FEDERAL REGISTER

Vol. 88 Thursday

No. 3 January 5, 2023

Pages 739–948

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Publishing Office, is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.federalregister.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at *www.govinfo.gov*, a service of the U.S. Government Publishing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 1, 1 (March 14, 1936) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Publishing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, *gpocusthelp.com.*

The annual subscription price for the **Federal Register** paper edition is $860 plus postage, or $929, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $330, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Publishing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 88 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Publishing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Assistance with Federal agency subscriptions:

Email	*FRSubscriptions@nara.gov*
Phone	**202–741–6000**

The Federal Register Printing Savings Act of 2017 (Pub. L. 115-120) placed restrictions on distribution of official printed copies of the daily **Federal Register** to members of Congress and Federal offices. Under this Act, the Director of the Government Publishing Office may not provide printed copies of the daily **Federal Register** unless a Member or other Federal office requests a specific issue or a subscription to the print edition. For more information on how to subscribe use the following website link: *https://www.gpo.gov/frsubs.*

Contents

Federal Register

Vol. 88, No. 3

Thursday, January 5, 2023

Centers for Disease Control and Prevention
NOTICES
Requirements for Negative Pre-departure COVID–19 Test Results or Documentation of Recovery from COVID–19 for Aircraft Passengers Traveling to the United States from the People's Republic of China, 864–871

Coast Guard
RULES
Safety Zones:
Corpus Christi Shipping Channel, Corpus Christi, TX, 756–758
NOTICES
Meetings:
Great Lakes Pilotage Advisory Committee; February 2023, 878–879

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 860–861

Energy Department
PROPOSED RULES
Energy Conservation Program:
Test Procedure for Uninterruptible Power Supplies, 790–805

Environmental Protection Agency
RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
North Carolina; Miscellaneous New Source Review Revisions and Updates; Updates to References to Appendix W Modeling Guideline, 773–775
Finding of Failure to Attain and Reclassification of Las Vegas Area as Moderate for the 2015 Ozone National Ambient Air Quality Standard, 775–783
PROPOSED RULES
National Emission Standards for Hazardous Air Pollutants:
Lime Manufacturing Plants Amendments, 805–820

Farm Credit Administration
NOTICES
Meetings; Sunshine Act, 861

Federal Aviation Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Airport Grants Program, 900–901

Federal Communications Commission
RULES
Annual Adjustment of Civil Monetary Penalties to Reflect Inflation, 783–786

Federal Deposit Insurance Corporation
NOTICES
Civil Monetary Penalty Inflation Adjustment, 861–863

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 863

Federal Motor Carrier Safety Administration
PROPOSED RULES
Broker and Freight Forwarder Financial Responsibility, 830–854
NOTICES
Exemption Application:
Qualification of Drivers; Epilepsy and Seizure Disorders, 904–908
Qualification of Drivers; Hearing, 901–904

Food and Drug Administration
RULES
Food Additives Permitted for Direct Addition to Food for Human Consumption:
Vitamin D3, 745–749
Medical Devices:
Neurological Devices; Classification of the Brain Stimulation Programming Planning Software, 749–751
Orthopedic Devices; Classification of the Bone Indentation Device, 753–755
Orthopedic Devices; Classification of the Implantable Post-Surgical Kinematic Measurement Knee Device, 751–753
NOTICES
Guidance:
Format and Content of a Risk Evaluation and Mitigation Strategy Document, 871–873

General Services Administration
NOTICES
Calendar Year 2023 Privately Owned Vehicle Mileage Reimbursement Rates; Calendar Year 2023 Standard Mileage Rate for Moving Purposes, 864
Meetings:
Senior Policy Operating Group's Procurement and Supply Chains Committee Outreach Session, 863–864

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration
PROPOSED RULES
Safeguarding the Rights of Conscience as Protected by Federal Statutes, 820–830

Health Resources and Services Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Uniform Data System, 874–876
Bright Futures Periodicity Schedule; Preventive Services Guidelines for Infants, Children, and Adolescents, 873–874

Women's Preventive Services Guidelines Relating to Screening for Diabetes in Pregnancy and Screening for Diabetes after Pregnancy, 876–878

Homeland Security Department
See Coast Guard

Indian Affairs Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Fiscal Year 2024 Expirations, 879–882

Interior Department
See Indian Affairs Bureau

Internal Revenue Service
RULES
Treatment of Special Enforcement Matters; Correction, 755–756
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 910–911

International Trade Administration
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China, 856–858
Fresh Garlic from the People's Republic of China, 858–859
Stainless Steel Wire Rods from India, 855

International Trade Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 882–883
Complaint, 883–884

Labor Department
See Mine Safety and Health Administration

Mine Safety and Health Administration
NOTICES
Petition:
Modification of Application of Existing Mandatory Safety Standards, 885–888

National Oceanic and Atmospheric Administration
RULES
Atlantic Highly Migratory Species:
Atlantic Bluefin Tuna Fisheries; General Category January through March Quota Transfer, 786–788
Fisheries of the Exclusive Economic Zone off Alaska:
Inseason Adjustment to the 2023 Bering Sea and Aleutian Islands Pollock, Atka Mackerel, and Pacific Cod Total Allowable Catch Amounts, 789
Pacific Cod by Catcher Vessels Using Hook-and-Line Gear in the Western Regulatory Area of the Gulf of Alaska, 789
Fisheries of the Northeastern United States:
Atlantic Deep-Sea Red Crab Fishery; Final 2023 Atlantic Deep-Sea Red Crab Specifications, 788–789
PROPOSED RULES
Taking and Importing Marine Mammals:
Incidental to Geophysical Surveys in the Gulf of Mexico, 916–948
NOTICES
Meetings:
Mid-Atlantic Fishery Management Council, 859
New England Fishery Management Council, 859–860
Permits; Applications, Issuances, etc.:
Endangered Species; File No. 27106; Correction, 859

Pension Benefit Guaranty Corporation
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Multiemployer Plan Regulations, 888–890

Pipeline and Hazardous Materials Safety Administration
NOTICES
Pipeline Safety; Special Permit:
Columbia Gas Transmission, LLC, 908–909
East Tennessee Natural Gas Transmission, LLC, 909–910

Postal Service
RULES
Removal of Sacks:
USPS Marketing Mail and Periodicals Flats, 758–773
NOTICES
Product Change:
First-Class Package Service and Parcel Select Service Negotiated Service Agreement, 891
Parcel Return Service Negotiated Service Agreement, 891
Parcel Select Negotiated Service Agreement, 890
Priority Mail and Parcel Select Negotiated Service Agreement, 890
Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement, 890–891
Priority Mail, First-Class Package Service and Parcel Select Negotiated Service Agreement, 891
Priority Mail, Parcel Select and Parcel Return Service Negotiated Service Agreement, 891

Presidential Documents
PROCLAMATIONS
Special Observances:
National Human Trafficking Prevention Month (Proc. 10510), 739–740
National Mentoring Month (Proc. 10511), 741–742
National Stalking Awareness Month (Proc. 10512), 743–744

Securities and Exchange Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Customer Account Statements, 893–894
Application:
Deregistration under the Investment Company Act, 896–897
Self-Regulatory Organizations; Proposed Rule Changes:
New York Stock Exchange LLC, 894–896
The Nasdaq Stock Market LLC, 892–893

State Department
NOTICES
Culturally Significant Object Being Imported for Exhibition:
Death is Not the End, 897
From Depero to Rotella: Italian Commercial Posters between Advertising and Art, 897
Monet/Mitchell: Painting the French Landscape, 898

Surface Transportation Board
NOTICES
Acquisition of Control:
Transdev Group, S.A., First Transit Topco, Inc.;, 898–899
Exemption:
Acquisition and Operation; Colorado Pacific Rio Grande Railroad, LLC, San Luis and Rio Grande Railroad, Inc., 899–900

Transportation Department
See Federal Aviation Administration
See Federal Motor Carrier Safety Administration
See Pipeline and Hazardous Materials Safety Administration

Treasury Department
See Internal Revenue Service

Veterans Affairs Department
NOTICES
Privacy Act; Systems of Records, 911–913

Separate Parts In This Issue

Part II
Commerce Department, National Oceanic and Atmospheric Administration, 916–948

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents electronic mailing list, go to https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new, enter your e-mail address, then follow the instructions to join, leave, or manage your subscription.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
10510.....739
10511.....741
10512.....743

10 CFR
Proposed Rules:
430.....790

21 CFR
172.....745
882.....749
888 (2 documents) 751, 753

26 CFR
301 (2 documents) 755, 756

33 CFR
165.....756

39 CFR
111.....758

40 CFR
52.....773
81.....775
Proposed Rules:
63.....805

45 CFR
Proposed Rules:
88.....820

47 CFR
1.....783

49 CFR
Proposed Rules:
386.....830
387.....830

50 CFR
635.....786
648.....788
679 (2 documents) 789
Proposed Rules:
217.....916

Federal Register
Vol. 88, No. 3
Thursday, January 5, 2023

Presidential Documents

Title 3—

The President

Proclamation 10510 of December 30, 2022

National Human Trafficking Prevention Month, 2023

By the President of the United States of America

A Proclamation

Around the world, human trafficking has stripped nearly 25 million people of their safety, dignity, and liberty—disproportionately affecting historically underserved and marginalized communities. During National Human Trafficking Prevention Month, we reaffirm our commitment to ending this inhumane and immoral practice in all its forms. And as we bring perpetrators to justice, we renew our pledge to help survivors recover and rebuild their lives.

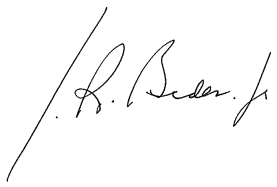
That is why, last year, my Administration released a National Action Plan to Combat Human Trafficking, which helps to prevent trafficking, prosecute perpetrators, and protect survivors. Consistent with this strategy, agencies across the Federal Government are working to combat human trafficking, conduct research to better address its root causes, and strengthen survivors' access to services, including affordable housing and trauma-informed care. Through the reauthorization of the Violence Against Women Act, we have expanded the recognition of Tribal courts' jurisdiction over non-Native sex traffickers on Tribal lands. And we have created a new unit within the Bureau of Indian Affairs that can help investigate human trafficking as an underlying cause of missing and murdered American Indians and Alaska Natives.

Human trafficking is a challenge that transcends borders, so the Department of State and United States Agency for International Development have partnered with allies across the globe to detect human trafficking, connect victims with supportive services, and strengthen accountability. In 2021, I signed into law the bipartisan Uyghur Forced Labor Prevention Act to prevent goods made with forced labor in the Xinjiang Uyghur Autonomous Region of the People's Republic of China from being imported to the United States. Throughout all of this work, we are listening to and highlighting the voices of survivors—particularly members of racial and ethnic minorities, women and girls, the LGBTQI+ community, migrants, and other disproportionately affected groups—and we will continue to ensure that survivors are treated with dignity and respect.

We all have an important role to play in preventing human tracking and protecting victims. This month, I encourage Americans to learn more about the signs of human trafficking and share the National Human Trafficking Hotline (1–888–373–7888)—an important resource to report a tip or ask for help. Together, we can combat human trafficking and its cruel consequences—creating a safer, freer, and more just world for everyone.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim January 2023 as National Human Trafficking Prevention Month. I call upon businesses, civil society organizations, communities of faith, families, and all Americans to recognize the vital role we play in combating human trafficking and to observe this month with appropriate programs and activities aimed at preventing all forms of human trafficking.

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



[FR Doc. 2023–00092
Filed 1–4–23; 8:45 am]
Billing code 3395–F3–P

Presidential Documents

Proclamation 10511 of December 30, 2022

National Mentoring Month, 2023

By the President of the United States of America

A Proclamation

Every January, our Nation celebrates the dedicated mentors whose wisdom, guidance, and positive examples set our children on a sound path and help prepare them to succeed.

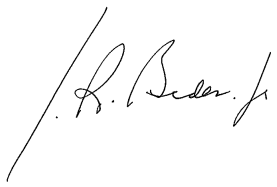
The events of the past few years have taken their toll on many of our Nation's young people. The isolation of the COVID–19 pandemic has hampered the social and academic progress of many students. A rising number of adolescents are experiencing mental health challenges, including from bullying and social media harms. That is why, as part of my Unity Agenda I announced in my State of the Union address, my Administration is pairing children with mentors who can help them navigate these complexities, open up doors of opportunity, and give them the additional support they may need to excel in school and in their communities.

Our American Rescue Plan provided $122 billion to help schools reopen safely and invest in tutoring, afterschool activities, summer learning, and enrichment programs, helping students regain ground that was lost in the last two years. The bill delivered a billion dollars to AmeriCorps to expand national service projects to include the recruitment of new mentors, tutors, and student success coaches. Through the Department of Labor, we are connecting young people who have previously dropped out of high school to pre-apprenticeship opportunities that help them prepare for jobs in high-demand industries. And this summer, I was proud to launch the National Partnership for Student Success, a collaboration between the Department of Education, AmeriCorps, and the Johns Hopkins Everyone Graduates Center to add 250,000 tutors and mentors around the country over the next 3 years.

During National Mentoring Month, I encourage Americans to visit americorps.gov/serve and partnershipstudentsuccess.org to learn about these opportunities and consider becoming a mentor or a tutor. I also call on local schonol districts to put the funding offered by my American Rescue Plan toward hiring more mentors and tutors for their students, particularly in subjects like the sciences, technology, engineering, and mathematics. I encourage our Nation's colleges and universities to partner with K–12 schools and community-based organizations to provide new mentorship opportunities, and I urge employers and unions to continue offering pre-apprenticeships and Registered Apprenticeships, which train new workers to participate in the 21st century's biggest industries. As families and friends, teachers and counselors, coaches and co-workers, faith and community leaders, good citizens and neighbors, we can each play a role in helping the next generation of Americans achieve their dreams.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim January 2023 as National Mentoring Month. I call upon Americans across the country to observe this month with mentoring, appropriate ceremonies, activities, and programs.

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



[FR Doc. 2023–00093
Filed 1–4–23; 8:45 am]
Billing code 3395–F3–P

Presidential Documents

Proclamation 10512 of December 30, 2022

National Stalking Awareness Month, 2023

By the President of the United States of America

A Proclamation

During National Stalking Awareness Month, we shine a light on the insidious crime of stalking, recommit to protecting survivors, and reaffirm that every American deserves to live free from fear, intimidation, and threats to their physical safety and emotional well-being.

Studies show that more than 3 million people aged 16 or older are victims of stalking on an annual basis in the United States. Being stalked, whether in-person or online, means having to worry about your safety at work, at school, in public, and even at home. It can mean having to uproot your life, leave your job, and suffer physical and psychological harms. One of the driving forces of my career has been fighting back against abuses of power. That is why I was proud to write and champion the groundbreaking Violence Against Women Act (VAWA) as a United States Senator, landmark legislation that first passed in 1994. In the nearly three decades since, I have worked with Members of the Congress from both parties to renew and strengthen VAWA three times in 2000, 2005, and 2013. And I was proud to sign its reauthorization this year. The 2022 reauthorization law increases resources and support for law enforcement to investigate and prosecute stalkers and offenders of gender-based violence. It extends legal protections for survivors as well as access to transitional housing when they flee unsafe homes. It expands recognition of Tribal courts' jurisdiction over non-Native perpetrators to include stalking, sexual assault, child abuse, and sex trafficking. Additionally, VAWA calls on the Attorney General to develop a national strategy to address the rising rate of cybercrimes, including cyberstalking.

As President, I also created the White House Task Force to Address Online Harassment and Abuse, which is co-chaired by the Gender Policy Council and the National Security Council to expand on these efforts and coordinate a Federal approach to preventing and addressing technology-facilitated gender-based violence. The taskforce is producing recommendations for State governments, technology platforms, schools, and other public and private entities to combat cyberstalking and other online abuses. At the same time, it is working closely with survivors, advocates, and parents to promote the safety of communities most impacted by online abuse, including women, girls, and LGBTQI+ individuals.

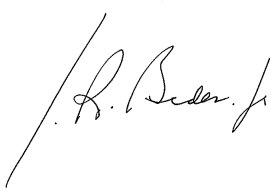
Cracking down on stalking and helping victims heal must be a government-wide effort. Since I took office, the Department of Justice has provided nearly $970 million in grants to help victim service providers, law enforcement agencies, prosecutors, courts, and community-based organizations prevent and address domestic violence, sexual assault, stalking, and dating violence. And the Department of Housing and Urban Development has provided 70,000 emergency housing vouchers to assist individuals and families who are homeless or at-risk of homelessness, including victims of domestic violence, sexual assault, stalking, and human trafficking. In June, I also signed the Bipartisan Safer Communities Act into law—the first major bipartisan gun safety legislation in more than 30 years—which requires young people ages 18 to 21 to undergo enhanced background checks, narrows

the ''boyfriend loophole'' to keep guns out of the hands of dating partners convicted of misdemeanor crimes of domestic violence, funds crisis intervention, including red flag laws, and services to address the trauma experienced by survivors of gun violence.

It is essential that we bring these offenses out of the shadows, making it unmistakably clear that violence, displays of unwanted attention that cause someone to fear for their safety or suffer substantial emotional distress, and other abuses of power will not stand. This month, let us strengthen stalking prevention efforts, amplify the voices of survivors, and hold stalkers accountable. We can—and must—advance a safer and more just America for all.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim January 2023 as National Stalking Awareness Month. I call on all Americans to speak out against stalking and to support the efforts of advocates, courts, service providers, and law enforcement to help those who are targeted and send the message to perpetrators that these crimes will not go unpunished.

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



[FR Doc. 2023–00094
Filed 1–4–23; 8:45 am]
Billing code 3395–F3–P

Rules and Regulations

Federal Register
Vol. 88, No. 3
Thursday, January 5, 2023

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. FDA–2019–F–3519]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Vitamin D_3

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA or we) is amending the food additive regulations to provide for the safe use of vitamin D_3 as a nutrient supplement in breakfast cereals and grain-based bars (*e.g.,* breakfast bars, granola bars, rice cereal bars), and to update the reference for the Vitamin D_3 specifications. We are taking this action in response to a petition filed by Kellogg Company (Kellogg).

DATES: This rule is effective January 5, 2023. The incorporation by reference of certain material listed in the rule is approved by the Director of the Federal Register as of January 5, 2023. See section VIII for further information on the filing of objections. Either electronic or written objections and requests for a hearing on the final rule must be submitted by February 6, 2023.

ADDRESSES: You may submit objections and requests for a hearing as follows. Please note that late, untimely filed objections will not be considered. The *https://www.regulations.gov* electronic filing system will accept objections until 11:59 p.m. Eastern Time at the end of February 6, 2023. Objections received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic objections in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov*. Follow the instructions for submitting comments. Objections submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your objection will be made public, you are solely responsible for ensuring that your objection does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your objection, that information will be posted on *https://www.regulations.gov*.
- If you want to submit an objection with confidential information that you do not wish to be made available to the public, submit the objection as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper objections submitted to the Dockets Management Staff, FDA will post your objection, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–F–3519 for ''Food Additives Permitted for Direct Addition to Food for Human Consumption; Vitamin D_3.'' Received objections, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit an objection with confidential information that you do not wish to be made publicly available, submit your objections only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' We will review this copy, including the claimed confidential information, in our consideration of objections. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov*. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your objections and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf*.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Lane A. Highbarger, Center for Food Safety and Applied Nutrition (HFS–255), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740–3835, 240–402–1204, or Joan Rothenberg, Center for Food Safety and Applied Nutrition, Office of Regulations and Policy (HFS–024), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2378.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of August 12, 2019 (84 FR 39785), we announced that we filed a food additive petition (FAP 9A4823) submitted on behalf of Kellogg by Hogan Lovells US LLP, Columbia Square, 555 Thirteenth St. NW,

Washington, DC 20004. The petition proposed that FDA amend the food additive regulations in § 172.380 (21 CFR 172.380) to provide for the safe use of vitamin D_3 as a nutrient supplement in: (1) breakfast cereals as defined in § 170.3(n)(4) (21 CFR 170.3(n)(4)) at levels up to 560 international units (IU) vitamin D_3 per 100 grams (g) and (2) grain-based nutrition bars at levels up to 400 IU vitamin D_3 per 100 g. (One IU of vitamin D is equivalent to 0.025 micrograms (µg) of vitamin D. We also note that while the petition uses ''grain-based nutrition bars,'' we consider this to refer to the same category of food products as ''grain-based bars'' (*e.g.,* breakfast bars, granola bars, rice cereal bars), which is used elsewhere in existing FDA regulations (see 21 CFR 172.780 and 101.12); therefore, for consistency of terminology, we are using ''grain-based bars.'') FDA is also updating the reference for specifications for vitamin D_3 established in § 172.380(b) by incorporating by reference the most recent edition of the Food Chemicals Codex (FCC). The current food additive regulation for the use of vitamin D_3 (§ 172.380) indicates that the additive must meet the specifications in the 11th edition of the FCC (FCC 11). Since we received the petition, the FCC has been updated to the 13th edition (FCC 13). The specifications for Vitamin D_3 from FCC 11 are identical to those in FCC 13. Therefore, we are amending § 172.380(b) by adopting, and incorporating by reference, the most recent edition of the FCC (FCC 13).

Vitamin D is essential for human health. The major function of vitamin D is the maintenance of blood serum concentrations of calcium and phosphorus by enhancing the absorption of these minerals in the small intestine. Vitamin D deficiency can lead to abnormalities in calcium and bone metabolism, such as rickets in children or osteomalacia in adults. At high levels in the diet, vitamin D may be toxic. Excessive intake of vitamin D elevates blood plasma calcium levels (hypercalcemia) by increased intestinal absorption and/or mobilization from the bone, and possibly associated with decreased renal function and increased cardiovascular risk (Refs. 1 and 2).

To ensure that vitamin D is not added to the U.S. food supply at levels that could raise safety concerns, FDA affirmed vitamin D as generally recognized as safe (GRAS) with specific limitations as listed in § 184.1950 (21 CFR 184.1950). Under § 184.1(b)(2) (21 CFR 184.1(b)(2)), an ingredient affirmed as GRAS with specific limitations may be used in food only within such limitations, including the category of food, functional use of the ingredient, and level of use. Any addition of vitamin D to food beyond those limitations set out in § 184.1950 requires a food additive regulation.

Vitamin D comprises a group of fat-soluble seco-sterols and occurs in many forms. The two major physiologically relevant forms are vitamin D_2 and vitamin D_3. Vitamin D without a subscript represents vitamin D_2, vitamin D_3, or both. Vitamin D is affirmed as GRAS for use in certain foods as a nutrient supplement (as defined under § 170.3(o)(20)) under § 184.1950(c)(1), in accordance with § 184.1(b)(2), as the sole source of added vitamin D only within the following specific limitations:

Category of food	Maximum levels in food (as served) (IU/100 g)
Breakfast cereals	350
Grain products and pasta	90
Milk	42
Milk products	89

Vitamin D is also affirmed as GRAS under § 184.1950(c)(2) and (3) for use in infant formula and margarine, respectively. Vitamin D_2 is an approved food additive under § 172.379 (21 CFR 172.379) for use as a nutrient supplement in edible plant-based beverages intended as milk alternatives, edible plant-based yogurt alternatives, soy beverage products, soy-based butter substitute spreads, and soy-based cheese substitutes and soy-based cheese substitute products. Vitamin D_3 is an approved food additive under § 172.380 for use as a nutrient supplement in certain calcium-fortified 100 percent fruit juices and fruit juice drinks; meal replacement and other-type bars that are represented for special dietary use in reducing or maintaining body weight; soy-protein based meal replacement beverages that are represented for special dietary use in reducing or maintaining body weight; certain cheese and cheese products; certain meal replacement beverages that are not intended for special dietary use in reducing or maintaining body weight; foods represented for use as a sole source of nutrition for enteral feeding; and milk that contains more than 42 IU vitamin D per 100 g and that meets the requirements for foods named by use of a nutrient content claim and a standardized term in accordance with 21 CFR 130.10. Vitamin D_2 baker's yeast is an approved food additive under § 172.381 (21 CFR 172.381) for use as a source of vitamin D_2 and as a leavening agent in yeast-leavened baked goods and baking mixes, and yeast-leavened baked snack foods. Vitamin D_2 mushroom powder is an approved food additive under § 172.382 (21 CFR 172.382) for use as a source of vitamin D_2 in foods to which vitamin D_2, vitamin D_3, and vitamin D_2 baker's yeast are currently allowed to be added under §§ 184.1950, 172.379, 172.380, and 172.381, excluding cheese and cheese products, foods represented for use as a sole source of nutrition for enteral feeding, infant formula, milk and milk products, and margarine; fruit smoothies; vegetable juices; extruded vegetable snacks; certain soups and soup mixes; and plant protein products.

To support their petition, Kellogg submitted dietary exposure estimates of vitamin D from the proposed uses of vitamin D_3, as well as all naturally occurring dietary sources of vitamin D, currently approved and affirmed uses of vitamin D under our food additive and GRAS regulations, and dietary supplements. Kellogg compared these dietary exposure estimates to the Tolerable Upper Intake Level (UL) for vitamin D established by the Institute of Medicine (IOM) of the National Academies (now the National Academy of Medicine). Kellogg also submitted published scientific literature pertaining to human clinical studies on vitamin D.

II. Evaluation of Safety

To establish with reasonable certainty that a food additive is not harmful under its intended conditions of use, we consider the projected human dietary exposure to the additive, the additive's toxicological data, and other relevant information (such as published scientific literature) available to us. We compare the dietary exposure for the additive from all food sources to an acceptable intake level established by data. The dietary exposure is determined based on the amount of the additive proposed for specific uses in foods and on data regarding the amount consumed from all food sources of the additive. We commonly use the dietary exposure for the 90th percentile consumer of a food additive as a measure of high chronic dietary exposure (Ref. 3).

A. Acceptable Daily Intake for Vitamin D

In 2011, the Standing Committee on the Scientific Evaluation of Dietary Reference Intakes of the Food and Nutrition Board at the IOM conducted an extensive review of relevant published scientific literature to update established dietary reference intakes (DRI) for vitamin D; these DRIs are a family of nutrient reference values that

includes ULs (Ref. 4). Based on this information, the IOM revised the ULs for vitamin D and published a report on their findings (Ref. 5). In their 2011 assessment of vitamin D, the IOM established the following ULs for different age groups, including total consumption from food, including dietary supplements and water:

UL IU/per person/day (p/d)	Age group
1,000	infants 0 months to 6 months of age.
1,500	infants 6 months to 12 months of age.
2,500	children 1–3 years of age.
3,000	children 4–8 years of age.
4,000	adolescents aged 9–18 years of age and adults.

The IOM considers the UL as the maximum daily intake level of a nutrient that is likely to pose no health hazard risk for almost all individuals in the general population when the nutrient is consumed over long periods of time. The UL is determined using a risk assessment approach developed specifically for nutrients. The dose-response assessment, which concludes with an estimate of the UL, is built upon three toxicological concepts commonly used in assessing the risk of exposures to chemical substances: no-observed-adverse-effect level, lowest-observed-effect level, and application of an uncertainty factor. We considered the ULs established by the IOM relative to the cumulative dietary exposure estimates as the primary basis for assessing the safety of the petitioned uses of vitamin D_3. We also reviewed published scientific literature on the safety of vitamin D submitted in the petition, as well as other relevant published studies available to FDA.

B. Dietary Exposure Estimate for Vitamin D

Kellogg provided mean and 90th percentile eaters-only dietary exposure estimates for vitamin D for the overall U.S. population and eight population subgroups from the: (1) proposed uses of vitamin D_3; (2) current food sources of vitamin D (including approved food additive and affirmed GRAS uses as a food ingredient, naturally occurring sources of vitamin D, and dietary supplements); and (3) the combined current and proposed food uses. Kellogg noted that dietary exposure was not estimated for infants 0–6 months as this age group is not expected to consume breakfast cereals or grain-based bars. Additionally, Kellogg indicated that dietary exposure was not estimated for infants 6–12 months for grain-based bars for the same reason; however, they were included in the exposure estimate for breakfast cereals (Ref. 3).

Kellogg presented the dietary exposure estimates to vitamin D from the proposed and existing uses. However, Kellogg did not provide an overall dietary exposure from all proposed uses, but instead provided separate dietary exposures for each of the petitioned uses of vitamin D_3. Kellogg then estimated a cumulative dietary exposure to vitamin D by adding the dietary exposures from each of the proposed uses and that from the existing uses. While the estimates of dietary exposures to each of the proposed and the existing uses of vitamin D are important to consider, it is not appropriate to estimate a cumulative dietary exposure by summing all the values because the populations of consumers for each of the food uses are not the same. Additionally, since the submission of the current petition by Kellogg, vitamin D_2 mushroom powder was approved under § 172.382 for use as a source of vitamin D_2 in certain foods (see Section I. Background). As a result, Kellogg did not include these uses in its cumulative dietary exposure estimate. Therefore, FDA conducted dietary exposure estimates to determine: (1) the overall dietary exposure to vitamin D_3 from the petitioned uses and (2) a cumulative dietary exposure for vitamin D from all existing sources, including the approved uses of vitamin D_2 in mushroom powder, and the petitioned uses for vitamin D_3 (Ref. 3).

FDA performed the dietary exposure estimate for vitamin D_3 from the proposed uses in breakfast cereals and grain-based bars using the combined 2011–2014 National Health and Nutrition Examination Survey. FDA also estimated a cumulative dietary exposure for vitamin D that includes all existing sources of vitamin D (*i.e.,* naturally occurring sources, approved and affirmed GRAS food uses of vitamin D, and dietary supplements) and Kellogg's proposed uses for vitamin D_3 in breakfast cereals and grain-based bars. Furthermore, FDA also included dietary exposure to the vitamin D metabolite, 25-hydroxyvitamin D, in the cumulative estimate to account for discrepancies seen between dietary intake and blood serum levels of vitamin D (Ref. 3).

For the overall U.S. population 1 year of age and older, we estimated the cumulative dietary exposure at the 90th percentile from all food sources of vitamin D, including the proposed uses and background sources, to be 2,730 IU/p/d. Additionally, the estimated 90th percentile dietary exposure to vitamin D from all food sources for infants 6 to 12 months of age is 1,060 IU/p/d. In summary, the cumulative dietary exposure to vitamin D_3 at the 90th percentile from the petitioned and background sources is below the IOM UL for all population groups for which ULs were established.

C. Safety of the Petitioned Uses of Vitamin D_3

We reviewed and evaluated the information submitted by Kellogg regarding the safety of the dietary exposure to vitamin D_3 from the proposed uses in grain-based bars and breakfast cereals. Kellogg submitted reports of scientific studies published after the 2011 IOM report and concluded that these publications support a conclusion that the proposed uses of vitamin D_3 are safe.

We reviewed the published reports of scientific studies on vitamin D submitted by Kellogg, as well as other relevant published studies available to us since our previous evaluations of food additive petitions for fortifying a variety of foods with vitamin D (85 FR 41916, July 13, 2020; 81 FR 46578, July 18, 2016; 79 FR 46993, August 12, 2014; 77 FR 52228, August 29, 2012; 74 FR 11019, March 16, 2009; 70 FR 69435, November 16, 2005; 70 FR 37255, June 29, 2005; 70 FR 36021, June 22, 2005; 68 FR 9000, February 27, 2003). These studies did not raise any new safety concerns regarding the current or proposed uses of vitamin D. The most recent food additive petition for a new use of vitamin D resulted in our amendment of the food additive regulations in § 172.382 to allow for the safe use of vitamin D_2 mushroom powder in specific food categories (85 FR 41916). The earlier food additive petitions also resulted in amendments of the food additive regulations to allow

for the safe use of vitamin D as a nutrient supplement in certain foods.

We consider the ULs established by the IOM relative to the dietary exposure estimates as the primary basis for assessing the safety of the petitioned uses of vitamin D_3. Depending on the age group, the IOM ULs for vitamin D for the U.S. population 4 years and older range from 3,000 IU/p/d to 4,000 IU/p/d. FDA's cumulative dietary exposure estimate for vitamin D from all food sources, including the proposed uses, at the 90th percentile for the U.S. population 1 year of age and older is estimated to be no greater than 2,740 IU/p/d, which is below the IOM ULs for all population groups 4 years and above. Estimated dietary exposure to vitamin D from all food sources for infants 6 months to 12 months of age is 1,060 IU/p/d, and for children aged 1 year to 3 years old is 1,730 IU/p/d. These estimates are below the respective IOM UL of 1,500 IU/p/d for infants 6 months to 12 months of age, and 2,500 IU/p/d for children aged older than 1 year to 3 years old (Ref. 6).

Because the estimated 90th percentile dietary exposure to vitamin D from all current and proposed food uses for each population group is less than the corresponding IOM UL for that population group, we conclude that dietary exposure to vitamin D_3 from the proposed uses as a nutrient supplement in breakfast cereals and grain-based bars are safe (Ref. 6).

III. Conclusion

Based on the relevant data available to FDA and information in the petition, we conclude that there is a reasonable certainty that no harm will result from the use of vitamin D_3 as a nutrient supplement in breakfast cereals, as defined in § 170.3(n)(4), at a level up to 560 IU vitamin D_3 per 100 g and in grain-based bars at a level up to 400 IU vitamin D_3 per 100 g. Additionally, we are amending § 172.380(b) by adopting, and incorporating by reference, the most recent edition of the FCC (FCC 13).

IV. Incorporation by Reference

FDA is incorporating by reference the monograph for vitamin D_3 from the Food Chemicals Codex, 13th ed., 2022, which was approved by the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may purchase a copy of the material from the U.S. Pharmacopeial Convention, 12601 Twinbrook Pkwy., Rockville, MD 20852, 1–800–227–8772, *https://www.usp.org/.* You may inspect a copy at Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500, between 9 a.m. and 4 p.m., Monday through Friday. On our own initiative, we have revised § 172.380 to state that the referenced material can be found at FDA's Dockets Management Staff instead of FDA's Main Library. This change reflects a recent decision regarding the location of referenced materials cited in FDA regulations.

The FCC monograph sets forth a standard for purity and identity for vitamin D_3. The monograph provides specifications and analytical methodologies to identify the substance and establish acceptable purity criteria. The current food additive regulation for the use of vitamin D_3 (§ 172.380) indicates that the additive must meet the specifications in the FCC 11. The petitioner indicated that the vitamin D_3 petitioned in FAP 9A4823 complies with the specifications in the monograph for vitamin D_3 in FCC 11. Since we received the petition, the FCC has been updated to the 13th edition (FCC 13). The specifications for vitamin D_3 in FCC 13 are identical to those in FCC 11. Therefore, we are amending § 172.380(b) by adopting, and incorporating by reference, the specifications for vitamin D_3 in FCC 13 in place of FCC 11.

V. Public Disclosure

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that we considered and relied upon in reaching our decision to approve the petition will be made available for public disclosure (see **FOR FURTHER INFORMATION CONTACT**). As provided in § 171.1(h), we will delete from the documents any materials that are not available for public disclosure.

VI. Analysis of Environmental Impact

We previously considered the environmental effects of this rule, as stated in the August 12, 2019, **Federal Register** notice of petition for FAP 9A4823 (84 FR 39785). We stated that we had determined, under 21 CFR 25.32(k), that this action is of a type that does not individually or cumulatively have a significant effect on the human environment such that neither an environmental assessment nor an environmental impact statement is required. We have not received any new information or comments that would affect our previous determination.

VII. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VIII. Objections

If you will be adversely affected by one or more provisions of this regulation, you may file with the Dockets Management Staff (see **ADDRESSES**) either electronic or written objections. You must separately number each objection, and within each numbered objection you must specify with particularity the provision(s) to which you object, and the grounds for your objection. Within each numbered objection, you must specifically state whether you are requesting a hearing on the particular provision that you specify in that numbered objection. If you do not request a hearing for any particular objection, you waive the right to a hearing on that objection. If you request a hearing, your objection must include a detailed description and analysis of the specific information you intend to present in support of the objection in the event that a hearing is held. If you do not include such a description and analysis for any particular objection, you waive the right to a hearing on the objection.

Any objections received in response to the regulation may be seen in the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *https:/www.regulations.gov.*

IX. Section 301(ll) of the Federal Food, Drug, and Cosmetic Act

Our review of this petition was limited to section 409 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 348). This final rule is not a statement regarding compliance with other sections of the FD&C Act. For example, section 301(ll) of the FD&C Act (21 U.S.C. 331(ll)) prohibits the introduction or delivery for introduction into interstate commerce of any food that contains a drug approved under section 505 of the FD&C Act (21 U.S.C. 355), a biological product licensed under section 351 of the Public Health Service Act (42 U.S.C. 262), or a drug or biological product for which substantial clinical investigations have been instituted and their existence has been made public, unless one of the exemptions in section 301(ll)(1) through (4) of the FD&C Act applies. In our review of this petition, we did not consider whether section 301(ll) of the FD&C Act or any of its exemptions apply to food containing this additive. Accordingly, this final rule should not be construed to be a statement that a food containing this additive, if introduced or delivered for introduction into interstate commerce, would not violate section 301(ll) of the FD&C Act.

Furthermore, this language is included in all food additive final rules and therefore should not be construed to be a statement of the likelihood that section 301(ll) of the FD&C Act applies.

X. References

The following references marked with an asterisk (*) are on display in the Dockets Management Staff (see **ADDRESSES**) and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *https://www.regulations.gov.* References without asterisks are not on public display at *https://www.regulations.gov* because they have copyright restriction. Some may be available at the website address, if listed. References without asterisks are available for viewing only at the Dockets Management Staff. FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

* 1. National Institutes of Health, Office of Dietary Supplements, ''Vitamin D—Fact Sheet for Consumers,'' 2021. Available at: *https://ods.od.nih.gov/factsheets/Vitamind-Consumer/.*
2. Pilz, S., W. Marz, K.D. Cashman, et al., ''Rationale and Plan for Vitamin D Food Fortification: A Review and Guidance Paper,'' *Frontiers in Endocrinology,* 9, 2018. Available at: *https://www.frontiersin.org/articles/10.3389/fendo.2018.00373/full.*
* 3. FDA Memorandum from R. Shah, Chemistry Review Branch, Division of Food Ingredients, to L. Highbarger, Regulatory Review Branch, Division of Food Ingredients, October 13, 2022.
* 4. Institute of Medicine Committee to Review Dietary Reference Intakes for Vitamin D and Calcium; Ross, A.C., C.L. Taylor, A.L. Yaktine, et al., editors. ''Dietary Reference Intakes for Calcium and Vitamin D.'' Washington (DC): National Academies Press, 2011. Available at: *https://www.ncbi.nlm.nih.gov/books/NBK56070/.*
5. Taylor, C., K. Patterson, J. Roseland, et al., ''Including Food 25-Hydroxyvitamin D in Intake Estimates May Reduce the Discrepancy between Dietary and Serum Measures of Vitamin D Status.'' *Journal of Nutrition,* 144: 654–659, 2014. Available at: *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3985821/pdf/nut144654.pdf.*
* 6. FDA Memorandum from S.A. Assimon, Toxicology Review Branch, Division of Food Ingredients, to L. Highbarger, Regulatory Review Branch, Division of Food Ingredients, October 14, 2022.

List of Subjects in 21 CFR Part 172

Food additives, Incorporation by reference, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

■ 1. The authority citation for part 172 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 348, 371, 379e.

■ 2. Amend § 172.380 by revising paragraph (b) and adding paragraphs (c)(9) and (10) to read as follows:

§ 172.380 Vitamin D_3.

* * * * *

(b) Vitamin D_3 meets the specifications of ''Vitamin D_3,'' *Food Chemicals Codex,* 13th edition, effective June 1, 2022, which is incorporated by reference. The Director of the Office of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies from the U.S. Pharmacopeial Convention, 12601 Twinbrook Pkwy., Rockville, MD 20852; website: *https://www.usp.org.* Copies may be examined at the FDA or the National Archives and Records Administration (NARA). Contact FDA at: the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500. For information on inspecting this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations.html* or email *fr.inspection@nara.gov.*

(c) * * *

(9) At levels not to exceed 560 IU per 100 g in breakfast cereals (as defined under § 170.3(n)(4) of this chapter).

(10) At levels not to exceed 400 IU per 100 g in grain-based bars (*e.g.,* breakfast bars, granola bars, rice cereal bars).

Dated: December 27, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–28428 Filed 1–4–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 882

[Docket No. FDA–2022–N–3224]

Medical Devices; Neurological Devices; Classification of the Brain Stimulation Programming Planning Software

AGENCY: Food and Drug Administration, HHS.

ACTION: Final amendment; final order.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is classifying brain stimulation programming planning software into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for the brain stimulation programming planning software's classification. We are taking this action because we have determined that classifying the device into class II (special controls) will provide a reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients' access to beneficial innovative devices.

DATES: This order is effective January 5, 2023. The classification was applicable on August 23, 2021.

FOR FURTHER INFORMATION CONTACT: Kristen Bowsher, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4210, Silver Spring, MD, 20993–0002, 301–796–6448, *Kristen.Bowsher@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA has classified the brain stimulation programming planning software as class II (special controls), which we have determined will provide a reasonable assurance of safety and effectiveness. In addition, we believe this action will enhance patients' access to beneficial innovation, in part by placing the device into a lower device class than the automatic class III assignment.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified as, and remains within, class III and requires premarket approval unless and until FDA takes an

action to classify or reclassify the device (see 21 U.S.C. 360c(f)(1)). We refer to these devices as ''postamendments devices'' because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act (see 21 U.S.C. 360c(i)) to a predicate device that does not require premarket approval. We determine whether a new device is substantially equivalent to a predicate device by means of the procedures for premarket notification under section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

FDA may also classify a device through ''De Novo'' classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act. Section 207 of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115) established the first procedure for De Novo classification. Section 607 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144) modified the De Novo application process by adding a second procedure. A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a 510(k) for a device that has not previously been classified. After receiving an order from FDA classifying the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA is required to classify the device by written order within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act. Although the device was automatically placed within class III, the De Novo classification is considered to be the initial classification of the device.

When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s (see section 513(f)(2)(B)(i) of the FD&C Act). As a result, other device sponsors do not have to submit a De Novo request or premarket approval application to market a substantially equivalent device (see section 513(i) of the FD&C Act, defining ''substantial equivalence''). Instead, sponsors can use the less-burdensome 510(k) process, when necessary, to market their device.

II. De Novo Classification

On February 3, 2021, FDA received Medtronic Neuromodulation's request for De Novo classification of the SureTune4 Software. FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for its intended use (see 21 U.S.C. 360c(a)(1)(B)). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA has determined that these special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on August 23, 2021, FDA issued an order to the requester classifying the device into class II. In this final order, FDA is codifying the classification of the device by adding 21 CFR 882.5855.[1] We have named the generic type of device brain stimulation programming planning software, and it is identified as a prescription device intended to assist in planning stimulation programming for implanted brain stimulators.

FDA has identified the following risks to health associated specifically with this type of device and the measures required to mitigate these risks in table 1.

TABLE 1—BRAIN STIMULATION PROGRAMMING PLANNING SOFTWARE RISKS AND MITIGATION MEASURES

Identified risks	Mitigation measures
Suboptimal stimulation settings leading to temporary injury or impairment and/or ineffective stimulation.	Software verification, validation, and hazard analysis; Usability assessment; and Labeling.

FDA has determined that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness. For a device to fall within this classification, and thus avoid automatic classification in class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this order. This device is subject to premarket notification requirements under section 510(k) of the FD&C Act.

At the time of classification, brain stimulation programming planning software is for prescription use only. Prescription devices are exempt from the requirement for adequate directions for use for the layperson under section 502(f)(1) of the FD&C Act (21 U.S.C. 352(f)(1)) and 21 CFR 801.5, as long as the conditions of 21 CFR 801.109 are met.

III. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously

[1] FDA notes that the ''ACTION'' caption for this final order is styled as ''Final amendment; final order,'' rather than ''Final order.'' Beginning in December 2019, this editorial change was made to indicate that the document ''amends'' the Code of Federal Regulations. The change was made in accordance with the Office of Federal Register's (OFR) interpretations of the Federal Register Act (44 U.S.C. chapter 15), its implementing regulations (1 CFR 5.9 and parts 21 and 22), and the Document Drafting Handbook.

approved collections of information found in other FDA regulations and guidance. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in 21 CFR part 860, subpart D, regarding De Novo classification have been approved under OMB control number 0910–0844; the collections of information in 21 CFR part 814, subparts A through E, regarding premarket approval, have been approved under OMB control number 0910–0231; the collections of information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 820, regarding quality system regulation, have been approved under OMB control number 0910–0073; and the collections of information in 21 CFR parts 801and 809, regarding labeling, have been approved under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 882

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 882 is amended as follows:

PART 882—NEUROLOGICAL DEVICES

■ 1. The authority citation for part 882 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

■ 2. Add § 882.5855 to subpart F to read as follows:

§ 882.5855 Brain stimulation programming planning software.

(a) *Identification.* The brain stimulation programming planning software is a prescription device intended to assist in planning stimulation programming for implanted brain stimulators.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) Software verification, validation, and hazard analysis must be performed.

(2) Usability assessment must demonstrate that the intended user(s) can safely and correctly use the device.

(3) Labeling must include:

(i) The implanted brain stimulators for which the device is compatible.

(ii) Instructions for use.

(iii) Instructions and explanations of all user-interface components.

(iv) A warning regarding use of the data with respect to not replacing clinical judgment.

Dated: December 28, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–28603 Filed 1–4–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 888

[Docket No. FDA–2022–N–3239]

Medical Devices; Orthopedic Devices; Classification of the Implantable Post-Surgical Kinematic Measurement Knee Device

AGENCY: Food and Drug Administration, HHS.

ACTION: Final amendment; final order.

SUMMARY: The Food and Drug Administration (FDA, Agency or we) is classifying the implantable post-surgical kinematic measurement knee device into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for the implantable post-surgical kinematic measurement knee device's classification. We are taking this action because we have determined that classifying the device into class II (special controls) will provide a reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients' access to beneficial innovative devices.

DATES: This order is effective January 5, 2023. The classification was applicable on August 27, 2021.

FOR FURTHER INFORMATION CONTACT: Patrick Macatangga, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1567, Silver Spring, MD 20993–0002, 301–796–4369, *Patrick.Macatangga@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA has classified the implantable post-surgical kinematic measurement knee device as class II (special controls), which we have determined will provide a reasonable assurance of safety and effectiveness. In addition, we believe this action will enhance patients' access to beneficial innovation, in part by placing the device into a lower device class than the automatic class III assignment.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified as, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (see 21 U.S.C. 360c(f)(1)). We refer to these devices as ''postamendments devices'' because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act (see 21 U.S.C. 360c(i)) to a predicate device that does not require premarket approval. We determine whether a new device is substantially equivalent to a predicate device by means of the procedures for premarket notification under section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

FDA may also classify a device through ''De Novo'' classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act. Section 207 of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115) established the first procedure for De Novo classification. Section 607 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144) modified the De Novo application process by adding a second procedure. A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a 510(k) for a device that has not previously been classified. After receiving an order from FDA classifying the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA is required to classify the device by written order

within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act. Although the device was automatically placed within class III, the De Novo classification is considered to be the initial classification of the device.

When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s (see section 513(f)(2)(B)(i) of the FD&C Act). As a result, other device sponsors do not have to submit a De Novo request or premarket approval application to market a substantially equivalent device (see section 513(i) of the FD&C Act, defining ''substantial equivalence''). Instead, sponsors can use the less-burdensome 510(k) process, when necessary, to market their device.

II. De Novo Classification

On October 19, 2020, FDA received Canary Medical, Inc.'s request for De Novo classification of the Canary Tibial Extension with Canary Health Implanted Reporting Processor (CHIRP) System. FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for its intended use (see 21 U.S.C. 360c(a)(1)(B)). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA has determined that these special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on August 27, 2021, FDA issued an order to the requester classifying the device into class II. In this final order, FDA is codifying the classification of the device by adding 21 CFR 888.3600.[1] We have named the generic type of device implantable post-surgical kinematic measurement knee device, and it is identified as a device that provides objective kinematic data after total knee arthroplasty surgery. The kinematic data provided by the device are used as an adjunct to other physiological parameter measurement tools utilized during the course of patient monitoring and treatment post surgery.

FDA has identified the following risks to health associated specifically with this type of device and the measures required to mitigate these risks in table 1.

TABLE 1—IMPLANTABLE POST-SURGICAL KINEMATIC MEASUREMENT KNEE DEVICE RISKS AND MITIGATION MEASURES

Identified risks	Mitigation measures
Tissue injury, thermal injury, or electric shock due to device failure including: • Loss of hermeticity. • Battery failure.	Thermal safety testing, Electrical safety testing, Battery safety testing, and Non-clinical performance testing.
Loosening/migration due to device failure at the bone/implant interface	Non-clinical performance testing, and Labeling.
Inaccurate, unreliable, and irreproducible kinematic data leading to improper post-surgical patient management.	Non-clinical performance testing.
Interference with imaging modalities	Non-clinical performance testing, and Magnetic resonance compatibility testing.
Data access failure and delayed access to kinematic data due to: • Software failure. • Interference with other devices. • Use error.	Software verification, validation, and hazard analysis, Electromagnetic compatibility testing, Human factors testing, and Labeling.
Infection	Sterilization validation, Reprocessing validation, Biocompatibility evaluation, and Labeling.
Adverse tissue reaction	Biocompatibility evaluation.

FDA has determined that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness. For a device to fall within this classification, and thus avoid automatic classification in class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this order. This device is subject to premarket notification requirements under section 510(k) of the FD&C Act.

III. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations and guidance. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in 21 CFR part 860, subpart D, regarding De Novo classification have been approved under OMB control number 0910–0844; the collections of information in 21 CFR part 814, subparts A through E, regarding premarket approval, have been approved under OMB control number 0910–0231; the collections of information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 820, regarding quality system regulation, have been approved under OMB control number 0910–0073; and the collections of information in 21 CFR parts 801, regarding labeling, have been

[1] FDA notes that the ''ACTION'' caption for this final order is styled as ''Final amendment; final order,'' rather than ''Final order.'' Beginning in December 2019, this editorial change was made to indicate that the document ''amends'' the Code of Federal Regulations. The change was made in accordance with the Office of Federal Register's (OFR) interpretations of the Federal Register Act (44 U.S.C. chapter 15), its implementing regulations (1 CFR 5.9 and parts 21 and 22), and the Document Drafting Handbook.

approved under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 888

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 888 is amended as follows:

PART 888—ORTHOPEDIC DEVICES

■ 1. The authority citation for part 888 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

■ 2. Add § 888.3600 to subpart D to read as follows:

§ 888.3600 Implantable post-surgical kinematic measurement knee device.

(a) *Identification.* An implantable post-surgical kinematic measurement knee device is a device that provides objective kinematic data after total knee arthroplasty surgery. The kinematic data provided by the device are used as an adjunct to other physiological parameter measurement tools utilized during the course of patient monitoring and treatment post surgery.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) Non-clinical performance testing must demonstrate that the device performs as intended under anticipated conditions of use. The following tests must be conducted:

(i) Mechanical testing must evaluate the mechanical function (mechanical fatigue, static mechanical strength) and durability of the implant.

(ii) Simulated use testing must evaluate the ability of the device to be sized, inserted, and sufficiently secured to any compatible components.

(iii) Testing must demonstrate the accuracy, reliability, and reproducibility of kinematic measurements.

(iv) Testing must demonstrate diagnostic and therapeutic ultrasound conditions for safe use.

(v) Testing must demonstrate that the device performs as intended under anticipated conditions of use demonstrating the following performance characteristics, if applicable:

(A) Magnetic pulse output testing;

(B) Magnetic and electrical field testing; and

(C) Testing of the safety features built into the device.

(vi) Testing must demonstrate hermeticity of any electronic component enclosures.

(2) Performance testing must evaluate the compatibility of the device in a magnetic resonance (MR) environment.

(3) Human factors testing must demonstrate that the intended user(s) can correctly use the device for its intended use, including for implantation and post-procedure data access.

(4) Performance data must demonstrate the sterility of the device implant and patient-contacting components.

(5) Performance data must validate the reprocessing instructions for the reusable components of the device.

(6) The patient-contacting components of the device must be demonstrated to be biocompatible.

(7) Design characteristics of the device, including engineering schematics, must ensure that the geometry and material composition are consistent with the intended use.

(8) Performance testing must demonstrate the electromagnetic compatibility/interference, (EMC/EMI), electrical safety, thermal safety, battery safety, and wireless performance of the device.

(9) Software verification, validation, and hazard analysis must be performed.

(10) The labeling must include the following:

(i) A shelf life;

(ii) Physician and patient instructions for use, including images that demonstrate how to interact with the device;

(iii) Detailed instruction of the surgical technique;

(iv) Hardware and software requirements for interacting with the device;

(v) A clear description of the technological features of the device including identification of the device materials, compatible components, and the principles of operation;

(vi) Identification of magnetic resonance (MR) compatibility status;

(vii) Validated methods and instructions for reprocessing of any reusable components; and

(viii) A statement regarding the limitations of the clinical significance of the kinematic data.

Dated: December 29, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–28604 Filed 1–4–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 888

[Docket No. FDA–2022–N–3191]

Medical Devices; Orthopedic Devices; Classification of the Bone Indentation Device

AGENCY: Food and Drug Administration, HHS.

ACTION: Final amendment; final order.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is classifying the bone indentation device into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for the bone indentation device's classification. We are taking this action because we have determined that classifying the device into class II (special controls) will provide a reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients' access to beneficial innovative devices.

DATES: This order is effective January 5, 2023. The classification was applicable on August 19, 2021.

FOR FURTHER INFORMATION CONTACT: Laura Rose, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4435, Silver Spring, MD 20993–0002, 301–348–1947, *Laura.rose@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA has classified the bone indentation device as class II (special controls), which we have determined will provide a reasonable assurance of safety and effectiveness. In addition, we believe this action will enhance patients' access to beneficial innovation, in part by placing the device into a lower device class than the automatic class III assignment.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified as, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (see 21 U.S.C. 360c(f)(1)). We refer to these devices as ''postamendments devices'' because they were not in

commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act (see 21 U.S.C. 360c(i)) to a predicate device that does not require premarket approval. We determine whether a new device is substantially equivalent to a predicate device by means of the procedures for premarket notification under section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

FDA may also classify a device through ''De Novo'' classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act. Section 207 of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115) established the first procedure for De Novo classification. Section 607 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144) modified the De Novo application process by adding a second procedure. A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a 510(k) for a device that has not previously been classified. After receiving an order from FDA classifying the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA is required to classify the device by written order within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act. Although the device was automatically placed within class III, the De Novo classification is considered to be the initial classification of the device.

When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s (see section 513(f)(2)(B)(i) of the FD&C Act). As a result, other device sponsors do not have to submit a De Novo request or premarket approval application to market a substantially equivalent device (see section 513(i) of the FD&C Act, defining ''substantial equivalence''). Instead, sponsors can use the less-burdensome 510(k) process, when necessary, to market their device.

II. De Novo Classification

On March 31, 2021, FDA received Active Life Scientific's request for De Novo classification of the OsteoProbe. FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for its intended use (see 21 U.S.C. 360c(a)(1)(B)). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA has determined that these special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on August 19, 2021, FDA issued an order to the requester classifying the device into class II. In this final order, FDA is codifying the classification of the device by adding 21 CFR 888.1600.[1] We have named the generic type of device bone indentation device, and it is identified as a device that measures resistance to indentation in bone.

FDA has identified the following risks to health associated specifically with this type of device and the measures required to mitigate these risks in table 1.

TABLE 1—BONE INDENTATION DEVICE RISKS AND MITIGATION MEASURES

Identified risks	Mitigation measures
Bone fracture or soft tissue damage	In vivo performance testing, and Labeling.
Adverse tissue reaction	Biocompatibility evaluation.
Infection, including operator exposure to infectious transmission.	Shelf-life testing, Sterilization validation, Reprocessing validation, Human factors testing, and Labeling.
Patient or operator injury due to electrical hazards	Electrical safety testing, and Electromagnetic compatibility testing.
Pain, discomfort, bruising, or bleeding	In vivo performance testing, and Labeling.
Inappropriate patient management due to inaccurate device output or misinterpretation of device output.	Non-clinical performance testing, In vivo performance testing, Software verification, validation, and hazard analysis, Human factors testing, and Labeling.

FDA has determined that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness. For a device to fall within this classification, and thus avoid automatic classification in class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this order. We encourage sponsors to consult with us if they wish to use a non-animal testing method they believe is suitable, adequate, validated, and feasible. We will consider if such an alternative method could be assessed for equivalency to an animal test method. This device is subject to premarket notification requirements under section 510(k) of the FD&C Act.

[1] FDA notes that the ''ACTION'' caption for this final order is styled as ''Final amendment; final order,'' rather than ''Final order.'' Beginning in December 2019, this editorial change was made to indicate that the document ''amends'' the Code of Federal Regulations. The change was made in accordance with the Office of Federal Register's (OFR) interpretations of the Federal Register Act (44 U.S.C. chapter 15), its implementing regulations (1 CFR 5.9 and parts 21 and 22), and the Document Drafting Handbook.

III. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations and guidance. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in 21 CFR part 860, subpart D, regarding De Novo classification have been approved under OMB control number 0910–0844; the collections of information in 21 CFR part 814, subparts A through E, regarding premarket approval, have been approved under OMB control number 0910–0231; the collections of information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 820, regarding quality system regulation, have been approved under OMB control number 0910–0073; and the collections of information in 21 CFR parts 801, regarding labeling, have been approved under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 888

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 888 is amended as follows:

PART 888—ORTHOPEDIC DEVICES

■ 1. The authority citation for part 888 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

■ 2. Add § 888.1600 to subpart B to read as follows:

§ 888.1600 Bone indentation device.

(a) *Identification.* A bone indentation device is a device that measures resistance to indentation in bone.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) In vivo performance testing must demonstrate that the device performs as intended under anticipated conditions of use. Testing must evaluate the risk of bone fracture, soft tissue damage, pain, discomfort, bruising, or bleeding.

(2) Non-clinical performance testing must demonstrate that the device performs as intended under anticipated conditions of use, including an evaluation of the accuracy and precision of the device with respect to resistance to bone indentation.

(3) Human factors testing must demonstrate that the intended user(s) can correctly use the device, based on the instructions for use.

(4) The patient-contacting components of the device must be demonstrated to be biocompatible.

(5) Performance testing must demonstrate:

(i) The sterility of the patient-contacting components of the device; and

(ii) Validation of reprocessing instructions for any reusable components of the device.

(6) Performance data must support the shelf life of the device by demonstrating continued sterility and device functionality over the identified shelf life.

(7) Software verification, validation, and hazard analysis must be performed.

(8) Performance data must be provided to demonstrate the electromagnetic compatibility (EMC) and electrical safety of the device.

(9) Labeling must include:

(i) Instructions for use;

(ii) Validated methods and instructions for reprocessing of any reusable components;

(iii) A shelf life for any sterile components;

(iv) Information regarding limitations of the clinical significance of the device output; and

(v) A detailed summary of the accuracy and precision of the device.

Dated: December 29, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–28601 Filed 1–4–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9969]

RIN 1545–BP01

Treatment of Special Enforcement Matters; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations; correction.

SUMMARY: This document contains corrections to final regulations (TD 9969) that was published in the **Federal Register** on December 9, 2022. This correction contains final regulations that except certain partnership-related items from the centralized partnership audit regime created by the Bipartisan Budget Act of 2015, and sets forth alternative rules that will apply to the examination of excepted items by the IRS.

DATES: These corrections are effective on January 5, 2023, and are applicable on December 9, 2022.

FOR FURTHER INFORMATION CONTACT: Concerning the final regulations, Jennifer M. Black, at (202)317–6834 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9969) subject to this correction are under section 6241(11) and 6241(7) of the Internal Revenue Code.

Correction of Publication

Accordingly, the final regulations (TD 9969) that are the subject of FR Doc. 2022–26783, published on December 9, 2022, at 87 FR 75473, are corrected to read as follows:

1. On page 75474, in the second column, the fifteenth line from the top of the first full paragraph, the language ''of partner'' is removed.

2. On page 75474, in the second column, the nineteenth line from the top of the first full paragraph is corrected to read ''additional example of an ineligible partner''.

3. On page 75476, in the first column, the last sentence of the first partial paragraph, the language ''adjustment-year'' is corrected to read ''adjustment year'' wherever it appears.

4. On page 75482, in the third column, the twelfth line from the bottom of the first full paragraph, the language ''partner level'' is corrected to read ''partner-level''.

5. On page 75486, in the first column, in the seventh line from the bottom of the second full paragraph, the language ''easily'' is removed.

6. On page 75486, in the second column, in the third line from the bottom of the second full paragraph, the language ''not'' is removed.

Oluwafunmilayo A. Taylor,

Branch Chief, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2022–28594 Filed 1–4–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9969]

RIN 1545–BP01

Treatment of Special Enforcement Matters; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final rule; correcting amendments.

SUMMARY: This document contains corrections to a final regulation (TD 9969) that was published in the **Federal Register** on December 9, 2022. This document contains final regulations that except certain partnership-related items from the centralized partnership audit regime created by the Bipartisan Budget Act of 2015, and sets forth alternative rules that will apply to the examination of excepted items by the IRS.

DATES: *Effective date.* These corrections are effective on January 5, 2023, and applicable on December 9, 2022.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Jennifer M. Black, at (202) 317–6834 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9969) that are the subject of these corrections are under section 6241(11) and 6241(7) of the Internal Revenue Code.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting, and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 301 is corrected by making the following correcting amendments:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 301.6225–1 Partnership adjustment by the Internal Revenue Service.

■ **Par. 2.** Section 301.6225–1 is amended by:

■ 1. Removing the language ''§ 301.6226–2(g)(1)'' in the last sentence of paragraph (h)(15) and adding the language ''§ 301.6226–2(g)(4)'' in its place.

■ 2. Removing the language ''(d)(3)(iii)(C)'' and ''(e)(3)(iii)(B)'' from the last sentence of paragraph (i)(1).

Oluwafunmilayo A. Taylor,

Branch Chief, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2022–28593 Filed 1–4–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–1005]

RIN 1625–AA00

Safety Zone; Corpus Christi Shipping Channel, Corpus Christi, TX

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters of the Corpus Christi Shipping Channel in a zone defined by the following coordinates; 27°50′31.28″ N, 97°04′17.23″ W; 27°50′31.73″ N, 97°04′15.44″ W; 27°50′29.06″ N, 97°04′16.61″ W; 27°50′29.32″ N, 97°04′14.82″ W. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by pipelines that will be removed from the floor of the Corpus Christi Shipping Channel. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Corpus Christi or a designated representative.

DATES: This rule is effective without actual notice from January 5, 2023, through 4 a.m. on January 9, 2023. For the purposes of enforcement, actual notice will be used from 8 p.m. on January 3, 2023, until January 5, 2023.

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

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. We must establish this safety zone immediately to protect personnel, vessels, and the marine environment from potential hazards created by pipeline removal operations and lack sufficient time to provide a reasonable comment period and then to consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest because immediate action is needed to respond to the potential safety hazards associated with pipeline removal operations in the Corpus Christi Shipping Channel.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector Corpus Christi (COTP) has determined that potential hazards associated with pipeline removal operations occurring from 8 p.m. on January 3, 2023, through 4 a.m. on January 9, 2023, will be a safety concern for anyone within the Corpus Christi Shipping Channel in a zone defined by the following coordinates; 27°50′31.28″ N, 97°04′17.23″ W; 27°50′31.73″ N, 97°04′15.44″ W; 27°50′29.06″ N, 97°04′16.61″ W; 27°50′29.32″ N, 97°04′14.82″ W. The purpose of this rule is to ensure safety of vessels and persons on these navigable waters in the safety zone while pipelines are removed from the floor of the Corpus Christi Shipping Channel.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from 8 p.m. on January 3,

2023, through 4 a.m. on January 9, 2023, and will be subject to enforcement from 8 p.m. to 4 a.m. of the next day, each day. The safety zone will encompass all navigable waters of the Corpus Christi Shipping Channel in a zone defined by the following coordinates; 27°50′31.28″ N, 97°04′17.23″ W; 27°50′31.73″ N, 97°04′15.44″ W; 27°50′29.06″ N, 97°04′16.61″ W; 27°50′29.32″ N, 97°04′14.82″ W. The pipeline will be removed along the floor of the Corpus Christi Shipping Channel. No vessel or person is permitted to enter the temporary safety zone during the effective period without obtaining permission from the COTP or a designated representative, who may be contacted on Channel 16 VHF–FM (156.8 MHz) or by telephone at 361–939–0450. The Coast Guard will issue Broadcast Notices to Mariners, Local Notices to Mariners, and/or Safety Marine Information Broadcasts as appropriate.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, and duration of the safety zone. The temporary safety zone will be enforced for a short period of only 8 hours each day. The rule does not completely restrict the traffic within a waterway and allows mariners to request permission to enter the zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, and Environmental Planning, COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishment of a temporary safety zone for navigable waters of the Corpus Christi Shipping Channel in a zone defined by the following coordinates; 27°50′31.28″ N, 97°04′17.23″ W; 27°50′31.73″ N, 97°04′15.44″ W; 27°50′29.06″ N, 97°04′16.61″ W; 27°50′29.32″ N, 97°04′14.82″ W. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by pipeline that will be removed from the floor of the Corpus Christi Shipping Channel. It is categorically excluded from further review under paragraph L60(d) 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 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, 70124; 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.T08–1005 to read as follows:

§ 165.T08–1005 Safety Zone; Corpus Christi Shipping Channel, Corpus Christi, TX.

(a) *Location.* The following area is a safety zone: all navigable waters of the Corpus Christi Shipping Channel in a zone defined by the following coordinates; 27°50′31.28″ N, 97°04′17.23″ W; 27°50′31.73″ N, 97°04′15.44″ W; 27°50′29.06″ N, 97°04′16.61″ W; 27°50′29.32″ N, 97°04′14.82″ W.

(b) *Effective period.* This section is effective from 8 p.m. on January 3, 2023, through 4 a.m. on January 9, 2023. This section is subject to enforcement from 8 p.m. to 4 a.m. of the next day, each day.

(c) *Regulations.* (1) According to the general regulations in § 165.23 of this part, entry into this temporary safety zone is prohibited unless authorized by the Captain of the Port Sector Corpus Christi (COTP) or a designated representative. They may be contacted on Channel 16 VHF–FM (156.8 MHz) or by telephone at 361–939–0450.

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

(d) *Information broadcasts.* The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners, Local Notices to Mariners, and/or Safety Marine Information Broadcasts as appropriate.

Dated: January 2, 2023.

J.B. Gunning,

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

[FR Doc. 2023–00071 Filed 1–3–23; 4:15 pm]

BILLING CODE 9110–04–P

POSTAL SERVICE

39 CFR Part 111

Removal of Sacks—USPS Marketing Mail and Periodicals Flats

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service™ is amending *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) to remove references to sacks as a handling unit for USPS Marketing Mail® and Periodicals Flats.

DATES: Effective January 22, 2023.

FOR FURTHER INFORMATION CONTACT: Dale Kennedy at (202) 268–6592 or Doriane Harley at (202) 268–2537.

SUPPLEMENTARY INFORMATION: As part of its network redesign efforts, the Postal Service is eliminating the use of sacks as containers for Flats acceptance/entry but will continue to allow Flat trays as acceptable containers for acceptance and entry along with bundles on pallets for USPS Marketing Mail and Periodicals flat Mail. Carrier route, 5-digit scheme carrier routes and 5-digit carrier routes USPS Marketing Mail® and Periodicals flat mail will continue to be allowed to use sacks as a handling unit.

The Postal Service received seven formal comments on the October 21, 2022, proposed rule (87 FR 63985). Two commenters supported the proposed rule, and five cited concerns:

Comment: Commenters expressed one concern about the conversion from using sacks for mail reparation to using trays for Periodicals and Marketing Mail flats. The commenters stated that the change would increase the number of handling unit containers used by varying percentages, ranging from 30% to 50%. The commenters also stated that it the change would require a 50% increase in truck loads, from 321 trucks required to 642 trucks, for their mail alone.

USPS Response: While the Postal Service agrees there will be an increase in flat trays used versus sacks, the intent is to drive increased use of bundles for presorted volume with working mail being pushed towards the flat trays. Sacks can still be used for Carrier Route volume containerized to pallet for insertion directly into Destinating Delivery Units and entered for cross dock to the delivery unit.

Comment: Commenters also expressed a lingering concern within the industry around the availability of sufficient flat tubs and pallets in the Mail Transport Equipment (MTE) system to support the change.

USPS Response: The Postal Service has been working proactively to increase the number of flat trays and pallets into the MTE system meet the increased demand for both items. We believe this concern will be mitigated via changes in the supply change process for MTE.

Comment: Commenters expressed concerns about costs to the mailers related to banding equipment for bundles and for flat trays and about having to acquire additional space for MTE storage. This equipment is versatile enough to be used for letter trays, flat trays, and bundles.

USPS Response: The Postal Service hopes that through new efficiencies related to increased bundles for flats, standardizing preparations standards based on shape rather than class of mail, and impacts network changes the increased costs will be mitigated. The Postal Service also believes the storage concern can be mitigated by just-in-time MTE supply management and through better inventory control using METEOR.

Comment: Commenters cited concerns that they cannot implement these changes until their software vendors have time to make changes in the software. As such, the commenters suggested a delay until at least April for implementation. Indeed, all commenters against the proposals are concerned about being ready by the end of January.

USPS Response: The Postal Service has been working proactively with software developers and programmers from the industry in preparation of these potential changes. It is believed that with 30 days' notice prior to the implementation, the Postal Service and customers will be ready for this implementation.

Comment: The commenters describe operational impacts based on the flexibility in working with sacks. Sacks are flexible and conform to the pallet container, while tubs are more rigid, requiring a specific amount of space and cause an increase in the amount of empty space (air) being shipped in the container.

USPS Response: The Postal Service believes that by driving more of the flats to bundles, eliminating dumping of sacks, and the ability to move flat trays directly to flat operations for working, mailers will find increased efficiencies

and reduce costs related to flats operations. This will provide benefits to both the customers and the Postal Service.

Comment: Finally, one comments suggested a way to mitigate the flat tub constraints, allowing Mixed NDC and Mixed ADC containers to require no minimums for bundles pallets to eliminate any need to use sacks or trays.

USPS Response: The Postal Service agrees to this recommendation to mitigate impacts and has modified the proposal to eliminate the 100 lb. minimum for bundles on pallets for Mixed NDC and Mixed ADC residual pallets of flats.

The Postal Service adopts the following changes to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the *Code of Federal Regulations*. See 39 CFR 111.1.

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 111 is amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM) as follows:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

200 Commercial Letters, Cards, Flats, and Parcels

* * * * *

203 Basic Postage Statement, Documentation, and Preparation Standards

* * * * *

3.0 Standardized Documentation for First-Class Mail, Periodicals, USPS Marketing Mail, and Flat-Size Bound Printed Matter

* * * * *

3.4 Sortation Level

* * * * *

Sortation level	Abbreviation
* * * * * * *	
[Revise the item beginning with "Merged 5–Digit" to read as follows:]	
Merged 5–Digit [flat trays and pallets (Periodicals and USPS Marketing Mail flats); sacks and pallets (irregular parcels)]	M5D
[Revise the item beginning with "Merged 5–Digit Scheme" to read as follows:]	
Merged 5–Digit Scheme [flat trays and pallets (Periodicals and USPS Marketing Mail flats); sacks and pallets (irregular parcels)]	M5DS
* * * * * * *	
[Revise the item beginning with "Merged 3-Digit" to read as follows:]	
Merged 3-Digit [flat trays (Periodicals flats); sacks (irregular parcels)]	M3D
* * * * * * *	
[Revise the item beginning with "SCF" to read as follows:]	
SCF [flat trays and pallets (Periodicals flats and USPS Marketing Mail); sacks and pallets (Bound Printed Matter and irregular parcels less than 6 ounces)]	SCF

* * * * *

4.0 Bundles

* * * * *

[Revise the title of 4.4 to read as follows:]

4.4 Exception to Bundle Preparation—Full Letter and Flat Trays

* * * * *

4.6 Address Visibility for Flats and Parcels

* * * * *

[Revise the items 4.6b and 4.6c to read as follows:]

b. Bundles placed in or on 5-digit or 5-digit scheme (L001) flat trays or pallets.

c. Bundles placed in carrier route and 5-digit carrier routes flat trays or sacks.

* * * * *

[Revise the title of 4.8 to read as follows:]

4.8 Preparing Bundles in Sacks and Flat Trays

[Revise the introductory text of 4.8 to read as follows:]

In addition to following the standards in 4.5 through 4.7, mailers must prepare bundles placed in flat trays and sacks as follows:

* * * * *

[Revise the title of 4.10 to read as follows:]

4.10 Additional Standards for Unsacked/Untrayed Bundles Entered at DDU Facilities

[Revise the introductory text of 4.10 to read as follows:]

Mailers may enter unsacked, untrayed, or nonpalletized bundles of carrier route, Periodicals, or USPS Marketing Mail flats and unsacked bundles of Bound Printed Matter (BPM) flats or irregular parcels (BPM only) at destination delivery units (DDUs) if all the following conditions are met:

* * * * *

4.11 Pieces With Simplified Address

[Revise the last sentence of the introductory text of 4.11 to read as follows:]

* * * Bundles must be secure and stable subject to weight limits in 705.8.0 if placed on pallets, and weight and height limits in 4.8 if placed in flat trays.

* * * * *

5.0 Letter and Flat Trays

5.1 General Standards

[Revise the last sentence of the introductory text of 5.1 to read as follows:]

* * * Periodicals and USPS Marketing Mail flat-size mailings must be prepared in flat trays with white lids under 207.22.7, 207.25.5, 245.8.7, and 245.10.4.3 and strapped under 5.6.2e.

* * * * *

[Add an item (5.1c) to read as follows:]

c. Flat trays used in a Periodicals or USPS Marketing Mail flat-size mailing

may be nested into each other on a pallet without lids and the pallet then shrink-wrapped.

* * * * *

5.6.2 Preparation for Flats in Flat Trays

[Revise the text of item (e) to read as follows:]

e. Each tray must be covered (with the green side of the lid facing up for First Class mail and the white side facing up for Periodicals and USPS Marketing Mail). Each covered flat tray must then be secured with two plastic straps placed tightly around the width of the tray (the shorter dimension).

* * * * *

204 Barcode Standards

* * * * *

3.0 Standards for Barcoded Tray Labels, Sack Labels, and Container Labels

* * * * *

3.2 Specifications for Barcoded Tray and Sack Labels

* * * * *

3.2.4 3-Digit Content Identifier Numbers

* * * * *

Exhibit 3.2.4 3-Digit Content Identifier Numbers

* * * * *

[Revise Exhibit 3.2.4 to read as follows:]

Class and mailing	CIN	Human-readable content line
* * * * *	*	*
[Revise the text of ''Per Flats—Carrier Route,'' ''Per Flats—Barcoded,'' ''Per Flats—Nonbarcoded,'' ''Per Flats—Cosacked Barcoded and Nonbarcoded,'' and ''Per Flats—Merged Carrier Route, Barcoded, and Nonbarcoded'' to read as follows:]		
PER Flats—Carrier Route:		
car. rt. sacks or flat trays—saturation	387	PER FLTS WSS [1].
car. rt. sacks or flat trays—high density	388	PER FLTS WSH [1].
car. rt. sacks or flat trays—basic	385	PER FLTS CR [1].
5-digit carrier routes sacks or flat trays	386	PER FLTS 5D CR–RTS.
5-digit scheme carrier routes sacks or flat trays	371	PER FLTS CR–RTS SCH.
3-digit carrier routes flat trays	351	PER FLTS 3D CR–RTS.
PER Flats—Barcoded:		
5-digit flat trays	372	PER FLTS 5D BC.
5-digit scheme flat trays	372	PER FLTS 5D SCH BC.
3-digit flat trays	373	PER FLTS 3D BC.
SCF flat trays	377	PER FLTS SCF BC.
ADC flat trays	374	PER FLTS ADC BC.
mixed ADC flat trays	375	PER FLTS BC WKG.
Origin mixed ADC flat trays	381	PER FLTS WKG W FCM.
PER Flats—Nonbarcoded:		
5-digit scheme flat trays	378	PER FLT 5D SCH NON BC.
5-digit flat trays	378	PER FLTS 5D NON BC.
3-digit flat trays	379	PER FLTS 3D NON BC.
SCF flat trays	384	PER FLTS SCF NON BC.
ADC flat trays	380	PER FLTS ADC NON BC.
mixed ADC flat trays	382	PER FLTS NON BC WKG.
origin mixed ADC flat trays	381	PER FLTS WKG W FCM.
PER Flats—Co-trayed Barcoded and Nonbarcoded:		
5-digit scheme flat trays	321	PER FLT 5D SCH BC/NBC.
5-digit flat trays	321	PER FLTS 5D BC/NBC.
3-digit flat trays	322	PER FLTS 3D BC/NBC.
SCF flat trays	329	PER FLTS SCF BC/NBC.
ADC flat trays	331	PER FLTS ADC BC/NBC.
mixed ADC flat trays	332	PER FLTS BC/NBC WKG.
origin mixed ADC flat trays	381	PER FLTS WKG W FCM.
PER Flats—Merged Carrier Route, Barcoded, and Nonbarcoded:		
merged 5-digit sacks or flat trays	339	PER FLTS CR/5D.
merged 5-digit scheme sacks or flat trays	349	PER FLTS CR/5D SCH.
merged 3-digit flat trays	352	PER FLTS CR/5D/3D.

Class and mailing	CIN	Human-readable content line
* * * * * * *		
[Revise the text of "NEWS Flats—Carrier Route," "NEWS Flats—Barcoded," "NEWS Flats—Nonbarcoded," "NEWS Flats—Cosacked Barcoded and Nonbarcoded," and "NEWS Flats—Merged Carrier Route, Barcoded and Nonbarcoded" to read as follows:]		
NEWS Flats—Carrier Route:		
car. rt. sacks or flat trays—saturation	487	NEWS FLTS WSS [1].
car. rt. sacks or flat trays—high density	488	NEWS FLTS WSH [1].
car. rt. sacks or flat trays—basic	485	NEWS FLTS CR [1].
5-digit carrier routes sacks or flat trays	486	NEWS FLTS 5D CR–RTS.
5-digit scheme carrier routes sacks or flat trays	471	NEWS FLTS CR–RTS SCH.
3-digit carrier routes flat trays	451	NEWS FLTS 3D CR–RTS.
NEWS Flats—Barcoded:		
5-digit flat trays	472	NEWS FLTS 5D BC.
5-digit scheme flat trays	472	NEWS FLTS 5D SCH BC.
3-digit flat trays	473	NEWS FLTS 3D BC.
SCF flat trays	477	NEWS FLTS SCF BC.
ADC flat trays	474	NEWS FLTS ADC BC.
mixed ADC flat trays	475	NEWS FLTS BC WKG.
origin mixed ADC flat trays	481	NEWS FLTS WKG W FCM.
NEWS Flats—Nonbarcoded:		
5-digit scheme flat trays	478	NEWS FLT 5D SCH NON BC.
5-digit flat trays	478	NEWS FLTS 5D NON BC.
3-digit flat trays	479	NEWS FLTS 3D NON BC.
SCF flat trays	484	NEWS FLTS SCF NON BC.
ADC flat trays	480	NEWS FLTS ADC NON BC.
mixed ADC flat trays	482	NEWS FLTS NON BC WKG.
origin mixed ADC flat trays	481	NEWS FLTS WKG W FCM.
NEWS Flats—Co-trayed Barcoded and Nonbarcoded:		
5-digit scheme flat trays	421	NEWS FLT 5D SCH BC/NBC.
5-digit flat trays	421	NEWS FLTS 5D BC/NBC.
3-digit flat trays	422	NEWS FLTS 3D BC/NBC.
SCF and origin/entry SCF flat trays	429	NEWS FLTS SCF BC/NBC.
ADC flat trays	431	NEWS FLTS ADC BC/NBC.
mixed ADC flat trays	432	NEWS FLTS BC/NBC WKG.
origin mixed ADC flat trays	481	NEWS FLTS WKG W FCM.
NEWS Flats—Merged Carrier Route, Barcoded, and Nonbarcoded:		
merged 5-digit	439	NEWS FLTS CR/5D.
merged 5-digit scheme	449	NEWS FLTS CR/5D SCH.
merged 3-digit flat trays	452	NEWS FLTS CR/5D/3D.
* * * * * * *		
[Revise the text of "Enhanced Carrier Route Flats—Nonautomation," "MKT Flats—Cosacked Automation and Nonautomation," "MKT Flats—Merged Carrier Route, Automation, and Presorted," "MKT Flats—Automation," "MKT Flats—Nonautomation," and "MKT Flats—Residual Pieces Subject to FCM Single-Piece Prices" to read as follows:]		
Enhanced Carrier Route Flats—Nonautomation:		
saturation price sacks or flat trays	587	MKT FLTS ECRWSS [1].
high density or high density plus price sacks or flat trays	588	MKT FLTS ECRWSH [1].
basic price sacks or flat trays	589	MKT FLTS ECRLOT [1].
5-digit carrier routes sacks or flat trays	586	MKT FLTS CR–RTS.

Class and mailing	CIN	Human-readable content line
5-digit scheme car. rts. sacks or flat trays	529	MKT FLTS CR–RTS SCH.
MKT Flats—Co-trayed Automation and Nonautomation:		
5-digit scheme flat trays	521	MKT FLT 5D SCH BC/NBC.
5-digit flat trays	521	MKT FLTS 5D BC/NBC.
3-digit and origin/entry 3-digit flat trays	522	MKT FLTS 3D BC/NBC.
ADC flat trays	531	MKT FLTS ADC BC/NBC.
mixed ADC flat trays	532	MKT FLTS BC/NBC WKG.
MKT Flats—Merged Carrier Route, Automation, and Presorted:		
merged 5-digit	539	MKT FLTS CR/5D.
merged 5-digit scheme	549	MKT FLTS CR/5D SCH.
MKT Flats—Automation:		
5-digit flat trays	572	MKT FLTS 5D BC.
5-digit scheme flat trays	572	MKT FLTS 5D SCH BC.
3-digit flat trays	573	MKT FLTS 3D BC.
ADC flat trays	574	MKT FLTS ADC BC.
mixed ADC flat trays	575	MKT FLTS BC WKG.
MKT Flats—Nonautomation:		
5-digit scheme flat trays	578	MKT FLT 5D SCH NON BC.
5-digit flat trays	578	MKT FLTS 5D NON BC.
3-digit flat trays	579	MKT FLTS 3D NON BC.
ADC flat trays	580	MKT FLTS ADC NON BC.
mixed ADC flat trays	582	MKT FLTS NON BC WKG.
MKT Flats—Residual Pieces Subject to FCM Single-Piece Prices:		
residual flat trays	582	MKT FLTS WKG.
* * * * * * *		
PACKAGE SERVICES		
* * * * * * *		
BPM Flats—Co-sacked Barcoded and Presorted:		
[Revise the text of "BPM—Co-sacked Barcoded and Presorted" to read as follows:]		
5-digit scheme sacks	648	PSVC FLTS 5D SCH BC/NBC.
5-digit sacks	648	PSVC FLTS 5D BC/NBC.
3-digit sacks	661	PSVC FLTS 3D BC/NBC.
SCF sacks	667	PSVC FLTS SCF BC/NBC.
ADC sacks	668	PSVC FLTS ADC BC/NBC.
mixed ADC sacks	669	PSVC FLTS BC/NBC WKG.

* * * * *

207 Periodicals

* * * * *

2.0 Price Application and Computation

2.1 Price Application

* * * * *

2.1.8 Applying Outside-County Bundle Prices

[Revise the third sentence in the Introductory text of 2.1.8 to read as follows:]

* * * Bundle prices do not apply to barcoded letter-size mail prepared in full letter trays.***

* * * * *

13.0 Carrier Route Eligibility

* * * * *

13.2 Sorting

13.2.1 Basic Standards

* * * * *

[Revise the text of 13.2.1b(2) and 13.2.1b(3) to read as follows:]

2. Bundles in carrier route, 5-digit scheme carrier routes, 5-digit carrier routes sacks/flat trays, or 3-digit carrier routes flat trays under 23.0. Sacks/flat trays may be palletized under 705.8.0.

3. Unsacked/untrayed bundles entered at a destination delivery unit under 23.4.2 and 29.6.5.

* * * * *

18.0 General Mail Preparation

* * * * *

18.4 Mail Preparation Terms

* * * * *

[Revise the text of 18.4j to read as follows:]

j. A *5-digit scheme carrier routes sort for carrier route Periodicals flats prepared in sacks/flat trays and irregular parcels prepared in sacks or as bundles on pallets* yields a 5-digit scheme carrier routes sack/flat tray or pallet for those 5-digit ZIP Codes listed in L001 and 5-digit carrier routes sacks/flat trays or pallets for other areas. The 5-digit ZIP Codes in each scheme are treated as one presort destination. Sacks/flat trays or pallets prepared for a 5-digit scheme carrier routes destination that contain carrier route bundles for only one of the schemed 5-digit areas are still considered to be sorted to 5-digit scheme carrier routes. Preparation of 5-digit scheme carrier routes sacks/flat trays or pallets must be done for all 5-digit scheme destinations.

* * * * *

[Revise the text of 18.4s to read as follows:]

s. An *origin/entry SCF flat tray* contains all 5-digit and 3-digit bundles (regardless of quantity) for the SCF in whose service area the mail is verified. At the mailer's option, such a flat tray may be prepared for the SCF area of each entry Post Office. This presort level applies only to nonletter-size Periodicals prepared in flat trays.

* * * * *

[Revise the first sentence in 8.4y to read as follows:]

y. A ''*logical*'' *presort destination* represents the total number of pieces that are eligible for a specific presort level based on the required sortation, but which might not be contained in one bundle or in one container (flat tray, sack, or pallet) due to preparation requirements or the piece size. * * *

* * * * *

20.0 Sacks and Trays

20.1 Basic Standards

20.1.1 General

[Revise the first sentence of 20.1.1 to read as follows:]

Mailings must be prepared in letter trays (letters), flat trays (flats) under 22.7 and 25.5, or sacks (carrier route, 5-digit scheme cr-rt and 5-digit cr-rt flats, or 5-digit flats entered at a DDU, 3-digit/SCF destination SCF flats, and all periodicals parcels).* * *

* * * * *

22.0 Preparing Nonbarcoded (Presorted) Periodicals

* * * * *

22.3 Firm Bundles

[Revise the last sentence of 22.3 to read as follows:]

* * * Firm bundles must not be placed in 5-digit scheme flat trays.

22.4 Bundles With Fewer Than Six Pieces

* * * * *

[Revise the text of 22.4a to read as follows:]

a. Place bundles in only 5-digit, 3-digit, and SCF flat trays that contain at least 24 pieces, or in origin/entry SCF flat trays, as appropriate.

* * * * *

[Revise the title of 22.5 to read as follows:]

22.5 Letter Tray Preparation—Letter-Size Pieces

* * * * *

[Revise the title of 22.6 to read as follows:]

22.6 Sack Preparation—Parcels

For mailing jobs that also contain a barcoded mailing, see *22.1.2.* For other mailing jobs, preparation sequence, sack size, and labeling:

[Delete item 22.6a in its entirety and renumber the remaining items as (a) through (g) respectively; revise the new items a through g to read as follows:]

a. *5-digit,* required at 72 pieces, optional at 24 pieces minimum.

1. Line 1: use city, state, and 5-digit ZIP Code on mail (see *21.0* for overseas military mail).

2. Line 2: ''PER'' or NEWS'' as applicable; followed by ''IRREG'' as applicable; followed by ''5D''.

b. *3-digit,* required at 72 pieces, optional at 24 pieces minimum.

1. Line 1: use *L002,* Column A.

2. Line 2: ''PER'' or ''NEWS'' as applicable; followed by ''IRREG'' as applicable; followed by ''3D'.

c. *SCF,* required at 72 pieces, optional at 24 pieces minimum.

1. Line 1: use *L002,* Column C.

2. Line 2: ''PER'' or ''NEWS'' as applicable; followed by ''IRREG'' as applicable; followed by ''SCF'.

d. *Origin/entry SCF,* required for the SCF of the origin (verification) office, optional for the SCF of an entry office other than the origin office, (no minimum); for Line 1 use *L002,* Column C.

1. Line 1: use *L002,* Column C.

2. Line 2: ''PER'' or ''NEWS'' as applicable; followed by ''IRREG'' as applicable; followed by ''SCF'.

e. *ADC,* required at 72 pieces, optional at 24 pieces minimum.

1. Line 1: use *L004,* Column B.

2. Line 2: ''PER'' or ''NEWS'' as applicable; followed by or ''IRREG'' as applicable; followed by ''ADC'.

f. *Origin mixed ADC,* required; no minimum; for any remaining bundles for destinations in *L201,* Column B, corresponding to the origin ZIP Code in Column A.

1. Line 1: Use *L201,* Column C.

2. Line 2: ''PER'' or ''NEWS'' as applicable, followed by ''IRREG'' as applicable, followed by ''WKG W FCM.''

g. *Mixed ADC,* required (no minimum).

1. Line 1: Use *L009,* Column B.

2. Line 2: ''PER'' or ''NEWS'' as applicable; followed by ''IRREG'' as applicable; followed by ''WKG'' for irregular parcels.

[Revise the title of 22.7 to read as follows:]

22.7 Tray Preparation—Flat-Size Nonbarcoded Pieces

[Revise the Introductory text of 22.7 to read as follows:]

Mailers must place flat sized pieces in flat trays (see 203.5.6) instead of sacks unless prepared as direct carrier route, 5-digit scheme carrier route, or 5-digit carrier route (see 23.4.1 *and* 705.9.0 *or* 705.10.0), or 5-digit and entered at a DDU or 3-digit/SCF destination SCF flats. Mailers must also prepare nonmachinable (see 26.0) flats in flat trays. Bundling is not permitted unless a bundle is more finely presorted than the tray's presort destination. The trays are subject to a container charge, and any bundles are subject to a bundle charge. Tray preparation, sequence, and labeling: * * *

* * * * *

23.0 Preparing Carrier Route Periodicals

* * * * *

23.6 Bundles With Fewer Than Six Pieces

[Revise the text of 23.6a to read as follows:]

* * * * *

a. Place bundles in only 5-digit scheme carrier routes and 5-digit carrier routes sacks/flat trays that contain at least 24 pieces, or 3-digit carrier routes or merged 3-digit flat trays that contain at least one six-piece carrier route bundle.

* * * * *

23.7 Multi-Box Section Bundles—Optional Preparation

[Revise the text of 23.7e to read as follows:]

e. Place bundles in existing carrier-route flat trays, 5-Digit scheme carrier routes, or 5-Digit carrier routes sacks/flat trays.

* * * * *

25.0 Preparing Flat-Size Barcoded (Automation) Periodicals

25.1 Basic Standards

* * * * *

25.1.7 Exception—Barcoded and Nonbarcoded Flats on Pallets

* * * * *

[Revise the text of 25.1.7b and 25.1.7c to read as follows:]

b. Mailing jobs prepared entirely in flat trays and qualifying for this exception must be cobundled under 705.11.0.

c. As an alternative to 705.9.0 through 705.13.0, if a portion of the job is prepared as palletized barcoded flats, the nonbarcoded portion may be prepared as palletized flats and paid for at nonbarcoded machinable and carrier route prices. The nonbarcoded price pieces that cannot be placed on ADC or finer pallets may be prepared as flats in flat trays and paid at the nonbarcoded prices.

25.1.8 Bundles With Fewer Than Six Pieces

* * * * *

[Revise the text of 25.1.8a to read as follows:]

a. Place 5-digit and 3-digit bundles in only 5-digit scheme, 5-digit, 3-digit, and SCF flat trays, as appropriate, that contain at least 24 pieces, or in merged 3-digit flat trays that contain at least one six-piece carrier route bundle, or in origin/entry SCF flat trays.

* * * * *

[Revise the text of 25.1.8c to read as follows:]

c. Place 5-digit scheme and 3-digit scheme bundles in only 5-digit scheme, 3-digit, and SCF flat trays, as appropriate, that contain at least 24 pieces, or in merged 3-digit flat trays that contain at least one six-piece carrier route bundle, or in origin/entry SCF flat trays.

* * * * *

[Revise the title of 25.1.9 to read as follows:]

25.1.9 Cotraying and Cobundling With Nonbarcoded and Carrier Route Price Mail

* * * * *

[Revise the text of 25.1.9b and 25.1.9c to read as follows:]

b. If the mailing job contains a machinable barcoded and nonbarcoded mailing, then it must be prepared under the cotraying standards in 705.9.0. Machinable barcoded and nonbarcoded pieces may be cobundled under the standards in 705.11.0.

c. If the mailing job contains a carrier route mailing and a machinable barcoded mailing, then it must be separately trayed under 23.0 and 25.0 or prepared using the merged flat tray option under 705.10.0.

* * * * *

240 Commercial Mail USPS Marketing Mail

243 Prices and Eligibility

* * * * *

5.0 Additional Eligibility Standards for Nonautomation USPS Marketing Mail Letters, Flats, and Presorted USPS Marketing Mail Parcels

* * * * *

5.6 Nonautomation Price Application—Flats

5.6.1 5-Digit Prices for Flats

[Revise item a to read as follows:]

a. In a 5-digit/scheme bundle of 10 or more pieces, or 15 or more pieces, as applicable; properly placed in a 5-digit/scheme flat tray (see full flat tray 245.1.4).

* * * * *

[Revise item c to read as follows:]

c. In a 5-digit bundle of 10 or more pieces, or 15 or more pieces, as applicable; properly placed in a merged 5-digit/scheme or 5-digit flat tray under 705.10.0.

5.6.2 3-Digit Prices for Flats

[Revise item a to read as follows:]

a. In a 5-digit/scheme bundle of 10 or more pieces, or 15 or more pieces, as applicable, or in a 3-digit/scheme bundle of 10 or more pieces; properly placed in a 3-digit flat tray (see full flat tray 245.1.4).

5.6.3 ADC Prices for Flats

[Revise items a and b to read as follows:]

a. In a 5-digit/scheme, 3-digit/scheme, or ADC bundle of 10 or more pieces properly placed in an ADC flat tray (see full flat tray 245.1.4).

b. In an optional 3-digit/scheme origin/entry flat tray.

* * * * *

5.6.4 Mixed ADC Prices for Flats

[Revise the text of 5.6.4 to read as follows:]

Mixed ADC prices apply to flat-size pieces in bundles that do not qualify for 5-digit, 3-digit, or ADC prices; placed in mixed ADC flat trays or on ASF, NDC, or mixed NDC pallets under 705.8.0.

* * * * *

6.3 Basic Price Enhanced Carrier Route Standards

* * * * *

6.3.4 Basic Carrier Route Bundles on a 5-digit/Direct Container (Basic–CR Bundles/Container) Price Eligibility–Flats

[Revise the text of 6.3.4 to read as follows:]

The Basic-CR Bundles/Container discount applies to each piece in a carrier route bundle of 10 or more pieces that are palletized under 705.8.0, 705.10.0, 705.12.0, or 705.13.0 on a 5-digit merged, 5-digit (scheme) merged, 5-digit carrier route or 5-digit scheme carrier route pallet entered at an Origin (None), DNDC, DSCF, or DDU entry or in a carrier route sack or flat tray under 245.9.7a or 203.5.8 and entered at the DDU.

* * * * *

6.5 High Density and High Density Plus (Enhanced Carrier Route) Standards—Flats

* * * * *

6.5.3 High Density Carrier Route Bundles on a 5-Digit/Direct Container (High Density-CR Bundles/Container Discount Eligibility)–Flats

[Revise the text of 6.5.3 to read as follows:]

The High Density-CR Bundles/Container discount applies to 125 or more High Density-eligible pieces that are palletized under 705.8.0, 705.10.0, 705.12.0, or 705.13.0 on a 5-digit merged, 5-digit (scheme) merged, 5-digit carrier route, 5-digit carrier routes, or 5-digit scheme carrier route pallet entered at an Origin (None), DNDC, DSCF, or DDU entry or in a carrier route sack or flat tray under 245.9.7a or 203.5.8 and entered at the DDU.

6.5.4 High Density Plus Carrier Route Bundles on a 5-Digit/Direct Container (High Density Plus-CR Bundles/Container Discount Eligibility)–Flats

[Revise the text of 6.5.4 to read as follows:]

The High Density Plus-CR Bundles/Container discount applies to 300 or more High Density Plus-eligible pieces that are palletized under 705.8.0, 705.10.0, 705.12.0, or 705.13.0 on a 5-digit scheme, 5-digit (scheme) merged, 5-digit carrier route, 5-digit carrier routes, or 5-digit scheme carrier route

pallet entered at an Origin (None), DNDC, DSCF, or DDU entry or in a carrier route sack or flat tray under 245.9.7a or 203.5.8 and entered at the DDU.

* * * * *

6.7 Saturation Enhanced Carrier Route Standards—Flats

* * * * *

6.7.2 Saturation Prices for Flats

* * * * *

[Revise item c to read as follows:]

c. Placed in a merged 5-digit scheme or merged 5-digit flat tray.

[Add new item d to read as follows:]

d. Placed in a 5-digit scheme carrier routes or 5-digit carrier routes sack/flat tray.

* * * * *

245 Mail Preparation

* * * * *

1.0 General Information for Mail Preparation

* * * * *

1.3.2 Flats

* * * * *

[Revise item c. to read as follows:]

c. *5-digit scheme (bundles and flat trays) for flats meeting the automation-compatibility standards in* 201.4.0: the ZIP Code in the delivery address on all pieces is one of the 5-digit ZIP Code areas processed by the USPS as a single scheme, as shown in L007.

* * * * *

[Revise item e. to read as follows:]

e. *Merged 5-digit flat trays:* the carrier route bundles and/or automation price 5-digit bundles and/or Presorted price 5-digit bundles in a flat tray are all for a 5-digit ZIP Code that has an ''A'' or ''C'' indicator in the Carrier Route Indicators field in the City State Product that allows combining carrier route price bundles with automation price 5-digit bundles and Presorted price 5-digit bundles in the same 5-digit container.

* * * * *

[Revise item g. to read as follows:]

g. *Merged 5-digit scheme flat tray:* the 5-digit ZIP Codes on pieces in carrier route bundles and/or automation price 5-digit bundles and/or Presorted price 5-digit bundles in a flat tray are all for 5-digit ZIP Codes that are part of a single scheme as shown in L001, and the automation price 5-digit bundles and/or the Presorted price 5-digit bundles also are for 5-digit ZIP Codes that have an ''A'' or ''C'' indicator in the Carrier Route Indicators field in the City State Product that allows combining carrier route bundles with automation price 5-digit bundles and Presorted price 5-digit bundles in the same 5-digit container.

* * * * *

[Revise item q. to read as follows:]

q. *Residual pieces/bundles/flat trays:* contain material remaining after completion of a presort sequence. Residual mail lacks the volume set by standard to require or allow preparation to a particular destination, and usually does not qualify for a presort price.

* * * * *

1.4 Preparation Definitions and Instructions

* * * * *

[Add new item (e) to read as follows; renumber current items (e) through (y) as (f) through (z):]

e. A full flat tray is one that is physically full. Although a specific minimum volume is required (at least a single stack of mail lying flat on the bottom of the tray and filling the tray to the bottom of the handholds) before a tray may or must be prepared to the corresponding presort destination, trays must be filled with additional available pieces (up to the reasonable capacity of the tray) when standards require preparation of full trays.

[Revise new item f. to read as follows:]

f. A full sack is defined in the standards for the class and price claimed.

* * * * *

[Revise new item h. to read as follows:]

h. *A 5-digit scheme sort for flats meeting the automation-compatibility standards in* 201.3.0 yields 5-digit scheme bundles for those 5-digit ZIP Codes identified in L007 and 5-digit bundles for other ZIP Codes. When standards require 5-digit/scheme sort, mailers must prepare all possible 5-digit scheme bundles and flat trays of flats, then prepare all possible 5-digit bundles and flat trays. The 5-digit ZIP Codes in each scheme are treated as a single presort destination subject to a single minimum volume, with no further separation required. Bundles prepared for a 5-digit scheme destination that contain pieces for only one of the schemed 5-digit ZIP Codes are still considered 5-digit scheme sorted and are labeled accordingly. Bundles must be labeled using an optional endorsement line (OEL) under 203.7.0 or with a red ''5 SCH'' bundle label. Bundles are placed in appropriate containers using the OEL ''label to'' 5-digit ZIP Code or using L007 column B.

* * * * *

[Revise new items k. through m. to read as follows:]

k. *A merged 5-digit sort for USPS Marketing Mail flats prepared in flat trays* yields merged 5-digit flat trays that contain carrier route bundles and/or automation price 5-digit bundles, and/or Presorted price 5-digit bundles that are all for a 5-digit ZIP Code that has an ''A'' or ''C'' indicator in the Carrier Route Indicators field in the City State Product that allows combining carrier route bundles, automation price 5-digit bundles, and Presorted price 5-digit bundles in the same 5-digit flat tray or pallet. The merged 5-digit sort is optional for USPS Marketing Mail flats prepared in flat trays. Flat trays prepared for a merged 5-digit destination that contain only a single price level of bundle(s) (only carrier route bundle(s) or only automation price 5-digit bundle(s) or only Presorted price 5-digit bundle(s)) or that contain only two price levels of bundle(s) are still considered to be merged 5-digit sorted and are labeled accordingly. If preparation of merged 5-digit flat trays is performed, it must be done for all 5-digit ZIP Code destinations with an ''A'' or ''C'' indicator in the Carrier Route Indicators field in the City State Product that allows combining carrier route bundles, automation price 5-digit bundles, and Presorted price 5-digit bundles in the same 5-digit container.

l. *A merged 5-digit sort for USPS Marketing Mail flats prepared as bundles on pallets* yields merged 5-digit pallets that contain carrier route bundles and noncarrier route 5-digit bundles (automation price 5-digit bundles and/or Presorted price 5-digit bundles). The merged 5-digit sort is optional for USPS Marketing Mail flats prepared in flat trays under 705.10.0. Flat trays or pallets prepared for a merged 5-digit destination that contain only a single price level of bundle(s) (only carrier route bundle(s) or only automation price 5-digit bundle(s) or only Presorted price 5-digit bundle(s)) or only two price levels of bundle(s) are still considered to be merged 5-digit sorted and must be labeled accordingly.

m. *A merged 5-digit scheme sort for USPS Marketing Mail flats prepared in flat trays under* 705.10.0 yields merged 5-digit scheme flat trays that contain carrier route bundles and noncarrier route 5-digit bundles (automation price 5-digit bundles and/or Presorted price 5-digit bundles) for those 5-digit ZIP Codes that are part of a single scheme as shown in L001. Flat trays prepared for a merged 5-digit scheme destination that contain only a single price level of bundle(s) (only carrier route bundle(s) or only automation price 5-digit bundle(s) or only presorted price 5-digit bundle(s)), or only two price levels of

bundle(s), or bundles for only one of the schemed 5-digit ZIP Codes are still considered to be merged 5-digit scheme sorted and must be labeled accordingly. If preparation of merged 5-digit scheme flat trays is performed, it must be done for all 5-digit scheme destinations in L001.

* * * * *

[Revise new item y. to read as follows:]

y. A ''*logical*'' *presort destination* represents the total number of pieces that are eligible for a specific presort level based on the required sortation, but which might not be contained in a single bundle or in a single container (flat tray, sack, or pallet) due to applicable preparation requirements or the size of the individual pieces. For example, there may be 42 mailpieces for ZIP Code 43112 forming a USPS Marketing Mail ''logical'' 5-digit bundle, and they are prepared in three physical 5-digit bundles because of the applicable weight and height restrictions on bundles. For pallets, 2,800 pounds of mail may be destined to an SCF destination, and these would form the ''logical'' SCF pallet, but the mail is placed on two physical SCF pallets each weighing 1,400 pounds because of the 2,200 pound maximum pallet weight requirement.

* * * * *

3.0 Letter Trays, Flat Trays, and Sacks

[Revise the second sentence of 3.0 to read as follows:]

* * * Flat mailings must be prepared in flat trays or sacks (carrier route, 5-digit scheme carrier route and 5-digit carrier route only) except when permitted to be prepared in letter trays under other applicable standards in this section. * * *

* * * * *

8.0 Preparing Nonautomation Flats

* * * * *

8.1 Basic Standards

* * * * *

[Revise the text of 8.1b2 to read as follows:]

2. Unless excepted by standard, all pieces must be in the flat-size processing category and must be prepared in flat trays or on pallets. Certain flat-size pieces may be prepared in letter trays under 3.0.

8.4 Loose Packing

[Revise the text to read as follows:]

District managers may authorize loose packing of unbundled pieces in flat trays if no pieces in a flat tray would be more finely sorted if bundled. Pieces must be faced and packed to remain oriented in transit. Requests for loose packing must be made in advance through the Post Office of mailing.

[Revise the title of 8.5 to read as follows.]

8.5 Required Traying

[Revise the text of 8.5 to read as follows:]

Except as provided in 8.6, a flat tray, or a letter tray under 3.0, must be prepared when the quantity of mail for a required presort destination reaches a full flat tray (up to the handholds), subject to these conditions: * * *

[Revise the text of 8.5b(2) to read as follows:]

2. The actual piece count or mail weight for each tray is used, if documentation can be provided with the mailing that shows for each tray the number of pieces and the total weight.

* * * * *

[Revise the title of 8.7 to read as follows:]

8.7 Traying, and Labeling

[Revise the introductory sentence to read as follows:]

Preparation sequence, flat tray and labeling:

* * * * *

[Revise items 8.7a to read as follows:]

a. 5-digit/scheme (required); scheme sort required (before 5-digit sort), only for pieces meeting the automation flats criteria in 201.6.0, see definition in 1.4j; full flat tray; labeling: * * *

[Revise items 8.7a(1) and 8.7a(2) to read as follows:]

1. Line 1: For 5-digit scheme flat trays use L007, Column B. For 5-digit flat trays, use city, state, and 5-digit ZIP Code destination on pieces. (See 203.5.11 for overseas military mail).

2. Line 2: For 5-digit scheme flat trays, ''STD FLT 5D SCH NON BC.'' For 5-digit flat trays, ''STD FLTS 5D NON BC.''

[Revise items 8.7b to read as follows:]

b. 3-digit (required); full flat tray; labeling: * * *

* * * * *

[Revise items 8.7d to read as follows:]

d. ADC (required); full flat tray; labeling: * * *

* * * * *

8.8 Cotraying and Cobundling Flats With Automation Mail

* * * * *

[Revise items b, c, and d to read as follows:]

b. If the mailing job contains an automation mailing and a nonautomation mailing, then it must be prepared under the cotrayed standards in 705.9.0.

c. If the mailing job contains a carrier route mailing and a nonautomation mailing, then it must be separately sacked or trayed under 5.0 and 9.0 or prepared using the merged sacking/traying option in 705.10.0.

d. If the mailing job contains a carrier route mailing and an automation mailing, then it must be separately sacked or trayed under 9.0 and 10.0 or prepared using the merged sacking/traying option in 705.10.0.

* * * * *

8.9 Merged Containerization of Carrier Route, Automation, and Nonautomation Flats

[Revise the text of 8.9 to read as follows:]

Under the optional preparation in 705.10.0, nonautomation 5-digit bundles prepared under 5.2 through 8.8 are cotrayed with carrier route bundles prepared under 9.0 and with automation 5-digit bundles prepared under 10.0 in merged 5-digit scheme flat trays and merged 5-digit flat trays. Under the optional preparation in 705.10.0, 705.12.0, or 705.13.0, nonautomation 5-digit bundles are copalletized with carrier route bundles prepared under 9.0 and with automation 5-digit bundles prepared under 10.0 on merged 5-digit scheme pallets and merged 5-digit pallets. See 8.8a for information on when preparation under 705.10.0 may be required.

8.10 Residual Pieces

[Revise the introductory text of 8.10 to read as follows:]

Mailers entering USPS Marketing Mail residual pieces that do not qualify for USPS Marketing Mail prices, and paying the First-Class Mail prices (but prepared ''as is'' under 244.5.0), must separately bundle and flat tray residual pieces from the automation and presort pieces. Mailers must label flat trays under 204.3.0 using the CIN code 582 for use with residual flat trays. Label flat trays as follows: * * *

* * * * *

9.0 Preparing Enhanced Carrier Route Flats

* * * * *

9.6 Required Flat Tray/Sack Minimums

[Revise the introductory text of 9.6 to read as follows:]

When traying/sacking is required, mailers must prepare a flat tray/sack when the quantity of mail for a required presort destination reaches either up to the handholds (see full flat tray 245.1.4),

125 pieces or 15 pounds of pieces (sacks), whichever occurs first. The following conditions apply:

* * * * *

[Revise item c. to read as follows:]

c. Less than full flat trays (see 245.1.4) and sacks with fewer than 125 pieces or less than 15 pounds of pieces may be prepared to a carrier route when the saturation price is claimed for the contents and the applicable density standard is met.

* * * * *

9.8 Merged Containerization of Carrier Route, Automation, and Presorted Price Flats

[Revise the first sentence of 9.8 to read as follows:]

Under the optional preparation in 705.10.0, carrier route price bundles prepared under 9.3 and 9.4 are cotrayed with Presorted price 5-digit bundles prepared under 8.0 and with automation price 5-digit bundles prepared under 10.0 in merged 5-digit scheme flat trays and merged 5-digit flat trays. * * *

* * * * *

10.0 Preparing Automation Flats

[Revise the last sentence of 10.1 to read as follows:]

10.1 Basic Standards

* * * Flat trays must bear the appropriate barcoded container labels under 4.0.

* * * * *

[Revise the title of 10.4 to read as follows:]

10.4 USPS Marketing Mail Bundle and Flat Tray Preparation

* * * * *

[Revise the title of 10.4.2 to read as follows:]

10.4.2 Required Traying

[Revise the introductory text of 10.4.2 to read as follows:]

A flat tray or a letter tray under 3.0, must be prepared when the quantity of mail for a required presort destination reaches either a full flat tray (1.4e), 125 pieces, or 15 pounds of pieces, whichever occurs first, subject to these conditions:

* * * * *

[Revise the text of 10.4.2b to read as follows:]

b. For nonidentical-weight pieces, mailers must either use the minimum that applies to the average piece weight for the entire mailing (divide the net weight of the mailing by the number of pieces; the resulting average single-piece weight determines whether the 125-piece or 15-pound minimum applies) or tray by the actual piece count or mail weight for each flat tray, if documentation can be provided with the mailing that shows (specifically for each flat tray) the number of pieces and their total weight.

[Revise the title of 10.4.3 to read as follows:]

10.4.3 Traying and Labeling

[Revise the first sentence of 10.4.3 to read as follows:]

Preparation sequence, flat tray size, and labeling:

* * * * *

[Revise the text of items 10.4.3a, 10.4.3a(1) and 10.4.3a(2) to read as follows:]

a. 5-digit/scheme (required); scheme sort required before 5-digit sort; see definition in 1.4g.; full flat tray, 125-piece, or 15-pound minimum, labeling:

1. Line 1: For 5-digit scheme flat trays use L007, Column B. For 5-digit flat trays use city, state, and 5-digit ZIP Code on mail (see 203.5.11 for overseas military mail).

2. Line 2: For 5-digit scheme flat trays, ''STD FLTS 5D SCH BC.'' For 5-digit flat trays, ''STD FLTS 5D BC.''

[Revise the text of items 10.4.3b to read as follows:]

b. 3-digit (required); full flat tray, 125-piece, or 15-pound minimum; labeling:

* * *

* * * * *

[Revise the text of items 10.4.3d to read as follows:]

d. ADC (required); full flat tray, 125-piece, or 15-pound minimum; labeling:

* * * * *

602 Addressing

* * * * *

3.0 Use of Alternative Addressing

* * * * *

3.2 Simplified Address

* * * * *

3.2.3 Mail Preparation

[Revise the introductory paragraph of 3.2.3 to read as follows:]

Mailers must prepare letter-size pieces in trays. Mailers must prepare flat-size pieces in carrier route bundles in sacks, flat trays, or directly on pallets. Mailers must prepare irregular parcels in carrier route bundles in sacks or directly on pallets. Bundles, sacks, or trays may be placed on SCF, 3-digit, 5-digit, or 5-digit scheme pallets under 705.8.10. In addition to the required simplified address, each bundle must bear a facing slip showing the desired distribution (for example, 5-digit ZIP Code and route number) or the top piece of each bundle must include the route number and ZIP Code. Mailers may obtain delivery statistics for routes as described in 509.1.0. The following also applies: * * *

* * * * *

700 Special Standards

* * * * *

705 Advanced Preparation and Special Postage Payment Systems

* * * * *

8.0 Preparing Pallets

* * * * *

8.5 General Preparation

* * * * *

8.5.3 Minimum Load

* * * * *

[Revise the text of 8.5.3a(1) to read as follows:]

1. In a single mailing, the minimum load per pallet is 250 pounds of bundles, parcels, or sacks, except as provided in items 2 through 4 below. When preparing letter trays on pallets, the minimum load is 36 linear feet or three layers of trays, except as provided in items 2 and 4 below. When preparing flat trays on pallets, the minimum load is 24 linear feet or three layers of flat trays, except as provided in items 2 and 4 below.

* * * * *

[Add a new item 8.5.3a(6) to read as follows:]

6. There is no minimum load for MNDC pallets of bundles or flat trays of USPS Marketing Mail flats.

* * * * *

8.10 Pallet Presort and Labeling

* * * * *

8.10.2 Periodicals—Bundles, Sacks, Letter, or Flat Trays

* * * * *

[Revise the text of 8.10.2f to read as follows:]

f. *5-digit,* required, except for letter trays; permitted for bundles, trays, and sacks (irregular parcels only). Pallet must contain only automation price and/or Presorted price mail for the same 5-digit ZIP Code or the same 5-digit scheme under L007 (for automation-compatible flats only under 201.6.0). Five-digit scheme bundles are assigned to pallets according to the ''label to'' 5-digit ZIP Code in L007. Labeling: * * *

* * * * *

[Revise the text of 8.10.2h to read as follows:]

h. *SCF,* required, permitted for bundles, trays, and sacks (irregular parcels only). Pallet may contain carrier route, automation price, and/or

Presorted price mail for the 3-digit ZIP Code groups in *L005.* Mailers may place origin mixed ADC (OMX) sacks (irregular parcels only) or flat trays on origin SCF pallets. Labeling: * * *

[Revise the text of 8.10.2i to read as follows:]

i. ADC, required, permitted for bundles, trays, and sacks (irregular parcels only). Pallet may contain carrier route, automation price, and/or Presorted price mail for the 3-digit ZIP Code groups in L004. Labeling: * * *

[Revise the text of 8.10.2j to read as follows:]

j. *Origin Mixed ADC (OMX), optional for sacks and trays;* allowed with no minimum and required at 100 pounds of mail for bundles of flats. Bundles of flats totaling less than 100 pounds in weight must be trayed if not palletized. Pallet may contain carrier route, automation price, and presorted price mail. Labeling: * * *

[Revise the text of 8.10.2k to read as follows:]

k. Mixed ADC, optional for sacks (irregular parcels only) and trays; allowed with no minimum and required at 100 pounds of mail for bundles of flats. Bundles of flats totaling less than 100 pounds in weight must be trayed if not palletized. Pallet may contain carrier route, automation price, or presorted price mail. Pallets must not contain sacks, trays or bundles that should be properly placed on the origin mixed ADC (OMX) pallet. Labeling: * * *

* * * * *

8.10.3 USPS Marketing Mail or Parcel Select Lightweight—Bundles, Sacks, or Trays

* * * * *

[Add new item d to read as follows and renumber items d through i as items e through j:]

d. 5-digit, required except for trays, permitted for bundles, trays, and sacks (irregular parcels only). Pallet must contain only automation price and/or Presorted price mail for the same 5-digit ZIP Code or same 5-digit scheme. 5-digit scheme bundles and trays are assigned to 5-digit pallets according to the ''label to'' 5-digit ZIP Code. Labeling: * * *

* * * * *

[Revise the text of renumbered 8.10.3f to read as follows:]

f. SCF, required, permitted for bundles, trays, and sacks (irregular parcels only). Pallet may contain carrier route, automation price, and/or Presorted price mail for the 3-digit ZIP Code groups in L005, or L051 for Parcel Select Lightweight sacks. Mailers may, at their option, place AADC trays on SCF pallets when the tray's ''label to'' 3-digit ZIP Code (from L801) is within that SCF's service area. Mailers may also, at their option, place mixed ADC or mixed AADC trays, labeled per L010, on an SCF pallet entered at the SCF facility responsible for the processing of mixed ADC or mixed AADC trays for that NDC/ASF facility. The SCF Pallet discount applies to 3-Digit, ADC, 5-Digit, Carrier Route, High Density, High Density Plus, Saturation (including EDDM—Not Retail) USPS Marketing Mail flat shaped pieces on a SCF pallet entered at an Origin (None), DNDC, or DSCF entry. SCF pallet discount does not apply to Marketing Mail letters or parcels. Labeling: * * *

* * * * *

[Revise the text of renumbered 8.10.3g to read as follows:]

g. *ASF,* required unless bundle reallocation used under *8.13,* permitted for bundles, trays, and sacks (irregular parcels only). Pallet may contain carrier route, automation price, and/or Presorted price mail for the 3-digit ZIP Code groups in *L602.* ADC bundles, sacks, or trays are assigned to pallets according to the ''label to'' ZIP Code in *L004* as appropriate. AADC trays are assigned to pallets according to the ''label to'' ZIP Code in *L801.* At the mailer's option, appropriate mixed ADC bundles and trays of flats; and mixed ADC and mixed AADC trays of letters, may be sorted to ASF pallets according to the ''label to'' ZIP Code in *L010.* All mixed ADC bundles, sacks, and trays and mixed AADC trays must contain only pieces destinating within the ASF as shown in *L602.* Labeling: * * *

[Revise the text of renumbered 8.10.3h to read as follows:]

h. *NDC,* required, permitted for bundles, trays, and sacks (irregular parcels only). Pallet may contain carrier route, automation price, and/or Presorted price mail for the 3-digit ZIP Code groups in *L601.* ADC bundles, sacks, or trays are assigned to pallets according to the ''label to'' ZIP Code in *L004* as appropriate. AADC trays are assigned to pallets according to the ''label to'' ZIP Code in *L801.* At the mailer's option, appropriate mixed ADC bundles and trays of flats; and mixed ADC trays and mixed AADC trays of letters, may be sorted to NDC pallets according to the ''label to'' ZIP Code in *L010.* All mixed ADC bundles, sacks, and trays and mixed AADC trays must contain only pieces destinating within the NDC as shown in *L601.* Labeling: * * *

[Revise the text of renumbered 8.10.3i to read as follows:]

i. Mixed NDC, optional, permitted for bundles, trays, and sacks (irregular parcels only); allowed with no minimum and required at 100 pounds of mail for bundles of flats. Bundles of flats totaling less than 100 pounds in weight must be trayed if not palletized. Pallet may contain carrier route, automation, and/or Presorted mail. Mailers must place trays and sacks (irregular parcels only) containing pieces paid at the single-piece price on the mixed NDC pallet (unless required to be presented separately by special postage payment authorization). Labeling: * * *

* * * * *

8.11 Bundle Reallocation To Protect SCF Pallet for Periodicals Flats and Irregular Parcels and USPS Marketing Mail Flats on Pallets

* * * * *

8.11.3 Reallocation of Bundles if Optional 3-Digit Pallets Are Prepared

* * * * *

[Revise the text of 8.11.3d to read as follows:]

d. If no single 5-digit level pallet within the SCF service area contains an adequate volume of mail to allow reallocation of a portion of the mail on a pallet as described in *8.11.3c,* then no bundles will be reallocated and an SCF pallet will not be prepared; the mail that falls beyond the SCF pallet level must be placed on the next appropriate pallet (ADC, ASF, NDC or MNDC) or in the next appropriate sack (irregular parcels) or flat tray.

8.11.4 Reallocation of Bundles if Optional 3-Digit Pallets Are Not Prepared

* * * * *

[Revise the text of 8.11.4b to read as follows:]

b. If no single 5-digit level pallet within the SCF service area contains an adequate volume of mail to allow reallocation of a portion of the mail on a pallet as described in *8.11.4a,* then no bundles will be reallocated and a SCF pallet will not be prepared; the mail that falls beyond the SCF pallet level must be placed on the next appropriate pallet (ADC, ASF, NDC, or MNDC) or in the next appropriate sack (irregular parcels) or flat tray.

* * * * *

8.12 Bundle Reallocation To Protect ADC Pallet for Periodicals Flats and Irregular Parcels on Pallets

8.12.1 Basic Standards

[Revise the text of 8.12.1 to read as follows:]

Bundle reallocation to protect the ADC pallet is an optional preparation method authorized for mailers using

PAVE-certified presort software and may be used to create pallets under the standards in *8.12.2* and 8.12.3. Presort software determines if mail for an ADC service area falls beyond the ADC level if all finer level pallets are prepared. Reallocation is performed only when there is mail for the ADC service area that falls beyond the ADC pallet level (*e.g.,* to sacks or flat trays). Reallocate only the minimum number of bundles necessary to create an ADC pallet at the minimum required weight.

* * * * *

[Revise the title of 705.9.0 to read as follows:]

9.0 Combining Bundles of Automation and Nonautomation Flats in Flat Trays

* * * * *

9.2 Periodicals

9.2.1 Basic Standards

[Revise the text of the introductory paragraph of 9.2.1 to read as follows:]

Bundles of flat-size pieces in a machinable barcoded (automation) price mailing must be cotrayed with bundles of flat-size pieces in a machinable nonbarcoded price mailing under the following conditions:

* * * * *

[Revise the text of 9.2.1b through 9.2.1f to read as follows:]

b. The machinable barcoded price mailing must meet the eligibility criteria in *207.14.0,* except that the traying and documentation criteria in *9.2.1, 9.2.3,* and *9.2.4* must be met rather than the traying and documentation criteria in *207.25.0.*

c. The machinable nonbarcoded price mailing must meet the eligibility criteria in *207.12.0,* except that the traying and documentation criteria in *9.2.1, 9.2.3,* and *9.2.4* must be met rather than the traying and documentation criteria in *207.25.0.*

d. The bundles prepared from the machinable barcoded price mailing and the bundles prepared from the machinable nonbarcoded price mailing must be sorted into the same flat trays as described in *9.2.3* and *9.2.4.*

e. A complete, signed, appropriate postage statement(s), using the correct USPS form or an approved facsimile, must accompany each mailing job prepared under these procedures. In addition to the applicable postage statement, documentation produced by PAVE-certified software or standardized documentation under *203.3.0* must be submitted with each cotrayed mailing job that describes for each flat tray sortation level the number of pieces qualifying for each applicable price.

f. Barcoded tray labels under *204.3.0* must be used to label flat trays.

* * * * *

9.2.3 Bundles With Fewer Than Six Pieces

[Revise the text of 9.2.3 to read as follows:]

5-digit and 3-digit bundles prepared under *207.22.0* and *207.25.0* may contain fewer than six pieces when the publisher determines that such preparation improves service. These low-volume bundles may be placed in 5-digit, 3-digit, and SCF flat trays that contain at least 24 pieces or on 5-digit, 3-digit, or SCF pallets. Pieces in low-volume bundles must claim the applicable mixed ADC price (Outside-County) or basic price (In-County).

[Revise the title of 9.2.4 to read as follows:]

9.2.4 Optional Sack Preparation and Labeling

[Revise the text 9.2.4 to read as follows:]

Allowed for 3-digit and SCF non-palletized sacks entered at the Destination SCF and 5-digit sacks entered at a DDU. Machinable barcoded price and machinable nonbarcoded price bundles must be presorted together into sacks (cosacked) in the sequence listed below. Sacks must be labeled using the following information for Lines 1 and 2 and *207.21.0* for other sack label criteria. If, due to the physical size of the mailpieces, the machinable barcoded price pieces are considered flat-size under *201.6.0* and the machinable nonbarcoded price pieces are considered irregular parcels under *201.7.6,* the processing category shown on the sack label must show ''FLTS.''

a. *3-digit,* required at 72 pieces, optional at 24 pieces minimum; labeling:

1. Line 1: use *L002,* Column A.
2. Line 2: ''PER'' or ''NEWS'' as applicable and ''FLTS 3D BC/NBC.''

b. *SCF,* required at 72 pieces, optional at 24 pieces minimum; labeling:

1. Line 1: use *L002,* Column C.
2. Line 2: ''PER'' or ''NEWS'' as applicable and ''FLTS SCF BC/NBC.''

[Revise the title of 9.2.5 to read as follows:]

9.2.5 Flat Tray Preparation—Flat-Size Machinable Pieces

[Revise the introductory text 9.2.5 to read as follows:]

See 207.20.0 for use of flat trays. Machinable pieces meeting the criteria in 201.6.0—Mailers must either bundle or group all pieces as specified in 207.25.0 and 207.22.0 for each 5-digit scheme, 5-digit, 3-digit scheme, 3-digit, SCF, and ADC destination. Bundling is not permitted unless it achieves a finer presort than the presort destination of the tray. The trays are subject to a container charge, and any bundles are subject to a bundle charge. Tray preparation, sequence, and labeling: * * *

* * * * *

9.3 USPS Marketing Mail

9.3.1 Basic Standards

[Revise the introductory text of 9.3.1 to read as follows:]

Bundles of flats in an automation price mailing must be cotrayed with bundles of flats in a Presorted price mailing under the following conditions:

* * * * *

[Revise the text of 9.3.1c through 9.3.1i to read as follows:]

c. The automation price mailing must meet the eligibility criteria in *243.7.0,* except that the traying and documentation criteria in *9.3.1, 9.3.4,* and *9.3.5* must be met rather than the traying and documentation criteria in *245.7.0.*

d. The Presorted price mailing must meet the eligibility criteria in *243.2.0* and *243.3.0,* except that the traying and documentation criteria in *9.3.1, 9.3.4,* and *9.3.5* must be met rather than the traying and documentation criteria in *245.5.0.*

e. The prices for pieces in the automation price mailing are applied based on the number of pieces in the bundle and the level of bundle to which they are sorted under *243.7.0.* The prices for pieces in the Presorted price mailing are based on the number of pieces in the bundle and the level of flat tray in which they are placed under *243.3.6* and *243.3.7.*

f. The pieces must be marked according to *202.*

g. The bundles prepared from the automation price mailing and the bundles prepared from the Presorted price mailing must be sorted into the same flat trays as described in *9.3.4* and *9.3.5.*

h. A complete, signed postage statement(s), using the correct USPS form or an approved facsimile, must accompany each mailing job prepared under these procedures. In addition to the applicable postage statement, documentation produced by PAVE-certified software or standardized documentation under *203.3.0* must be submitted with each cotrayed mailing job that describes for each flat tray sortation level the number of pieces qualifying for each applicable automation price and the number of

pieces qualifying for each applicable Presorted price.

i. Barcoded tray labels under *204.3.0* must be used to label the trays.

* * * * *

[Revise the title of 9.3.4 to read as follows:]

9.3.4 Traying Rules

[Revise the text of 9.3.4 to read as follows:]

When a full flat tray is specified for a sortation level in *9.3.5,* the provisions of 245.1.4e apply.

[Revise the title of 9.3.5 to read as follows:]

9.3.5 Flat Tray Preparation and Labeling

[Revise the introductory text of 9.3.5 to read as follows:]

Presorted price and automation price bundles prepared under *9.3.2* and *9.3.3* must be presorted together into flat trays (cotrayed) in the sequence listed below. Flat trays must be labeled using the following information for Lines 1 and 2, and *245.4.0* for other flat tray label criteria.

* * * * *

[Revise the text of items 9.3.5a, 9.3.5a(1) and 9.3.5a(2) to read as follows:]

a. 5-digit/scheme, required; scheme sort required, only for pieces meeting the automation-compatibility criteria in 201.6.0; full tray minimum; labeling:

1. Line 1: For 5-digit scheme flat trays, use *L007,* Column B. For 5-digit flat trays, use city, state, and 5-digit ZIP Code destination on pieces.

2. Line 2: For 5-digit scheme flat trays, ''STD FLT 5D SCH BC/NBC''; for 5-digit flat trays, ''STD FLT 5D BC/NBC.''

[Revise item 9.3.5b to read as follows:]

b. 3-digit, required, full flat tray minimum; labeling: * * *

* * * * *

[Revise item 9.3.5d to read as follows:]

d. *ADC,* required, full flat tray minimum; use L004 to determine ZIP Codes served by each ADC; labeling: * * *

* * * * *

[Revise the title of 9.3.6 to read as follows:]

9.3.6 Letter Tray Preparation and Labeling

* * * * *

10.0 Merging Bundles of Flats Using the City State Product

10.1 Periodicals

10.1.1 Basic Standards

[Revise the introductory text of 10.1.1 to read as follows:]

Carrier route bundles in a carrier route mailing may be placed in the same flat trays or on the same pallet as 5-digit bundles from machinable (barcoded or nonbarcoded) price mailings (including pieces cobundled under *11.0*) under the following conditions:

[Revise the text of 10.1.1a to read as follows:]

a. A carrier route mailing must be part of the mailing job, unless cobundled under *11.0* using 5-digit scheme (*L007*) or 3-digit scheme (*L008*) bundle preparation, and trayed under *10.1.4.*

* * * * *

[Revise the text of 10.1.1c to read as follows:]

c. Pieces in the machinable price mailing must meet the flats criteria in *201.6.0;* pieces that meet the flats criteria in *207.26.0* must also be trayed under this option. Pieces in the machinable nonbarcoded price mailing and the carrier route mailing must be flat-size.

* * * * *

[Revise the text of 10.1.1e through 10.1.1j to read as follows:]

e. Carrier route bundles may be cotrayed or copalletized with machinable barcoded price 5-digit bundles, machinable nonbarcoded price 5-digit bundles, and cobundled 5-digit bundles only for those 5-digit ZIP Codes that have an ''A'' or ''C'' indicator in the Carrier Route Indicators field in the City State Product indicating eligibility for such cotraying or copalletization. Containers of mail sorted in this manner are called ''merged 5-digit'' flat trays or pallets. Containers of mail sorted in this manner for which scheme (*L001*) sortation is also performed are called ''merged 5-digit scheme'' flat trays or pallets. Pieces in 5-digit scheme (*L007*) bundles may not be placed in merged 5-digit containers.

f. If sortation under this section is performed, merged 5-digit flat trays or pallets must be prepared for all 5-digit ZIP Codes with an ''A'' or ''C'' indicator in the City State Product that permits such preparation when there is enough volume for the 5-digit ZIP Code to prepare such a flat tray under *10.1.4* or such a pallet under *10.1.5.* In addition, all possible merged 5-digit scheme flat trays must be prepared under *10.1.4,* or all possible merged 5-digit scheme and 5-digit scheme pallets must be prepared under *10.1.5.*

g. For mailings prepared in flat trays, mailers may not combine firm bundles and 5-digit scheme pieces in 5-digit scheme bundles or in 5-digit scheme flat trays. Firm bundles must be placed in a separate individual 5-digit flat tray under *10.1.4g* to maintain 5-digit price eligibility. Mailers may combine firm bundles with 5-digit scheme, 3-digit scheme, and other presort destination bundles in carrier route, 5-digit, 3-digit, SCF, ADC, and mixed ADC flat trays. Only an In-County firm bundle can contribute toward the six-piece minimum for price eligibility.

h. The bundles from each separated mailing must be sorted together into flat trays (cotrayed) under *10.1.4* or on pallets (copalletized) under *10.1.5* using presort software that is PAVE-certified.

i. A complete, signed postage statement(s), using the correct USPS form or an approved facsimile, must accompany each mailing job prepared under these procedures. In addition to the postage statement(s), documentation prepared by PAVE-certified software must be submitted with each cotrayed or copalletized mailing job that describes for each flat tray sortation level and flat tray, or each pallet sortation level and pallet, the number of pieces qualifying for each applicable price.

j. Barcoded tray labels under *204.3.0* must be used to label flat trays.

* * * * *

10.1.3 Bundles With Fewer Than Six Pieces

[Revise the introductory text of 10.1.3 to read as follows:]

Carrier route, 5-digit scheme, 5-digit, 3-digit scheme, and 3-digit bundles may contain fewer than six pieces when the publisher determines that such preparation improves service. Pieces in these low-volume bundles must be claimed at the applicable mixed ADC price (Outside-County) or basic price (In-County). Low-volume bundles are permitted only when they are sacked (as applicable), trayed, or prepared on pallets as follows:

* * * * *

[Revise the text of items 10.1.3a(1) through 10.1.3a(3) to read as follows:]

1. Carrier route, merged 5-digit scheme, 5-digit scheme carrier routes, merged 5-digit, 5-digit carrier routes, 5-digit, 3-digit, and SCF sacks (5-digit scheme carrier routes and 5-digit carrier routes only) or flat trays that contain at least 24 pieces.

2. Merged 3-digit flat trays that contain at least one six-piece carrier route bundle.

3. Origin/entry SCF flat trays.

* * * * *

[Revise the text of 10.1.3b to read as follows:]

b. Place low-volume 5-digit scheme bundles in only 5-digit scheme, 3-digit, and SCF flat trays that contain at least 24 pieces, or in origin/entry SCF flat

trays, or on 3-digit or SCF pallets, as appropriate.

[Revise the title of 10.1.4 to read as follows:]

10.1.4 Sack and Flat Tray Preparation and Labeling

[Revise the introductory text of 10.1.4 to read as follows:]

All carrier route bundles must be placed in sacks/flat trays under *10.1.4a* through *10.1.4e* and *10.1.4h* as described below. When sorting is performed under this section, mailers must prepare merged 5-digit scheme sacks (irregular parcels) or flat trays, 5-digit scheme carrier routes sacks/flat trays, and merged 5-digit sacks (irregular parcels) or flat trays for all possible 5-digit schemes or 5-digit ZIP Codes as applicable, using *L001* (merged 5-digit scheme and 5-digit scheme carrier routes sort only) and the Carrier Route Indicators field in the City State Product when there is enough volume for the 5-digit scheme or 5-digit ZIP Code to prepare such sacks (irregular parcels) or flat trays under *10.1.4.* Mailers must label sacks/flat trays according to the Line 1 and Line 2 information listed below and under *207.20.1.* If, due to the physical size of the mailpieces, the barcoded pieces are considered flat-size under *207.26.0,* and the carrier route pieces and nonbarcoded pieces are considered irregular parcels under *201.7.6,* ''FLTS'' must be shown as the processing category on the sack/tray label. If a mailing job does not contain barcoded price pieces and the carrier route pieces and the nonbarcoded pieces are irregular parcel shaped, use ''IRREG'' for the processing category on the contents line of the label. Mailers must prepare sacks/flat trays containing carrier route and 5-digit bundles from the carrier route, barcoded, and nonbarcoded mailings in the mailing job in the following manner and sequence:

* * * * *

[Revise the text of item 10.1.4b to read as follows:]

b. *Merged 5-digit scheme,* required at 72 pieces, optional at 24 pieces minimum. Must contain at least one 5-digit ZIP Code in the scheme with an ''A'' or ''C'' indicator in the City State Product. May contain carrier route bundles for any 5-digit ZIP Code(s) in a single scheme listed in *L001* as well as machinable barcoded price 5-digit bundles and machinable nonbarcoded price 5-digit bundles for those 5-digit ZIP Codes in the schemes that have an ''A'' or ''C'' indicator in the City State Product. For 5-digit ZIP Code(s) in a scheme that has a ''B'' or ''D'' indicator in the City State Product, prepare sack(s) (irregular parcels only) or flat tray(s) under *10.1.4g* and *10.1.4h.* For 5-digit ZIP Codes not included in a scheme, prepare sacks (irregular parcels only) or flat trays under *10.1.4d* through *10.1.4h.* Labeling: * * *

* * * * *

[Revise the text of item 10.1.4h to read as follows:]

h. *Merged 3-digit.* Required for carrier route, 5-digit, and 5-digit scheme bundles remaining after preparing sacks (irregular parcels only) or flat trays under *10.1.4a* through *10.1.4g,* and any 3-digit and 3-digit scheme bundles with a minimum of 24 pieces for a 3-digit area. Labeling: * * *

* * * * *

10.2 USPS Marketing Mail

10.2.1 Basic Standards

[Revise the introductory text of 10.2.1 and item 10.2.1a to read as follows:]

Carrier route bundles from a carrier route price mailing may be placed in the same flat tray or on the same pallet as 5-digit bundles from an automation price mailing and 5-digit bundles from a Presorted price mailing (including pieces cobundled under *11.0*) under the following conditions:

a. A carrier route mailing must be part of the mailing job, unless cobundled under *11.0* utilizing 5-digit scheme (*L007*) or 3-digit scheme (*L008*) bundle preparation and trayed under *10.1.4.*

* * * * *

[Revise the text of items 10.2.1e through 10.2.1g to read as follows:]

e. Carrier route bundles may be cotrayed or copalletized with automation price 5-digit bundles, Presorted price 5-digit bundles, and cobundled 5-digit bundles only for those 5-digit ZIP Codes that have an ''A'' or ''C'' indicator in the Carrier Route Indicators field in the City State Product indicating eligibility for such cotraying or copalletization. Containers of mail sorted in this manner are called ''merged 5-digit'' flat trays or pallets. Containers of mail sorted in this manner for which scheme (*L001*) sortation is also performed are called ''merged 5-digit scheme'' flat trays or pallets. Pieces in 5-digit scheme (*L007*) bundles may not be placed in merged 5-digit containers.

f. If sortation under this section is performed, merged 5-digit flat trays or pallets must be prepared for all 5-digit ZIP Codes with an ''A'' or ''C'' indicator in the City State Product that permits such preparation when there is enough volume for the 5-digit ZIP Code to prepare that flat tray or pallet.

g. For trayed mailings, the prices for pieces in the carrier route mailing are based on the criteria in *243.6.0,* the prices for pieces in the automation price mailing are applied based on the number of pieces in the bundle and the level of bundle to which they are sorted under *243.7.0,* and the prices for pieces in the Presorted price mailing are based on the number of pieces in the bundle and the level of flat tray to which they are sorted under *243.5.0.*

* * * * *

[Revise the text of 10.2.1j to read as follows:]

j. The bundles from each separate mailing must be sorted together into flat trays (cotrayed) under *10.2.3* and *10.2.4* or on pallets (copalletized) under *10.2.5* using presort software that is PAVE-certified.

* * * * *

[Revise the text of items 10.2.1l and 10.2.1m to read as follows:]

l. In addition to the applicable postage statement, documentation produced by PAVE-certified software must be submitted with each cotrayed or copalletized mailing job that describes for each sack/flat tray sortation level and flat tray, or each pallet sortation level and pallet, the number of pieces qualifying for each applicable carrier route price, each applicable automation price, and each applicable Presorted price.

m. Barcoded tray labels under *204.3.0* must be used to label flat trays.

* * * * *

[Revise the title and text of 10.2.3 to read as follows:]

10.2.3 Sacking and Traying Rules

When the minimum quantity of 125 pieces or 15 pounds of mail for sacks or a full flat tray is specified for a sortation level in *10.2.4,* the provisions of *245.7.4* and 245.1.4e apply.

10.2.4 Sack/Flat Tray Preparation and Labeling

[Revise the introductory text of 10.2.4 to read as follows:]

Mailers must prepare sacks and flat trays in the following manner and sequence. All carrier route bundles must be placed in sacks or flat trays under *10.2.4a* through *10.2.4e* as described below. Mailers must prepare all merged 5-digit scheme flat trays, 5-digit scheme carrier routes sacks or flat trays, and merged 5-digit flat trays that are possible in the mailing based on the volume of mail to the destination using *L001* and the Carrier Route Indicators field in the City State Product. Mailers must label sacks/flat trays according to the Line 1 and Line 2 information listed below and under *245.4.0.*

* * * * *

[Revise the text of 10.2.4b to read as follows:]

b. *Merged 5-digit scheme,* required and permitted only when there is at least one 5-digit ZIP Code in the scheme with an ''A'' or ''C'' indicator in the City State Product. May contain carrier route bundles for any 5-digit ZIP Code(s) in a single scheme listed in *L001* as well as automation price 5-digit bundles and Presorted price 5-digit bundles for those 5-digit ZIP Codes in the scheme with an ''A'' or ''C'' indicator in the City State Product. When preparation of this flat tray level is permitted, a flat tray must be prepared if there are any carrier route bundle(s) for the scheme. If there is not at least one carrier route bundle for any 5-digit destination in the scheme, preparation of this flat tray is required when there is at least a full flat tray (245.1.4), 125 pieces or 15 pounds of pieces in 5-digit bundles for any of the 5-digit ZIP Codes in the scheme that have an ''A'' or ''C'' indicator in the City State Product (smaller volume not permitted). For a 5-digit ZIP Code(s) in a scheme with a ''B'' or ''D'' indicator in the City State Product, prepare flat tray(s) for the automation price and Presorted price bundles under *10.2.4g* and *10.2.4h.* For 5-digit ZIP Codes not included in a scheme, prepare flat trays under *10.2.4d* through *10.2.4h.* Labeling: * * *

* * * * *

[Revise the text of 10.2.4d to read as follows:]

d. *Merged 5-digit,* required. Must be prepared only for those 5-digit ZIP Codes that are not part of a scheme and that have an ''A'' or ''C'' indicator in the City State Product. May contain carrier route bundles, automation price 5-digit bundles, and Presorted price 5-digit bundles. Must be prepared if there are any carrier route bundles for the 5-digit destination. If there is not at least one carrier route bundle for the 5-digit destination, must be prepared when there is at least a full flat tray (245.1.4), 125 pieces or 15 pounds of pieces in 5-digit bundles for the same 5-digit destination (smaller volume not permitted). Labeling: * * *

[Revise the text of 10.2.4h to read as follows:]

h. *3-digit through Mixed ADC flat trays.* Any 5-digit scheme and 5-digit bundles remaining after preparing flat trays under *10.2.4a* through *10.2.4g,* and all 3-digit, ADC, and Mixed ADC bundles, must be trayed and labeled according to the applicable requirements under *9.3* for cosacking/cotraying of automation price and Presorted price bundles, except if there are no automation price bundles in the mailing job, tray and label under *245.5.0,* or, if there are no Presorted price bundles in the mailing job, tray and label under *245.7.4.*

10.2.5 Pallet Preparation and Labeling

* * * * *

[Add a new item (j) to read as follows:]

j. Mixed NDC, use 8.10.3h, as applicable, to prepare and label Mixed NDC pallets. * * * * *

11.0 Combining Automation Price and Nonautomation Price Flats in Bundles

* * * * *

11.2 Periodicals

11.2.1 Basic Standards

[Revise the third sentence of the introductory text of 11.2.1 to read as follows:]

* * * Mailing jobs (for flats meeting the criteria in *201.6.0*) prepared using the 5-digit scheme and/or the 3-digit scheme bundle preparation must be trayed under *9.0* or *10.0* or palletized under *10.0, 12.0,* or *13.0.* * * *

* * * * *

[Revise the text of 11.2.1b to read as follows:]

b. Mailings prepared in flat trays must meet the basic standards in *9.0* or *10.0.*

* * * * *

11.2.3 Bundles With Fewer Than Six Pieces

[Revise the last sentence of the introductory text of 11.2.3 to read as follows:]

* * * Low-volume bundles are permitted only when they are trayed or prepared on pallets as follows:

[Revise the text of items 11.2.3a and 11.2.3b to read as follows:]

a. Place low-volume 5-digit and 3-digit bundles in only 5-digit scheme, 5-digit, 3-digit, and SCF flat trays that contain at least 24 pieces; or in origin/entry SCF flat trays; or on merged 5-digit scheme, 5-digit scheme, merged 5-digit, 5-digit, 3-digit, or SCF pallets, as appropriate.

b. Place low-volume 5-digit scheme and 3-digit scheme bundles in only 5-digit scheme, 3-digit, and SCF flat trays that contain at least 24 pieces, or in origin/entry SCF flat trays, or on 3-digit or SCF pallets, as appropriate.

11.3 USPS Marketing Mail

11.3.1 Basic Standards

[Revise the introductory text of 11.3.1 to read as follows:]

Mailers may choose to cobundle (see *245.1.4u.*) automation price and nonautomation price flat-size pieces as an option to the basic bundling requirements in *245.5.0* and *245.7.0.* All pieces in the same bundle must meet the standards in *201.6.0.* 5-digit scheme and 3-digit scheme bundles must meet the additional standards in *245.1.4f.* and *245.1.4m.* Mailing jobs prepared using the 5-digit scheme and/or 3-digit scheme bundle preparation (for flats meeting the criteria in *201.6.0*) must be trayed under *10.0* or palletized under *10.0, 12.0,* or *13.0.* All bundles are subject to the following conditions:

* * * * *

[Revise the text of 11.3.1b to read as follows:]

b. Mailings prepared in flat trays must meet the basic standards in *9.0* or *10.0.*

* * * * *

12.0 Merging Bundles of Flats on Pallets Using a 5% Threshold

12.1 Periodicals

12.1.1 Basic Standards

* * * * *

[Revise the text of 12.1.1g to read as follows:]

g. Portions of the mailing job that cannot be palletized must be prepared in sacks/flat trays.

* * * * *

12.2 USPS Marketing Mail

12.2.1 Basic Standards

* * * * *

[Revise the text of 12.2.1l to read as follows:]

l. Portions of the mailing job that cannot be palletized must be prepared in flat trays.

* * * * *

12.2.3 Pallet Preparation and Labeling

* * * * *

[Add a new item (j) to read as follows:]

j. Mixed NDC, use 8.10.3h, as applicable, to prepare and label Mixed NDC pallets.

* * * * *

13.0 Merging Bundles of Flats on Pallets Using the City State Product and a 5% Threshold

13.1 Periodicals

13.1.1 Basic Standards

* * * * *

[Revise the text of 13.1.1h to read as follows:]

h. Portions of the mailing job that cannot be palletized must be prepared in flat trays.

* * * * *

13.2 USPS Marketing Mail

13.2.1 Basic Standards

* * * * *

[Revise the text of 13.2.1m to read as follows:]

a. Portions of the mailing job that cannot be palletized must be prepared in flat trays.

* * * * *

13.2.4 Pallet Preparation and Labeling

[Add a new item (j) to read as follows:]

j. Mixed NDC, use 8.10.3h, as applicable, to prepare and label Mixed NDC pallets

* * * * *

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–28587 Filed 1–4–23; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2022–0782; FRL–10215–02–R4]

Air Plan Approval; NC; Miscellaneous NSR Revisions and Updates; Updates to References to Appendix W Modeling Guideline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing the approval of a State Implementation Plan (SIP) revision, submitted by North Carolina on April 13, 2021. Specifically, EPA is approving updates to the incorporation by reference of Federal new source review (NSR) regulations and federal guidelines on air quality modeling in the North Carolina SIP. EPA is also converting a previous conditional approval regarding the infrastructure SIP prevention of significant deterioration (PSD) elements, for the 2015 ozone national ambient air quality standards (NAAQS) for North Carolina to a full approval. EPA is also approving updates to North Carolina's NSR regulations to better align them with the federal rules. EPA is approving these changes pursuant to the Clean Air Act (CAA or Act).

DATES: This rule is effective February 6, 2023.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R04–OAR–2022–0782. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information may not be publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that, if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Josue Ortiz Borrero, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number for Mr. Ortiz Borrero is (404) 562–8085. Mr. Ortiz Borrero can also be reached via electronic mail at *ortizborrero.josue@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On October 1, 2015, EPA promulgated a revised primary and secondary NAAQS for ozone, revising the 8-hour ozone standards from 0.075 parts per million (ppm) to a new more protective level of 0.070 ppm. *See* 80 FR 65292 (October 26, 2015). Pursuant to section 110(a)(1) of the CAA, states are required to submit SIP revisions meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe.[1] For the 2015 8-hour ozone NAAQS, states were required to submit such SIP revisions (also known as iSIPs) no later than October 1, 2018.

On September 27, 2018, North Carolina met the requirement to submit an iSIP for the 2015 8-hour ozone NAAQS by the October 1, 2018, deadline. Through previous rulemakings, EPA approved most of the infrastructure SIP elements for the 2015 ozone NAAQS for North Carolina.[2] However, regarding the PSD elements of section 110(a)(2)(C), (D)(i)(II) (prong 3), and (J) (herein referred to as element C, Prong 3, and element J, respectively), EPA conditionally approved[3] these portions of North Carolina's iSIP submission because of outdated references to the federal guideline on air quality modeling found in Appendix W of 40 CFR part 51.[4]

As discussed in the conditional approval for the 2015 ozone iSIP PSD elements, North Carolina's SIP contained outdated references to Appendix W, and the State committed to update the outdated references and submit a SIP revision within one year of EPA's final rule conditionally approving these PSD elements. Accordingly, North Carolina was required to make its submission by April 15, 2021. North Carolina met its commitment by submitting a SIP revision to correct the deficiencies on April 13, 2021.

Through a Notice of Proposed Rulemaking (NPRM), EPA proposed to approve the changes to the North Carolina SIP and to also convert the April 15, 2020, conditional approval to a full approval regarding element C, Prong 3, and element J for the 2015 8-hour ozone NAAQS infrastructure SIP. *See* 87 FR 61548 (October 12, 2022). Comments on the October 12, 2022, NPRM were due on or before November 14, 2022. No comments were received on the October 12, 2022, NPRM, and EPA is now finalizing the changes.

II. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of North Carolina regulations 15A NCAC 02D .0530, ''Prevention of Significant Deterioration,'' state effective on October 1, 2020, and .0544, ''Prevention of Significant Deterioration Requirements for Greenhouse Gases,''

[1] Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the NAAQS. This particular type of SIP is commonly referred to as an ''infrastructure SIP'' or ''iSIP.''

[2] EPA approved most elements for North Carolina, except for the Interstate Transport provisions (Prongs 1 & 2) and the PSD provisions (elements C, Prong 3, and J), on March 11, 2020. *See* 85 FR 14147. EPA approved the interstate transport provisions (Prongs 1 & 2) for North Carolina on December 2, 2021. *See* 86 FR 68413.

[3] Under CAA section 110(k)(4), EPA may conditionally approve a SIP revision based on a commitment from a state to adopt specific enforceable measures by a date certain, but not later than one year from the date of approval. If the state fails to meet the commitment within one year of the final conditional approval, the conditional approval will be treated as a disapproval and EPA will issue a finding of disapproval.

[4] *See* 85 FR 20836 (April 15, 2020).

state effective on November 1, 2020, making several updates to North Carolina's emission control permitting rules consistent with federal requirements.[5] EPA has made, and will continue to make, the SIP generally available at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, the revised materials as stated above, have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[6]

III. Final Action

EPA is approving changes to the North Carolina SIP and converting the conditional approval for element C, Prong 3, and element J for the 2015 8-hour ozone Infrastructure SIP to a full approval. Specifically, EPA is approving changes to North Carolina Rule 15A NCAC 02D .0530, ''Prevention of Significant Deterioration,'' and .0544, ''Prevention of Significant Deterioration Requirements for Greenhouse Gases.''

IV. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 6, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

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

Dated: December 20, 2022.

Daniel Blackman,

Regional Administrator, Region 4.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart II—North Carolina

§ 52.1769 [Reserved].

■ 2. Remove and reserve § 52.1769

■ 3. Amend § 52.1770 by:

■ a. In paragraph (c), in table (1) under ''Subchapter 2D Air Pollution Control Requirements'', revising the entries for ''Section .0530'' and ''Section .0544''; and

---

[5] EPA is not approving the October 1, 2020, state-effective version of Rule 02D .0530 to the extent that the rule incorporates by reference certain provisions of 40 CFR 51.166, as specified in this footnote. NCDAQ provided a letter to EPA dated September 6, 2022, clarifying that it is not requesting approval of these provisions into the North Carolina SIP.

EPA is not approving the October 1, 2020, state-effective version of Rule 02D .0530 to the extent that the rule incorporates by reference 51.166(b)(2)(iii)(*a*) as of July 1, 2019. Instead, the version of 40 CFR 51.166(b)(2)(iii)(*a*) in the SIP remains the version that existed in the CFR on March 15, 1996, as approved by EPA into the SIP on October 15, 1999 (64 FR 55831).

EPA is also not approving the October 1, 2020, state-effective version of Rule 02D .0530 to the extent the rule incorporates by reference 40 CFR 51.166(i)(2). Instead, the version of 40 CFR 51.166(i)(2) in the SIP remains the version that existed in the CFR on July 1, 2014, as approved by EPA into the SIP on September 11, 2018 (83 FR 45827).

Finally, EPA is not approving the October 1, 2020, state-effective version of Rule 02D .0530 to the extent the rule incorporates by reference the following federal provisions: 40 CFR 51.166(b)(2)(v), 51.166(b)(3)(iii)(*d*), 51.166(b)(53)–(56), 51.166(i)(11) [note that the NPRM included a typographical error and cited instead to 40 CFR 51.166(i)(11)(ii)], and 51.166(y).

[6] *See* 62 FR 27968 (May 22, 1997).

■ b. In paragraph (e), in the table by adding at the end an entry for ''110(a)(1) and (2) Infrastructure Requirements for the 2015 8-Hour Ozone NAAQS'' The additions read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

(1) EPA Approved North Carolina Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
Rule .0530	Prevention of Significant Deterioration.	10/1/2020	1/5/2023, [Insert citation of publication].	Except for the incorporation by reference of 40 CFR 51.166(b)(2)(iii)(*a*), which is instead the incorporation of the March 15, 1996, version of that section as approved into the SIP on October 15, 1999. Except for the incorporation by reference of 40 CFR 51.166(i)(2), which is instead the incorporation of the July 1, 2014, version of that section as approved into the SIP on September 11, 2018. Except for the incorporation by reference of 40 CFR 51.166(b)(2)(v), 51.166(b)(3)(iii)(*d*), 51.166(b)(53)–(56), 51.166(i)(11), and 51.166(y).
*	*	*	*	*
Rule .0544	Prevention of Significant Deterioration Requirements for Greenhouse Gases.	11/1/2020	1/5/2023, [Insert citation of publication].	Except for the Biomass Deferral Rule language contained in the second sentence of 40 CFR 51.166(b)(48)(ii)(*a*).
*	*	*	*	*

* * * * *

(e) * * *

EPA-Approved North Carolina Non-Regulatory Provisions

Provision	State effective date	EPA approval date	**Federal Register** citation	Explanation
*	*	*	*	*
110(a)(1) and (2) Infrastructure Requirements for the 2015 8-Hour Ozone NAAQS.	4/13/2021	1/5/2023	[Insert citation of publication].	Addressing the PSD provisions of sections 110(a)(2)(C), (D)(i)(II) (Prong 3), and (J) only.

[FR Doc. 2022–28150 Filed 1–4–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–R09–OAR–2022–0525; FRL–9961–02–R9]

Finding of Failure To Attain and Reclassification of Las Vegas Area as Moderate for the 2015 Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is determining that the Las Vegas, Nevada nonattainment area (''Las Vegas'') failed to attain the 2015 ozone National Ambient Air Quality Standard (NAAQS) by the applicable attainment date. The effect of failing to attain by the applicable attainment date is that Las Vegas is being reclassified by operation of law as ''Moderate'' nonattainment for the 2015 ozone NAAQS on January 5, 2023, the effective date of this final rule. Accordingly, the Nevada Division of Environmental Protection (NDEP) must submit State Implementation Plan (SIP) revisions and implement controls to satisfy the statutory and regulatory requirements for Moderate areas for the 2015 ozone NAAQS according to the deadlines established in this final rule.

DATES: The effective date of this rule is January 5, 2023.

ADDRESSES: The EPA has established a public docket for this action at *https://www.regulations.gov* under Docket ID No. EPA–R09–OAR–2022–0525. Although listed in the docket index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Karina O'Connor, Air Planning Office (AIR–2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105; By

phone: (775) 434–8176 or by email at *oconnor.karina@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

The following is an outline of the Preamble.

I. Proposed Actions
A. Proposed Determination of Failure To Attain by the Attainment Date
B. Proposed Moderate Area SIP Submission and Controls Implementation Deadlines
II. Responses to Comments and Final Action
A. Determination of Failure To Attain and Reclassification
B. Moderate Area SIP Submission and Implementation Deadlines
C. Final Action
III. Good Cause Exemption Under the Administrative Procedure Act (APA) for Immediate Effective Date
IV. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Paperwork Reduction Act (PRA)
C. Regulatory Flexibility Act (RFA)
D. Unfunded Mandates Reform Act (UMRA)
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act (NTTAA)
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act (CRA)
L. Judicial Review

I. Proposed Actions

A. Proposed Determination of Failure To Attain by the Attainment Date

On July 22, 2022, the EPA proposed to determine that Las Vegas failed to attain the 2015 ozone NAAQS by the applicable attainment date and did not qualify for a 1-year attainment date extension. Under Clean Air Act (CAA or ''Act'') section 181, the EPA has a statutory obligation to determine whether the Marginal nonattainment area attained the 2015 ozone NAAQS by August 3, 2021, the applicable attainment date.[1] The proposed determination was based upon complete, quality-assured and certified ozone air quality monitoring data that showed that the 8-hour ozone design value (DV) for the area exceeded 0.070 parts per million (ppm) for the period 2018–2020, *i.e.,* the area's DV as of the attainment date. The EPA proposed that Las Vegas would be reclassified as a Moderate nonattainment area by operation of law on the effective date of a final action finding that the area failed to attain the 2015 ozone NAAQS by the applicable attainment date for Marginal areas.[2]

B. Proposed Moderate Area SIP Submission and Controls Implementation Deadlines

In the July 2022 proposal, the EPA solicited comment on adjusting the due dates, in accordance with CAA section 182(i), for submission and implementation deadlines for all SIP requirements that apply to Las Vegas.[3] Under CAA section 181(b)(2), Marginal nonattainment areas that fail to attain the 2015 ozone NAAQS by the applicable attainment date will be reclassified as Moderate by operation of law upon the effective date of the final determination. Once Las Vegas is reclassified as Moderate, NDEP must subsequently submit a SIP revision that satisfies the air quality planning requirements for a Moderate area under CAA section 182(b).

The EPA proposed to align the submission deadline for all Moderate area SIP elements for Las Vegas with the proposed January 1, 2023, deadline for other areas being reclassified from Marginal to Moderate in the EPA's national determination for Marginal areas under the 2015 ozone NAAQS.[4] The EPA adopted this approach previously for Marginal areas reclassified as Moderate for failure to timely attain the 2008 ozone NAAQS and in recent actions for the 2008 and 2015 ozone NAAQS to achieve consistency among required SIP submissions for areas facing a similarly compressed timeframe between the effective date of reclassification and the Moderate area attainment date.[5]

The EPA's implementing regulations for the 2015 ozone NAAQS require that, for areas initially classified as Moderate or higher, a state shall provide for implementation of reasonable available control technology (RACT) as expeditiously as practicable but no later than January 1 of the fifth year after the effective date of designation, which corresponds with the beginning of the attainment year for initially classified Moderate areas (*i.e.,* January 1, 2023).[6] The modeling and attainment demonstration requirements for 2015 ozone NAAQS nonattainment areas classified Moderate or higher require that a state must provide for implementation of all control measures needed for attainment no later than the beginning of the attainment year ozone season, notwithstanding any alternative deadline established per *40 CFR 51.1312.*[7] For reclassified areas, the EPA's implementing regulations for the 2015 ozone NAAQS require that the state shall provide for implementation of RACT as expeditiously as practicable, but no later than the start of the attainment year ozone season associated with the area's new attainment deadline, or January 1 of the third year after the associated SIP submission deadline, whichever is earlier; or the deadline established by the Administrator in the final action issuing the area reclassification.[8] The EPA requested comment on the proposed January 1, 2023, reasonably available control measures (RACM)/RACT implementation deadline. This proposed deadline is the same as the single RACT implementation deadline for all areas initially classified Moderate per *40 CFR 51.1312(a)(3) in the national rulemaking* and would require implementation of any identified RACM/RACT at the beginning of the Las Vegas Moderate area's attainment year ozone season (January 1, 2023) to influence the area's air quality and 2021–2023 attainment DV. The proposed RACT implementation deadline would also align with the proposed SIP submission deadline of January 1, 2023, and ensure that any control measures needed for attainment, including RACM, would be submitted no later than when those controls are required to be implemented.

A ''Basic'' vehicle inspection and maintenance program (I/M program) is required for all urbanized Moderate areas under the 2015 ozone NAAQS. The Las Vegas nonattainment area is currently operating I/M programs as part

[1] 87 FR 43764 (July 22, 2022).

[2] CAA section 181(b)(2)(A).

[3] See CAA sections 172(c)(1) and 182(a) and (b), and 40 CFR 51.1300 *et seq.*

[4] Proposed Rule—Determinations of Attainment by the Attainment Date, Extensions of the Attainment Date, and Reclassification of Areas Classified as Marginal for the 2015 Ozone National Ambient Air Quality Standards (81 FR 21842, April 13, 2022).

[5] Final Rule—Determinations of Attainment by the Attainment Date, Extensions of the Attainment Date, and Reclassification of Several Areas for the 2008 Ozone National Ambient Air Quality Standards (81 FR 26697, 26705, May 4, 2016). Final Rule—Determinations of Attainment by the Attainment Date, Extensions of the Attainment Date, and Reclassification of Areas Classified as Marginal for the 2015 Ozone National Ambient Air Quality Standards (87 FR 60897, October 7, 2022).

[6] See *40 CFR 51.1312(a)(3)(i).*

[7] See *40 CFR 51.1308(d).*

[8] See *40 CFR 51.1312(a)(3)(ii).*

of its maintenance plan for the 1971 carbon monoxide standard for which the area had been classified as Serious nonattainment and subsequently redesignated.[9] With respect to the implementation deadline for any revisions to the current I/M program that may be necessary, if Clark County Department of Environment and Sustainability (''Clark County DES'') and NDEP intend to use emissions reductions from a revised I/M program for the 2015 ozone NAAQS, they would need to have such revisions fully established and start testing as expeditiously as practicable but no later than January 1, 2023. However, if the state does not intend to rely upon emissions reductions from a revised I/M program in the Moderate area attainment or reasonable further progress (RFP) demonstrations, the EPA proposed to allow the I/M program to be fully implemented no later than 4 years after the effective date of reclassification.

II. Responses to Comments and Final Action

The public comment period for the EPA's July 2022 proposal closed on August 22, 2022. The EPA requested comment on the determination of failure to attain and subsequent reclassification from Marginal to Moderate as well as the Moderate area SIP revision and implementation deadlines. The two comment letters received during this period can be found in the docket for this action. In the first letter, the Clark County DES disagrees with the EPA's proposed reclassification and the associated timelines for the SIP revision and implementation. In the second letter, Earthjustice, on behalf of Sierra Club, supports all aspects of the EPA's proposal but expresses a concern about review of wildfires under the Exceptional Events Rule (EER).

A. Determination of Failure To Attain and Reclassification

The EPA received adverse comments on its proposal to determine that Las Vegas failed to attain by the applicable attainment date and to reclassify the area as Moderate from the Clark County DES.

Comment: Clark County DES stated opposition to the proposed reclassification of Las Vegas as Moderate, indicating that the area is heavily impacted by ozone precursors originating from upwind states and asserting that as a result, further actions taken by the State to address Moderate area planning requirements are unlikely to significantly improve air quality in Las Vegas.

Response: The EPA disagrees that Las Vegas should not be reclassified as Moderate. The EPA has a mandatory duty under CAA section 181(b)(2)(A) to determine whether Las Vegas attained by its attainment date of August 3, 2021, based on the area's design value as of the attainment date. The CAA also requires that any area that the EPA finds has not attained the standard by the attainment deadline shall be reclassified by operation of law to the higher of the next ''higher'' classification (*e.g.,* Marginal to Moderate, Moderate to Serious, etc.) or the classification applicable to the area's DV. Further, the Agency's mandatory duty to make determinations of attainment or failure to attain the NAAQS exists regardless of the nature or effect of transported ozone on monitored air quality in a given nonattainment area.[10]

Under the EPA regulations at 40 CFR part 50, Appendix U, the 2015 ozone NAAQS is attained at a monitoring site when the three-year average of the annual fourth-highest daily maximum eight-hour average ozone concentration (*i.e.,* the DV) is less than or equal to 0.070 ppm. When the DV is less than or equal to 0.070 ppm at each regulatory ambient air quality monitoring site within the area, the area is deemed to be meeting the NAAQS. If the DV is greater than 0.070 ppm at any site in the area, the area is deemed to be violating the NAAQS. Four monitoring sites in Las Vegas have design values greater than 0.070 ppm (the highest design value measured in the area is 0.074 ppm) for the 2018–2020 period; [11] therefore, the EPA must determine that the area failed to attain the standard by the August 3, 2021, Marginal attainment deadline and reclassify the area as Moderate as required by section 181(b)(2) of the CAA.

Comment: Clark County DES strongly disagreed with the EPA's nonconcurrence on exceptional event (EE) demonstrations submitted in support of Clark County DES's requested determination of attainment or, alternatively, a 1-year attainment date extension for the Las Vegas area for the 2015 ozone NAAQS.

Response: The EPA disagrees that its nonconcurrence with regard to Clark County DES' EE demonstrations was incorrect. The 2016 EER applies to data showing exceedances or violations of an air quality standard for purposes of qualifying regulatory determinations (*i.e.,* having ''regulatory significance''), and requires that, if a state demonstrates to the EPA's satisfaction that an exceptional event meets the requirements of the EER, the EPA shall exclude the data from use in determinations of exceedances and violations with respect to such regulatory determinations.[12] In addition to having regulatory significance and meeting certain procedural requirements for submitting an EE demonstration, the demonstration must include: (1) a narrative conceptual model describing the event(s) causing the exceedance or violation, (2) a demonstration of a clear causal relationship between the event and the monitored exceedance or violation, (3) analyses comparing the event-influenced concentration to concentrations at the same monitoring site at other times to support the clear causal relationship; (4) a demonstration that the event was both not reasonably controllable and not reasonably preventable; and (5) a demonstration that the event was caused by human activity that is unlikely to recur at a particular location or was a natural event.[13]

Of the seventeen EE demonstrations submitted by Clark County DES, the EPA first reviewed three wildfire events and two stratospheric ozone intrusion (SOI) events, based on the regulatory significance and critical potential effect on design values and 2020 data of these five events. As more fully discussed in the EE technical support documents included in the docket to this rulemaking, the EPA ultimately found that none of the five demonstrations fully satisfied all of the EER criteria required for the EPA to concur; specifically, the EPA determined that each of the five demonstrations did not sufficiently show a clear causal relationship between the specific events and the monitored exceedances. This conclusion was based on the technical review of extensive information presented in the demonstrations, such as meteorological data, fire and stratospheric ozone intrusion information and analyses, trajectory analysis, ground level monitoring data, and statistical modeling analysis. The technical data and analyses presented did not support that event emissions were transported to the Clark County

[9] See the July 2022 proposal for more background information on I/M SIP requirements (87 FR 43764, 43769–43770).

[10] *Cf. Sierra Club* v. *EPA,* 294 F.3d 155 (D.C. Cir. 2002) (rejecting the EPA's decision not to reclassify a downwind nonattainment area that failed to timely attain due to transported pollution from upwind states).

[11] AQS report AMP480_2054242.pdf dated 20221025.

[12] 81 FR 68216 (October 3, 2016).

[13] See 40 CFR 50.14(c)(3)(iv).

monitoring sites and influenced air quality sufficiently to cause exceedances of the 2015 ozone NAAQS, and therefore did not satisfy the clear causal relationship criterion of the EER.

The EPA notified Clark County DES of its decision to nonconcur on the five demonstrations on April 11, 2022. As a result of the nonconcurrences on the five demonstrations, the remaining demonstrations submitted by Clark County DES, even if concurred upon, would not have resulted in an attaining DV or air quality that would have met the criterion for an attainment date extension. Therefore, the remaining EE demonstrations no longer had regulatory significance, as required by the 2016 EER, and were not reviewed by the EPA.

Comment: Clark County DES expressed concerns about the increasing impact of western wildfires and associated smoke on air quality in Las Vegas, noting that control of wildfires and the transport of the emissions were out of their jurisdiction and control. The commenter requested that the EPA consider changes to the EER and EE guidance to clearly define what qualifies as a wildfire-related EE because normal levels of wildfire smoke have changed. Another commenter expressed concern that implementation of the EER undermines the goals of the attaining the NAAQS because wildfire occurrences are becoming more frequent.

Response: The EPA recognizes that many areas in the West are experiencing more intense wildfire activity, in large part driven by severe drought conditions that are affecting nearly ninety percent of the region.[14] The EPA recognizes that these wildfire impacts are generally outside of the control of local air quality agencies, like Clark County DES. Indeed, the purpose of the EER and related guidance is to exclude these types of air quality impacts, *i.e.,* naturally occurring events that can affect air quality but that are not reasonably controllable using techniques that tribal, state or local air agencies may implement in order to attain and maintain the NAAQS, to avoid imposing unreasonable planning or implementation requirements on air quality agencies. Additionally, as noted in 40 CFR 50.1(n), a wildfire occuring predominantly on wildland is defined as a natural event, and the definition of natural events at 40 CFR 50.1(k) clarifies that such events may recur at the same location. Therefore, the EER continues to allow for exclusion of data affected by more frequent wildfires, presuming those events otherwise meet the requirements of the EER.

The EPA acknowledges the complexity and intricacies of regional conditions prevalent across the country and is committed to continuing to provide clarification and assistance to states as the EER is implemented and through communications between the Regions and the states to ensure that these regional conditions are adequately addressed. However, to the extent that the commenters suggest the EPA revisit the EER and EE guidance in this rulemaking, either to provide additional clarifications or because of a commenter's concern that implementation of the EER undermines attainment of the NAAQS, the EPA believes that doing so is beyond the scope of this rulemaking to determine whether Las Vegas attained by its Marginal area attainment date.

While we acknowledge that wildfires have become more common in the West, we reiterate that the EPA carefully examined Clark County DES' EE demonstrations, and, as described in more detail above and in the EE technical support documents included in the docket to this rulemaking, found that the EE demonstrations submitted by Clark County DES did not sufficiently establish a clear causal relationship between wildfire emissions and ozone concentrations during the three identified wildfire exceedance events reviewed by the EPA. The EPA's evaluation of the ''clear causal relationship'' criterion did not rely on the frequency of events, and therefore an increasing frequency or intensity of wildfires were not considered in the EPA's nonconcurrence determinations issued with respect to the Clark County DES wildfire demonstrations.

Comment: In identifying the local impacts from increased wildfires, Clark County DES also highlighted the need for federal action to research, prevent, and contain these wildfires.

Response: We recognize that many areas in the West are experiencing more wildfire activity, as well as drought conditions and high temperatures. The White House and many executive agencies, including the EPA, are committed to devoting federal resources to study and reduce these wildfire impacts to the extent possible. For example, land managers, landowners, air agencies and communities may be able to lessen the impacts of wildfires by working collaboratively to take steps to minimize fuel loading in areas vulnerable to fire. There are specific Department of the Interior [15] and United States Forest Service [16] federal plans to increase fuel load minimization efforts in areas at high risk of wildfire. The recently passed Bipartisan Infrastructure Law [17] and Inflation Reduction Act [18] further direct agencies and provides funding for such efforts at the federal level as well as at state, tribal, local and private landowner levels.[19] For example, the White House recently outlined a plan to leverage $8 billion from the Bipartisan Infrastructure Law to improve wildfire response capabilities by bolstering the wildland firefighting workforce and utilizing data and technology to better detect and respond to wildfires, among other tools to strengthen prevention, preparedness, mitigation, and response efforts to wildfires.[20] It is important to note that the EPA is not a land management agency, and therefore land management techniques to prevent and control wildfires are outside of our jurisdiction. However, we work closely with other federal agencies including the United States Forest Service on multiple interagency groups to discuss the use of prescribed fires and other land management control techniques.

From an air quality perspective, the EPA has multiple Air Sensor Loan Programs to help bolster local air quality monitoring efforts. One example of this is the Wildfire Smoke Air Monitoring

[14] Fact Sheet: The Biden-Harris Administration Acts to Address the Growing Wildfire Threat, The White House (June 30, 2021), *https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/30/fact-sheet-the-biden-harris-administration-acts-to-address-the-growing-wildfire-threat/.* While heat waves and droughts do not directly cause pollutant emissions and are not themselves considered exceptional events, they can combine with or exacerbate the effects of events that do meet the requirements, provisions, and criteria of the EER.

[15] See *https://www.doi.gov/sites/doi.gov/files/bil-5-year-wildfire-risk-mmt-plan.04.2022.owf_.final_.pdf.*

[16] See *https://www.fs.usda.gov/sites/default/files/Confronting-Wildfire-Crisis.pdf.*

[17] Inflation Reduction Act, Public Law 117–169 available at *https://www.congress.gov/bill/117th-congress/house-bill/5376/text.*

[18] Infrastructure Investment and Jobs Act, Public Law 117–58, available at *https://www.congress.gov/117/plaws/publ58/PLAW-117publ58.pdf.*

[19] Inflation Reduction Act, Public Law 117–169 available at *https://www.congress.gov/bill/117th-congress/house-bill/5376/text.*

[20] See Fact Sheet: ''The Biden-Harris Administration Acts to Address the Growing Wildfire Threat'', The White House (June 30, 2021*), https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/30/fact-sheet-the-biden-harris-administration-acts-to-address-the-growing-wildfire-threat/*; Fact Sheet: President Biden Signs Executive Order to Strengthen America's Forests, Boost Wildfire Resilience, and Combat Global Deforestation The White House (April 22, 2022), *https://www.whitehouse.gov/briefing-room/statements-releases/2022/04/22/fact-sheet-president-biden-signs-executive-order-to-strengthen-americas-forests-boost-wildfire-resilience-and-combat-global-deforestation/#:~:text=To%20strengthen%20America's%20forests20and,growth%%20forests%20on%20federal%20lands.*

Technology (WSMART) Pilot program.[21] The WSMART program allows state, local, or tribal air agencies to loan one of two types of stationary sampling systems to supplement air quality data in smoke-impacted communities. In addition, the EPA regularly deploys air quality experts to large smoke events, where they help predict, analyze, and communicate smoke impacts from fires, along with other air experts, to the public.[22] The EPA is also involved in numerous research efforts. Current research includes a study on the safety and efficacy of using Do-It-Yourself air cleaners, which are in-home air filtration devices made by attaching an air filter to a box fan, as an alternative to other air cleaners. A second study is research on the use of N95 masks to protect against wildfire smoke when used with varying levels of instruction.[23] This research helps us understand the safety and efficacy of different tools the public can use to protect themselves.

Federal agencies will continue to engage on various fronts to address wildfires and the associated impacts, and the EPA will continue to incorporate the tools and research information to work with Clark County DES and others toward protecting the environment and human health.

B. Moderate Area SIP Submission and Implementation Deadlines

The EPA received one supportive comment from the Sierra Club and adverse comments from Clark County DES on our proposed deadlines, which are addressed as follows. We acknowledge that meeting a January 1, 2023, SIP submission and RACM/RACT implementation deadline will be challenging. As discussed in our responses, the options for establishing deadlines within the CAA framework of attainment timeframes and RACT implementation requirements are constrained. We also note that a state may at any time request—and the EPA must grant—a voluntary reclassification under CAA section 181(b)(3). As a general matter, the EPA remains committed to working closely with affected states to help them prepare their SIP revisions in a timely manner. One additional comment, regarding future contingency measures policy is also addressed below.

Comment: Regarding the EPA's proposed January 1, 2023, SIP submission deadline for Clark County's Moderate area SIP revision, the commenter states that the deadline was without a rational basis because the EPA knows NDEP cannot meet the deadline, and further asserts that the proposed deadline is not specifically mandated by the CAA or the EPA's regulations. The commenter observed that the proposed deadline would be less than three months from final area reclassification, which they note is less than the planning timeframe allowed for initially designated areas (up to, *e.g.,* 3 years for RFP demonstrations) or for reclassified areas under 40 CFR 51.1312(a)(2)(ii), which allows up to 2 years for RACT SIPs. Clark County DES did not request a specific deadline but was concerned that the proposed submission deadline was unachievable given the timing and need for development of the plan and the need for providing the public with opportunity to comment, also noting that the EPA's delayed rulemaking in this action has contributed to the planning burden on the nonattainment area.

The commenter disagrees with the EPA's exercise of discretion under CAA section 182(i) to provide for consistency among the required SIP submissions by harmonizing the SIP submission and RACT SIP implementation deadlines, claiming the EPA has not yet shown that its exercise of discretion is ''necessary or appropriate'' under the Act.

Further, the commenter requests that the EPA use its general regulatory authorities under CAA section 301(a)(1) to harmonize the SIP submission deadlines and the attainment date on the grounds that Congress intended for the EPA to give adequate time for states to implement control measures before facing sanctions or additional bump-ups. The commenter notes that the D.C. Circuit Court of Appeals has held that an agency's statutory interpretation must ''avoid unnecessary hardship or surprise to affected parties and remains within the general statutory bounds prescribed.''

Response: The EPA acknowledges the short planning timeframe available to NDEP and Clark County DES for the newly reclassified Las Vegas Moderate area, and that delays in this rulemaking, including additional time needed to review the EE demonstrations described above, have contributed to this shortened timeframe. We further acknowledge that the available timeframe here will present significant challenges to Clark County DES, but we believe that our approach here is consistent with prior determination and reclassification actions and with the confines of the CAA. Further, we maintain that the aligned SIP submission and RACT implementation deadline established in this final action best addresses the regulatory requirement under *40 CFR 51.1312(a)(3)(ii)* that RACT be implemented as expeditiously as practicable, but no later than the start of the attainment year ozone season associated with the area's new attainment deadline—in this case, January 1, 2023, for the Las Vegas area.

We note that first and foremost, the primary purpose of title I of the CAA and subpart 2 in particular is the expeditious attainment of the NAAQS in all areas. We do not agree that the Act provides support for the notion that the overriding goal of these statutory provisions is to provide adequate time to states for implementing control measures, or that our proposed SIP submission and implementation deadlines would result in ''unnecessary hardship or surprise'' that exceeds permissible bounds. The plain language of the CAA mandates that the Las Vegas area be reclassified as Moderate as a matter of law because the area failed to attain the NAAQS by its Marginal attainment date. The Act, and its implementing regulations, further mandate that, once reclassified, the area's new attainment date is August 3, 2024.

The State, in this case, has been on notice since December 2020 that there was a possibility that Las Vegas would be reclassified, given the preliminary air quality data for the time period relevant to attainment demonstrations (2018–2020). Moreover, the EPA shared with the State in April of this year that we did not agree with the state's exceptional events demonstrations, paving the way for a finding that the area did not attain and would be reclassified. A state need not wait until EPA's finding and reclassification is made effective before beginning to develop an attainment plan for a higher classification of an air quality standard. At the time of the proposed finding and reclassification for Las Vegas, there was nearly two full years until the area's attainment date, including the entire attainment year ozone season of 2023.

Given these facts and circumstances, we think it is appropriate and necessary to establish deadlines that would result in the most expeditious schedule for adopting and implementing control

[21] Wildfire Smoke Air Monitoring Response Technology (WSMART) Pilot, EPA, *https://www.epa.gov/air-sensor-toolbox/wildfire-smoke-air-monitoring-response-technology-wsmart-pilot.*

[22] Air Resource Advisor Deployments, Interagency Wildland Fire Air Quality Response Program, *https://www.wildlandfiresmoke.net/ara/deployments.*

[23] When research results are published, they will appear on the EPA's Wildland Fire Research to Protect Health and the Environment page, *https://www.epa.gov/air-research/wildland-fire-research-protect-health-and-environment.*

measures, as we have in similarly situated areas all over the country, in order to provide Las Vegas with the best chance of timely attainment by its new 2024 attainment deadline. It is not appropriate, when there is still time to affect whether the area will timely attain, to delay the area's SIP submission or implementation deadlines, such that none of the controls adopted or implemented could ever affect whether the area attained by its next attainment deadline. We also therefore do not think CAA section 301(a)(1)'s gap-filling authority is needed or appropriate here, where CAA section 182(i) provides the EPA with the specific authority to establish new deadlines for areas that are reclassified for failing to timely attain by their attainment date.

Areas initially classified as Moderate under the 2015 ozone NAAQS were required to prepare and submit SIP revisions by deadlines relative to the effective date of the nonattainment designation (*i.e.,* August 3, 2018), which ranged from 2 to 3 years after the effective date of designation (*e.g.,* 2 years for the RACT SIP, and 3 years for the attainment plan with RACM and attainment demonstration). These SIP submission deadlines preceded the RACT implementation deadline (*i.e.,* as expeditiously as practicable but no later than January 1 of the 5th year after the effective date of designations) and have the practical effect of ensuring that SIPs requiring control measures needed for attainment, including RACM, would be submitted prior to when those controls are required to be implemented—in this case, no later than the beginning of the Moderate area attainment year. *i.e.,* January 1, 2023.

Section 181(b)(2)(A) of the CAA requires that within 6 months following the applicable attainment date, the EPA shall determine whether an ozone nonattainment area attained the ozone standard, and those areas that failed to attain and were not granted a 1-year attainment date extension are reclassified by operation of law. Although Congress did not articulate specific SIP submission deadlines for reclassified areas in the Act, it provided the EPA with authority under CAA section 182(i) to adjust any related deadlines for requirements under CAA sections 182(b) through (d) ''. . . to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions.'' Notably, explicitly excluded from CAA section 182(i) is authority to adjust attainment dates.[24]

The area classifications and attainment date framework established in Table 1 of CAA section 181(a)(1) and interpreted by 40 CFR 51.1303 inherently constrains the planning and implementation timeframe for reclassified areas, particularly for lower area classifications. The time increments between the Marginal and Moderate, and the Moderate and Serious area statutory attainment dates are only three years. These short timeframes are further constrained by the RACT implementation deadline for reclassified areas. Consistent with the RACT requirements of 40 CFR 51.1312(a)(3)(ii), the EPA proposed a RACT implementation deadline for the reclassified Las Vegas Moderate area corresponding with the beginning of the area's attainment year ozone season (*i.e.,* January 1, 2023). Aligning the RACT implementation and SIP submission deadlines ensures that SIPs requiring control measures needed for attainment, including RACM, are submitted no later than when those controls are required to be implemented.[25] The combination of constraints dictated by the statutory and regulatory requirements for reclassified ozone areas, particularly at the lower classifications, are a primary cause of the compressed timeframe for SIP development and implementation.

The EPA also notes that voluntary reclassification provides a way for states to anticipate and manage the tight timeframes for SIP development for nonattainment areas. An air agency can request—and the EPA *must* grant—a voluntary reclassification under CAA section 181(b)(3), which resets the area's attainment date into the future, and would therefore likely provide more time and flexibility for developing and submitting required SIP revisions. Of particular benefit for states is the longer timeframe to prepare RACT analyses and adopt SIP revisions for voluntarily reclassified areas, which could result in states determining that additional controls are reasonable and in turn help expedite air quality improvements in these areas.

Thus, while we recognize that Clark County DES may face difficulty in meeting the submission and implementation deadlines in this final rule, we continue to believe our proposed approach is consistent with the CAA and our regulations. As a reclassified Moderate area, Las Vegas is required to attain the 2015 ozone NAAQS by August 3, 2024, and per Congress's clear statutory instruction in CAA section 182(i), the EPA may not alter attainment deadlines for reclassified areas. Given the competing considerations outlined above and the remaining planning options available for Clark County, we maintain that the deadlines imposed by the final action are reasonable, and an appropriate exercise of the EPA's discretion under CAA section 182(i).

Comment: Regarding the proposed January 1, 2023, RACT implementation deadline for reclassified Moderate areas, the EPA received comments from Clark County DES stating that the deadline was unreasonable, and/or the resulting compressed timeframe provided insufficient time for RACT SIP development and implementation by affected sources. The commenter contended that the RACT implementation deadline would not provide enough time for the area to adopt new measures and also allow time for the EPA to approve the measures into the SIP, making them federally enforceable before the implementation deadline. The commentor argued that it is inappropriate to ask sources to make capital investments for new control measures before the EPA approves the SIP because they could have additional requirements to meet. Finally, the commenter considered the EPA's reliance upon the Moderate area attainment date to justify the RACT SIP submission deadline as not rational because the RACT SIP requirement is independent from attainment planning.

Response: As discussed previously, the EPA considers the compressed planning and RACT implementation timeframe for reclassified Moderate areas to be largely dictated by the area classifications and attainment date framework established in the CAA, and the regulatory RACT implementation deadline for reclassified areas—in this case, January 1, 2023, for the reclassified Las Vegas Moderate area. The EPA recognizes that measures that states identify as ''reasonably available'' and that affected sources must implement are directly tied to the amount of time provided by the EPA in establishing a due date within the statutory and regulatory constraints discussed previously, which includes the time needed for EPA to approve these measures into the SIP. Therefore, an area may be limited to RACM and RACT measures that are already on the books or well into the state's adoption process and might not generate additional emissions reductions. However, delaying the implementation deadline

[24] CAA section 182(i)(''. . . the Administrator may adjust any applicable deadlines (other than attainment dates) . . .'').

[25] See 87 FR 21842, 21856 (April 13, 2022).

for RACT will not make it more likely that the area will attain by its attainment date. The deadline the EPA is finalizing is already the beginning of the last year in that any emissions reductions could influence an area's DV as of their next attainment date.

Moreover, a states' obligation to adopt and implement RACT are not conditioned in any way on the EPA's action on those SIP revisions. There are no provisions of the CAA that permit states an extension of time to adopt SIP revisions or require implementation of control measures based on the timing of the EPA's action on the state's submissions. It is the state's obligation to adopt control measures and to implement those measures in order to attain the NAAQS, and the more expeditiously those controls are adopted and implemented, the likelier Las Vegas is to timely attain.

To the extent that the commenter does not think it will be possible to implement any controls beyond what has already been federally approved and recognizes that additional controls are necessary for that area to reach attainment, the area may, as discussed previously, exercise the option to request a voluntary reclassification, which the EPA must approve. The EPA cannot, under the CAA, reclassify ozone areas based on its presumption that an area will not attain or is unlikely to attain by the attainment date; but states are fully within their rights to recognize this and put themselves in a better position for longer planning and implementation timeframes.

Finally, the EPA disagrees with the commenter that it would be irrational to consider the attainment deadline when determining the proper RACT implementation deadline. The CAA and the EPA's regulations require the agency to consider the attainment date when determining the RACT implementation deadline.[26] Moreover, although the EPA considers the requirement to adopt RACT to be generally independent of attainment planning requirements, the EPA does not take the position that the RACT implementation requirement is fully independent of all other attainment planning requirements. The purpose of generally considering the RACT implementation requirement independent of attainment planning, particularly after reclassification to a higher standard, is to ensure continued progress toward and maintenance of attainment for those areas with more difficult air quality problems.[27] A nonattainment area is not required to submit certain attainment planning demonstrations, *e.g.,* attainment and RFP demonstrations, if the EPA finds that the area is in fact attaining the standard, with the caveat that those demonstrations will be required if the area again violates the standard.[28] RACT implementation, however, would still be required in the event that attainment could be demonstrated.

With respect to the Las Vegas area, in contrast, attainment has not been demonstrated and the nonattainment area will be required to submit all SIP planning requirements for Moderate nonattainment areas in addition to RACT implementation. Given this context, considering the attainment deadline when determining the optimal timeline for RACT implementation is a reasonable exercise of discretion in ensuring continued progress towards attainment.

Comment: In the remaining comment received from Clark County DES, the commenter asked that any future guidance on development and implementation of contingency measures not be applicable to the Las Vegas Moderate SIP for the 2015 ozone standard due to the short timeframe for SIP development.

Response: The EPA recognizes that many states are seeking guidance from the EPA on contingency measures, and as noted by the commenter, the EPA intends to release draft guidance on contingency measures for public review in the coming months. We appreciate the concerns expressed by the commenter and note that this comment is outside of the scope of this current rulemaking. Clark County DES will have an opportunity to comment on the draft guidance when it is released for public comment in the future, and the EPA is committed to continuing to support Clark County DES during the development of the Moderate area plan for Las Vegas.

C. Final Action

Pursuant to CAA section 181(b)(2) and after considering comments received, the EPA is finalizing its proposed determination that Las Vegas failed to attain the 2015 ozone NAAQS by the applicable attainment date of August 3, 2021. Therefore, upon the effective date of this final action, Las Vegas will be reclassified, by operation of law, as Moderate for the 2015 ozone NAAQS. Once reclassified as Moderate, Las Vegas will be required to attain the standard ''as expeditiously as practicable'' but no later than 6 years after the initial designation as nonattainment, which in this case would be no later than August 3, 2024. If the area attains the 2015 ozone NAAQS prior to the Moderate area attainment date, NDEP may request redesignation to attainment, provided the state can demonstrate at a minimum that the other criteria under CAA section 107(d)(3)(E) are met.[29]

Pursuant to CAA section 182(i) and after considering comments received, the EPA is finalizing its proposed deadlines for the Las Vegas Moderate area SIP revisions and implementation of RACM/RACT for the 2015 ozone NAAQS. SIP revisions required for the newly reclassified Las Vegas Moderate area, including the I/M SIP revision, must be submitted no later than January 1, 2023, and RACM/RACT for these areas must be implemented as expeditiously as practicable, but no later than the same date.[30]

For any revisions to the current I/M program that may be necessary, the EPA is finalizing an implementation deadline of no later than 4 years after the effective date of reclassification if the state does not intend to rely upon emissions reductions from a revised Basic I/M program in the Moderate area attainment or RFP demonstrations. The EPA received no comments on the implementation deadline for the Basic I/M program in Las Vegas.

III. Good Cause Exemption Under the Administrative Procedure Act (APA) for Immediate Effective Date

Under APA section 553(d)(3), 5 U.S.C. 553(d)(3), an agency may make a rule immediately effective ''for good cause found and published with the rule.'' The EPA believes that there is ''good cause'' to make this rule effective upon publication in the **Federal Register** to avoid any additional delay in development and implementation of the SIP requirements under 182(b), given the closeness to the beginning of the 2023 ozone season and the proximity of EPA's final action to the submission and implementation deadlines described in this rule. While EPA acknowledges and

[26] See *e.g.,* Clean Air Act 182(b)(2); 40 CFR 51.1312(a)(3)(ii).

[27] See 81 FR 58010, 58081 (August 24, 2016).

[28] See Memo from John Seitz, ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard'' (1995).

[29] More information about redesignation is available at *https://www.epa.gov/ground-level-ozone-pollution/redesignation-and-clean-data-policy-cdp.*

[30] In addition to EPA Region 9's technical assistance, the EPA's Office of Transportation and Air Quality recently provided new guidance for performance standard modeling that is required for I/M SIPs for the 2015 ozone NAAQS. See EPA's I/M website for additional information at *www.epa.gov/state-and-local-transportation/vehicle-emissions-inspection-and-maintenance-im.*

addresses comments related to the compressed timeline associated with this action elsewhere in this notice, the agency believes that establishing an effective date of this action simultaneous with the date of publication will reconcile the competing statutory interests by minimizing a potentially impractical outcome in which the area might otherwise be subject to Moderate nonattainment area statutory and regulatory deadlines that would already have passed prior to the normal 30 days post-publication effective date.

As described above, when 2020 monitoring data became available showing that the Las Vegas area may not have attained the 2015 ozone NAAQS, nor be eligible for a one-year extension, Clark County DES had every reason to anticipate and prepare for reclassification. In addition, EPA notified Clark County DES in April 2022 that it did not agree with the area's exceptional events demonstrations, published its proposed rule for this reclassification on July 22, 2022, and is providing direct notice to the state and county of this final action simultaneous with signature of this rule. Accordingly, the EPA finds that the preparation time actually available to the state and the need to reconcile the statutory interest in reclassification with the deadlines for submission of Moderate area SIP revisions and compliance with RACT implementation requirements, constitute good cause under 5 U.S.C. 553(d)(3) to make this final action effective upon publication.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is exempt from review by the Office of Management and Budget (OMB) because it responds to the CAA requirement to determine whether areas designated nonattainment for an ozone NAAQS attained the standard by the applicable attainment date, and to take certain steps for areas that failed to attain.

B. Paperwork Reduction Act (PRA)

This rule does not impose any new information collection burden under the PRA not already approved by the Office of Management and Budget. This action does not contain any information collection activities and serves only to make final: (1) determinations that the Las Vegas Marginal nonattainment area failed to attain the 2015 ozone standards by the August 3, 2021, attainment date where such areas will be reclassified as Moderate nonattainment for the 2015 ozone standards by operation of law upon the effective date of the final reclassification action; and (2) adjust any applicable implementation deadlines.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. The determination of failure to attain the 2015 ozone standards (and resulting reclassifications), do not in and of themselves create any new requirements beyond what is mandated by the CAA. This final action would require the state to adopt and submit SIP revisions to satisfy CAA requirements and would not itself directly regulate any small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538 and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The division of responsibility between the federal government and the states for purposes of implementing the NAAQS is established under the CAA.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

The Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony have areas of Indian country located within the Las Vegas Valley nonattainment area for the 2015 ozone NAAQS. The EPA has concluded that this final rule may have implications for this tribe for the purposes of Executive Order 13175 but would not impose substantial direct costs upon the tribes, nor would it preempt tribal law. A tribe that is part of an area that is reclassified from Marginal to Moderate nonattainment is not required to submit a tribal implementation plan revision to address new Moderate area requirements.[31] However, the NNSR major source threshold and offset requirements will change for stationary sources seeking preconstruction permits in any nonattainment areas newly reclassified as Moderate (Section II.D.1 of the proposed rule), including on tribal lands within these nonattainment areas.

Given the potential implications, the EPA contacted tribal officials early in the process of developing our proposed rule to provide an opportunity to have meaningful and timely input into its development. In a letter dated July 16, 2021, the EPA invited the Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony to consult on our evaluation and determination of whether the Las Vegas nonattainment area attained or failed to attain by its Marginal area attainment date and notified the Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony of the proposed action. The tribe did not comment or request consultation.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

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 establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions 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 rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make

[31] See 87 FR 21842, 21846 (April 13, 2022).

environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. There is no information in the record indicating that this action would be inconsistent with the stated goals of Executive Order 12898 of achieving environmental justice for people of color, low-income populations, and indigenous peoples.

K. Congressional Review Act (CRA)

This rule is exempt from the CRA because it is a rule of particular applicability. The rule makes factual determinations for specific entities and does not directly regulate any entities. The determination of failure to attain the 2015 ozone NAAQS (and resulting reclassification), do not in themselves create any new requirements beyond what is mandated by the CAA.

L. Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 6, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 81

Environmental protection, Administrative practice and procedure, Air pollution control, Designations and classifications, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, and Volatile organic compounds.

Dated: December 22, 2022.

Martha Guzman Aceves,

Regional Administrator, Region IX.

For the reasons stated in the preamble, part 81, title 40, chapter 1 of the Code of Federal Regulations are amended as follows:

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 1. The authority citation for part 81 continues to read as follows:

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

Subpart C—Section 107 Attainment Status Designations

■ 2. Section 81.329 is amended in the table for ''Nevada—2015 8-Hour Ozone NAAQS [Primary and Secondary]'' by revising the entry for ''Las Vegas, NV'' to read as follows:

§ 81.329 Nevada.

* * * * *

NEVADA—2015 8-HOUR OZONE NAAQS

[Primary and Secondary]

Designated area [1]	Designation		Classification	
	Date [2]	Type	Date [2]	Type
Las Vegas, NV		Nonattainment	January 5, 2023	Moderate.
Clark County (part)				
That portion of Clark County that lies in hydrographic area 212.[3]				
Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony.				
* * * * * * *				

[1] Includes any Indian country in each county or area, unless otherwise specified. EPA is not determining the boundaries of any area of Indian country in this table, including any area of Indian country located in the larger designation area. The inclusion of any Indian country in the designation area is not a determination that the state has regulatory authority under the Clean Air Act for such Indian country.

[2] This date is August 3, 2018, unless otherwise noted.

[3] Hydrographic areas are shown on the State of Nevada Division of Water Resources' map titled Water Resources and Inter-basin Flows (September 1971).

* * * * *

[FR Doc. 2022–28319 Filed 1–3–23; 4:15 pm]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[DA 22–1356; FR ID 121243]

Annual Adjustment of Civil Monetary Penalties To Reflect Inflation

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Inflation Adjustment Act) requires the Federal Communications Commission to amend its forfeiture penalty rules to reflect annual adjustments for inflation in order to improve their effectiveness and maintain their deterrent effect. The Inflation Adjustment Act provides that the new penalty levels shall apply to penalties assessed after the effective date of the increase, including when the penalties whose associated violation predate the increase.

DATES: *Effective date:* The rule is effective January 5, 2023. *Applicability date:* The civil monetary penalties are applicable beginning January 15, 2023.

ADDRESSES: Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Lisa Gelb, Deputy Chief, Enforcement Bureau, at *Lisa.Gelb@fcc.gov* or 202–418–2019.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, DA 22–1356, adopted and released on December 23, 2022. The document is available for download at *https://www.fcc.gov/document/2023-annual-adjustment-civil-monetary-penalties-reflect-inflation.* The complete text of this document is also available for inspection and copying during normal business hours in the FCC Reference Information Center, 45 L Street NE,

Washington, DC 20554. To request this document in accessible formats for people with disabilities (*e.g.,* Braille, large print, electronic files, audio format, etc.) or to request reasonable accommodations (*e.g.,* accessible format documents, sign language interpreters, CART, etc.), send an email to *fcc504@fcc.gov* or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice).

The Bipartisan Budget Act of 2015 included, as section 701 thereto, the Inflation Adjustment Act, which amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410), to improve the effectiveness of civil monetary penalties and maintain their deterrent effect. Under the Inflation Adjustment Act, agencies are required to make annual inflationary adjustments by January 15 each year, beginning in 2017. The adjustments are calculated pursuant to Office of Management and Budget (OMB) guidance. OMB issued guidance on December 15, 2022, and this Order follows that guidance. The Commission therefore updates the civil monetary penalties for 2023, to reflect an annual inflation adjustment based on the percent change between each published October's CPI–U; in this case, October 2022 CPI–U (298.012)/October 2021 CPI–U (276.589) = 1.07745. The Commission multiplies 1.07745 by the most recent penalty amount and then rounds the result to the nearest dollar.

For 2023, the adjusted penalty or penalty range for each applicable penalty is calculated by multiplying the most recent penalty amount by the 2023 annual adjustment (1.07745), then rounding the result to the nearest dollar. The adjustments in civil monetary penalties that we adopt in this Order apply only to such penalties assessed on and after January 15, 2023.

Paperwork Reduction Act

This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Congressional Review Act

The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that this rule is non-major under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of this Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Penalties.

Federal Communications Commission.

Lisa Gelb,

Deputy Chief, Enforcement Bureau.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461 note, unless otherwise noted.

■ 2. Amend § 1.80 by revising paragraphs (b)(1) through (9), Table 4 to paragraph (b)(10), and paragraph (b)(11)(ii) to read as follows:

§ 1.80 Forfeiture proceedings.

* * * * *

(b) * * *

(1) *Forfeiture penalty for a broadcast station licensee, permittee, cable television operator, or applicant.* If the violator is a broadcast station licensee or permittee, a cable television operator, or an applicant for any broadcast or cable television operator license, permit, certificate, or other instrument of authorization issued by the Commission, except as otherwise noted in this paragraph (b)(1), the forfeiture penalty under this section shall not exceed $59,316 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $593,170 for any single act or failure to act described in paragraph (a) of this section. There is no limit on forfeiture assessments for EEO violations by cable operators that occur after notification by the Commission of a potential violation. See section 634(f)(2) of the Communications Act (47 U.S.C. 554). Notwithstanding the foregoing in this section, if the violator is a broadcast station licensee or permittee or an applicant for any broadcast license, permit, certificate, or other instrument of authorization issued by the Commission, and if the violator is determined by the Commission to have broadcast obscene, indecent, or profane material, the forfeiture penalty under this section shall not exceed $479,945 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $4,430,255 for any single act or failure to act described in paragraph (a) of this section.

(2) *Forfeiture penalty for a common carrier or applicant.* If the violator is a common carrier subject to the provisions of the Communications Act or an applicant for any common carrier license, permit, certificate, or other instrument of authorization issued by the Commission, the amount of any forfeiture penalty determined under this section shall not exceed $237,268 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $2,372,677 for any single act or failure to act described in paragraph (a) of this section.

(3) *Forfeiture penalty for a manufacturer or service provider.* If the violator is a manufacturer or service provider subject to the requirements of section 255, 716, or 718 of the Communications Act (47 U.S.C. 255, 617, or 619), and is determined by the Commission to have violated any such requirement, the manufacturer or service provider shall be liable to the United States for a forfeiture penalty of not more than $136,258 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $1,362,567 for any single act or failure to act.

(4) *Forfeiture penalty for a 227(e) violation.* Any person determined to have violated section 227(e) of the Communications Act or the rules issued by the Commission under section 227(e) of the Communications Act shall be liable to the United States for a forfeiture penalty of not more than $13,625 for each violation or three times that amount for each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $1,362,567 for any single act or failure to act. Such penalty shall be in addition to any other forfeiture penalty provided for by the Communications Act.

(5) *Forfeiture penalty for a 227(b)(4)(B) violation.* Any person determined to have violated section 227(b)(4)(B) of the Communications Act or the rules in 47 CFR part 64 issued by the Commission under section 227(b)(4)(B) of the Communications Act shall be liable to the United States for a forfeiture penalty determined in accordance with paragraphs (A)–(F) of

section 503(b)(2) plus an additional penalty not to exceed $11,580.

(6) *Forfeiture penalty for pirate radio broadcasting.* (i) Any person who willfully and knowingly does or causes or suffers to be done any pirate radio broadcasting shall be subject to a fine of not more than $2,316,034; and

(ii) Any person who willfully and knowingly violates the Act or any rule, regulation, restriction, or condition made or imposed by the Commission under authority of the Act, or any rule, regulation, restriction, or condition made or imposed by any international radio or wire communications treaty or convention, or regulations annexed thereto, to which the United States is party, relating to pirate radio broadcasting shall, in addition to any other penalties provided by law, be subject to a fine of not more than $115,802 for each day during which such offense occurs, in accordance with the limit described in this section.

(7) *Forfeiture penalty for a section 6507(b)(4) Tax Relief Act violation.* If a violator who is granted access to the Do-Not-Call registry of public safety answering points discloses or disseminates any registered telephone number without authorization, in violation of section 6507(b)(4) of the Middle Class Tax Relief and Job Creation Act of 2012 or the Commission's implementing rules in 47 CFR part 64, the monetary penalty for such unauthorized disclosure or dissemination of a telephone number from the registry shall be not less than $127,602 per incident nor more than $1,276,024 per incident depending upon whether the conduct leading to the violation was negligent, grossly negligent, reckless, or willful, and depending on whether the violation was a first or subsequent offense.

(8) *Forfeiture penalty for a section 6507(b)(5) Tax Relief Act violation.* If a violator uses automatic dialing equipment to contact a telephone number on the Do-Not-Call registry of public safety answering points, in violation of section 6507(b)(5) of the Middle Class Tax Relief and Job Creation Act of 2012 or the Commission's implementing rules in 47 CFR part 64, the monetary penalty for contacting such a telephone number shall be not less than $12,760 per call nor more than $127,602 per call depending on whether the violation was negligent, grossly negligent, reckless, or willful, and depending on whether the violation was a first or subsequent offense.

(9) *Maximum forfeiture penalty for any case not previously covered.* In any case not covered in paragraphs (b)(1) through (8) of this section, the amount of any forfeiture penalty determined under this section shall not exceed $23,727 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $177,951 for any single act or failure to act described in paragraph (a) of this section.

(10) * * *

TABLE 4 TO PARAGRAPH (b)(10)—NON-SECTION 503 FORFEITURES THAT ARE AFFECTED BY THE DOWNWARD ADJUSTMENT FACTORS [1]

Violation	Statutory amount after 2023 annual inflation adjustment
Sec. 202(c) Common Carrier Discrimination	$14,236, $712/day.
Sec. 203(e) Common Carrier Tariffs	$14,236, $712/day.
Sec. 205(b) Common Carrier Prescriptions	$28,472.
Sec. 214(d) Common Carrier Line Extensions	$2,847/day.
Sec. 219(b) Common Carrier Reports	$2,847/day.
Sec. 220(d) Common Carrier Records & Accounts	$14,236/day.
Sec. 223(b) Dial-a-Porn	$147,529/day.
Sec. 227(e) Caller Identification	$13,625/violation. $40,875/day for each day of continuing violation, up to $1,362,567 for any single act or failure to act.
Sec. 364(a) Forfeitures (Ships)	$11,864/day (owner).
Sec. 364(b) Forfeitures (Ships)	$2,374 (vessel master).
Sec. 386(a) Forfeitures (Ships)	$11,864/day (owner).
Sec. 386(b) Forfeitures (Ships)	$2,374 (vessel master).
Sec. 511 Pirate Radio Broadcasting	$2,316,034, $115,802/day.
Sec. 634 Cable EEO	$1,052/day.

[1] Unlike section 503 of the Act, which establishes maximum forfeiture amounts, other sections of the Act, with two exceptions, state prescribed amounts of forfeitures for violations of the relevant section. These amounts are then subject to mitigation or remission under section 504 of the Act. One exception is section 223 of the Act, which provides a maximum forfeiture per day. For convenience, the Commission will treat this amount as if it were a prescribed base amount, subject to downward adjustments. The other exception is section 227(e) of the Act, which provides maximum forfeitures per violation, and for continuing violations. The Commission will apply the factors set forth in section 503(b)(2)(E) of the Act and this table 4 to determine the amount of the penalty to assess in any particular situation. The amounts in this table 4 are adjusted for inflation pursuant to the Debt Collection Improvement Act of 1996 (DCIA), 28 U.S.C. 2461. These non-section 503 forfeitures may be adjusted downward using the ''Downward Adjustment Criteria'' shown for section 503 forfeitures in table 3 to this paragraph (b)(10).

(11) * * *

(ii) The application of the annual inflation adjustment required by the foregoing Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 results in the following adjusted statutory maximum forfeitures authorized by the Communications Act:

TABLE 5 TO PARAGRAPH (b)(11)(ii)

U.S. Code citation	Maximum penalty after 2023 annual inflation adjustment
47 U.S.C. 202(c)	$14,236, $712.
47 U.S.C. 203(e)	$14,236, $712.
47 U.S.C. 205(b)	$28,472.
47 U.S.C. 214(d)	$2,847.
47 U.S.C. 219(b)	$2,847.
47 U.S.C. 220(d)	$14,236.

TABLE 5 TO PARAGRAPH (b)(11)(ii)—Continued

U.S. Code citation	Maximum penalty after 2023 annual inflation adjustment
47 U.S.C. 223(b)	$147,529.
47 U.S.C. 227(b)(4)(B)	$59,316, plus an additional penalty not to exceed $11,580; $593,170, plus an additional penalty not to exceed $11,580; $237,268, plus an additional penalty not to exceed $11,580; $2,372,677, plus an additional penalty not to exceed $11,580; $479,945, plus an additional penalty not to exceed $11,580; $4,430,255, plus an additional penalty not to exceed $11,580; $23,727, plus an additional penalty not to exceed $11,580; $177,951, plus an additional penalty not to exceed $11,580; $136,258, plus an additional penalty not to exceed $11,580; $1,362,567, plus an additional penalty not to exceed $11,580.
47 U.S.C. 227(e)	$13,625, $40,875, $1,362,567.
47 U.S.C. 362(a)	$11,864.
47 U.S.C. 362(b)	$2,374.
47 U.S.C. 386(a)	$11,864.
47 U.S.C. 386(b)	$2,374.
47 U.S.C. 503(b)(2)(A)	$59,316, $593,170.
47 U.S.C. 503(b)(2)(B)	$237,268, $2,372,677.
47 U.S.C. 503(b)(2)(C)	$479,945, $4,430,255.
47 U.S.C. 503(b)(2)(D)	$23,727, $177,951.
47 U.S.C. 503(b)(2)(F)	$136,258, $1,362,567.
47 U.S.C. 507(a)	$2,350.
47 U.S.C. 507(b)	$345.
47 U.S.C. 511	$2,316,034, $115,802.
47 U.S.C. 554	$1,052.
Sec. 6507(b)(4) of Tax Relief Act	$1,276,024/incident.
Sec. 6507(b)(5) of Tax Relief Act	$127,602/call.

* * * * *

[FR Doc. 2022–28493 Filed 1–4–23; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 220919–0193; RTID 0648–XC610]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries; General Category January Through March Quota Transfer

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

ACTION: Temporary rule; quota transfer.

SUMMARY: NMFS is transferring 20.5 metric tons (mt) of Atlantic bluefin tuna (BFT) quota from the General category December 2023 subquota to the January through March 2023 subquota period. The adjusted General category January through March 2023 subquota is 58.2 mt. This action is provides further opportunities for General category fishermen to participate in the January through March General category fishery, based on consideration of the regulatory determination criteria regarding inseason adjustments. This action would affect Atlantic Tunas General category (commercial) permitted vessels and Highly Migratory Species (HMS) Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT.

DATES: Effective January 3, 2023, through March 31, 2023.

FOR FURTHER INFORMATION CONTACT: Larry Redd, Jr., *larry.redd@noaa.gov,* 301–427–8503, Ann Williamson, *ann.williamson@noaa.gov,* 301–427–8503, or Nicholas Velseboer, *nicholas.velsboer@noaa.gov,* 978–281–9260.

SUPPLEMENTARY INFORMATION: Atlantic HMS fisheries, including BFT fisheries, are managed under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635. Section 635.27 divides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States among the various domestic fishing categories, per the allocations established in the 2006 Consolidated HMS FMP and its amendments. NMFS is required under the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest quotas under relevant international fishery agreements such as the ICCAT Convention, which is implemented domestically pursuant to ATCA.

The baseline General category quota is 710.7 mt. The General category baseline subquotas for the January through March time-period and for the December time-period are 37.7 mt and 37.0 mt, respectively. In this action, NMFS is transferring 20.5 mt from the December 2023 subquota period to the January through March subquota period. This transfer results in 58.2 mt (37.7 mt + 20.5 mt = 58.2 mt) being available for the January through March 2023 subquota period and 16.5 mt (37.0 − 20.5 = 16.5 mt) being available for the December 2023 subquota period.

Transfer From the December 2023 Subquota to the January Through March 2023 Subquota

Under § 635.27(a)(1)(ii), NMFS has the authority to transfer subquota from one time period to another time period through inseason action after considering determination criteria provided under § 635.27(a)(8). NMFS has considered all of the relevant determination criteria and their applicability to this inseason quota transfer. These considerations include, but are not limited to, the following.

Regarding the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock (§ 635.27(a)(8)(i)), biological samples collected from BFT landed by General category fishermen continue to provide NMFS with valuable parts and data for ongoing scientific studies of

BFT age and growth, migration, and reproductive status. Additional opportunity to land BFT in the General category would support the continued collection of a broad range of data for these studies and for stock monitoring purposes.

NMFS also considered recent catches of the General category quota (including in December 2022 and during the January through March fishery in the last several years) and the likelihood of closure of that segment of the fishery if no adjustment is made (§ 635.27(a)(8)(ii) and (ix)). Without a quota transfer from the December 2023 subquota period, the quota available for the 2023 January through March period would be 37.7 mt and participants would have to stop BFT fishing activities once that amount is met, while commercial-sized BFT remain available in the areas where General category permitted vessels operate. A quota transfer of 20.5 mt would provide limited additional opportunities to harvest the U.S. BFT quota while avoiding exceeding it.

Regarding the projected ability of the vessels fishing under the General category quota to harvest the additional amount of BFT quota transferred before the end of the fishing year (§ 635.27(a)(8)(iii)), NMFS considered General category landings over the last several years. Landings are highly variable and depend on access to commercial-sized BFT and fishing conditions, among other factors. NMFS may adjust each period's subquota based on overharvest or underharvest in the prior period and may transfer subquota from one time period to another time period. By allowing for such quota adjustments and transfers, NMFS anticipates that the General category quota would be used before the end of the fishing year. For 2022, NMFS transferred 19.5 mt of quota from the December 2022 subquota period to the January through March 2022 subquota period, resulting in an adjusted subquota of 49 mt for the January through March 2022 period and an adjusted subquota of 9.4 mt for the December 2022 period (86 FR 72857, December 23, 2021). NMFS also made a transfer of 26 mt from the Reserve to the General category effective January 28, 2022, resulting in an adjusted subquota of 75 mt for the January through March 2022 period (87 FR 5737, February 2, 2022), and closed the General category fishery for the January through March subquota period effective February 11, 2022 (87 FR 8432, February 15, 2022).

NMFS also considered the estimated amounts by which quotas for other gear categories of the BFT fishery might be exceeded (§ 635.27(a)(8)(iv)) and the ability to account for all 2023 landings and dead discards. In the last several years, total U.S. BFT landings have been below the available U.S. quota such that the United States has carried forward the maximum amount of underharvest allowed by ICCAT from one year to the next. NMFS will need to account for 2023 landings and dead discards within the adjusted U.S. quota, consistent with ICCAT recommendations, and anticipates having sufficient quota to do that.

NMFS also considered the effects of the adjustment on the BFT stock and the effects of the transfer on accomplishing the objectives of the 2006 Consolidated FMP (§ 635.27(a)(8)(v) and (vi)). This transfer would be consistent with established quotas and subquotas, which are implemented consistent with ICCAT recommendations (established in Recommendation 21–07), ATCA, and the objectives of the 2006 Consolidated HMS FMP and amendments. In establishing these quotas and subquotas and associated management measures, ICCAT and NMFS considered the best scientific information available, objectives for stock management and status, and effects on the stock. This quota transfer is in line with the established management measures and stock status determinations. Another principal consideration is the objective of providing opportunities to harvest the available General category quota without exceeding the annual quota, based on the objectives of the 2006 Consolidated HMS FMP and its amendments, including to achieve optimum yield on a continuing basis and to allow all permit categories a reasonable opportunity to harvest available BFT quota allocations (related to § 635.27(a)(8)(x)). Specific to the General category, this includes providing opportunities equitably across all time periods.

Given these considerations, NMFS is transferring 20.5 mt from the December 2023 period to the January through March 2023 period, resulting in an adjusted January through March 2023 subquota of 58.2 mt and an adjusted December 2023 subquota of 16.5 mt. The General category fishery will remain open until March 31, 2023, or until the adjusted General category quota is reached, whichever comes first.

Monitoring and Reporting

NMFS will continue to monitor the BFT fishery closely. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. Late reporting by dealers compromises NMFS' ability to timely implement actions such as quota and retention limit adjustments, as well as closures, and may result in enforcement actions. Additionally, and separate from the dealer reporting requirement, General category and HMS Charter/Headboat vessel owners are required to report the catch of all BFT retained or discarded dead within 24 hours of the landing(s) or the end of each trip, by accessing *hmspermits.noaa.gov* or by using the HMS Catch Reporting app or calling (888) 872–8862 (Monday through Friday from 8 a.m. until 4:30 p.m.).

Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional adjustments are necessary to ensure available quota is not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. If needed, subsequent adjustments will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (978) 281–9260, or access *hmspermits.noaa.gov,* for updates on quota monitoring and inseason adjustments.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act and regulations at 50 CFR part 635 and is exempt from review under Executive Order 12866.

The Assistant Administrator for NMFS (AA) finds that pursuant to 5 U.S.C. 553(b)(B), it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons. Specifically, the regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Providing prior notice and opportunity for public comment on this quota transfer for the January through March 2023 time period is impracticable. NMFS could not have proposed this action earlier, as it needed to consider and respond to updated landings data, including the recently available December 2022 data, in deciding to transfer a portion of the December 2023 subquota to the January through March 2023 subquota. Delaying this action is contrary to public interest, not only because it would likely result in a General category closure and associated costs to the fishery, but also administrative costs due to further agency action needed to re-open the fishery after quota is transferred. The

delay would preclude the fishery from harvesting BFT that are available on the fishing grounds that might otherwise become unavailable during a delay. This action does not raise conservation and management concerns. Transferring quota within the General category does not affect the overall U.S. BFT quota, and the adjustment would have a minimal risk of exceeding the ICCAT-allocated quota. NMFS notes that the public had an opportunity to comment on the underlying rulemakings that established the U.S. BFT quota and the inseason adjustment criteria.

For all of the above reasons, the AA finds that pursuant to 5 U.S.C. 553(d), there also is good cause to waive the 30-day delay in effective date.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: December 30, 2022.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–28635 Filed 1–3–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 221228–0283]

RTID 0648–XC484

Fisheries of the Northeastern United States; Atlantic Deep-Sea Red Crab Fishery; Final 2023 Atlantic Deep-Sea Red Crab Specifications

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

ACTION: Final rule.

SUMMARY: We are finalizing specifications for the 2023 Atlantic deep-sea red crab fishery, including an annual catch limit, and total allowable landings limit. This action is necessary to fully implement previously projected allowable red crab harvest levels that will prevent overfishing and allow harvesting of optimum yield. This action is intended to establish the allowable 2023 harvest levels, consistent with the Atlantic Deep-Sea Red Crab Fishery Management Plan.

DATES: The final specifications for the 2023 Atlantic deep-sea red crab fishery are effective March 1, 2023, through February 29, 2024.

FOR FURTHER INFORMATION CONTACT: Laura Deighan, Fishery Management Specialist, (978) 281–9184.

SUPPLEMENTARY INFORMATION: The Atlantic deep-sea red crab fishery is managed by the New England Fishery Management Council. The Atlantic Deep-Sea Red Crab Fishery Management Plan includes a specification process that requires the Council to recommend an acceptable biological catch, an annual catch limit, and total allowable landings every four years. Collectively, these are the red crab specifications. Prior to the start of fishing year 2020, the Council recommended specifications for the 2020–2023 fishing years (Table 1).

TABLE 1—COUNCIL-APPROVED 2020–2023 RED CRAB SPECIFICATIONS

	Metric ton	Million lb
Acceptable Biological Catch	2,000	4.41
Annual Catch Limit	2,000	4.41
Total Allowable Landings	2,000	4.41

On April 14, 2020, we approved the Council-recommended specifications for the 2020 fishing year, effective through February 28, 2021, and we projected the continuation of those specifications for 2021–2023 (85 FR 20615). At the end of each fishing year, we evaluate catch information and determine if the quota has been exceeded. If a quota is exceeded, the regulations at 50 CFR 648.262(b) require a pound-for-pound reduction in a subsequent fishing year. We have reviewed available 2022 fishery information against the projected 2023 specifications. There have been no annual catch limit or total allowable landings overages, nor is there any new biological information that would require altering the projected 2023 specifications published in 2020. Based on this information, we are finalizing specifications for fishing year 2023, as projected in the 2020 specifications rule, and outlined above in Table 1. These specifications are not expected to result in overfishing, and they adequately account for scientific uncertainty. This is the final year of these specifications, and new specifications will be developed by the Council for 2024 and beyond.

Classification

The NMFS Assistant Administrator has determined that this final rule is consistent with the Atlantic Deep-Sea Red Crab Fishery Management Plan, the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable law.

This rule is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), we find good cause to waive prior public notice and opportunity for public comment on the catch limit and allocation adjustments, because allowing time for notice and comment would be contrary to the public interest. The proposed rule for the 2020–2023 specifications provided the public with the opportunity to comment on the specifications, including the projected 2021 through 2023 specifications (85 FR 9717, February 20, 2020). We received no comments on the proposed rule announcing the projected 2021–2023 specifications and the process for announcing finalized interim year quotas. Further, this final rule contains no changes from the projected 2023 specifications that were included in both the February 20, 2020, proposed rule and the April 14, 2020, final rule. The public and industry participants expect this action. Through both the proposed rule for the 2020–2023 specifications and the final rule for the 2020 specifications, we alerted the public that we would conduct a review of the latest available catch information in each of the interim years of the multi-year specifications and announce the final quota prior to the March 1 start of the fishing year. Thus, the proposed and final rules that contained the projected 2021–2023 specifications provided a full opportunity for the public to comment on the substance and process of this action.

The Chief Counsel for Regulation, Department of Commerce, previously certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that the 2020–2023 red crab specifications would not have a significant economic impact on a substantial number of small entities. Implementing the 2023 specifications will not change the conclusions drawn in that previous certification to the SBA. Because advance notice and the opportunity for public comment are not required for this action under the Administrative Procedure Act, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* do not apply to this rule. Therefore, no new regulatory flexibility analysis is required and none has been prepared.

This action does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 30, 2022.

Samuel D. Rauch, III,

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

[FR Doc. 2022–28626 Filed 1–4–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 220223–0054; RTID 0648–XC635]

Fisheries of the Exclusive Economic Zone Off Alaska; Inseason Adjustment to the 2023 Bering Sea and Aleutian Islands Pollock, Atka Mackerel, and Pacific Cod Total Allowable Catch Amounts

Correction

In rule document 2022–28343 appearing on pages 80090–80094 in the issue of December 29, 2022, make the following corrections:

1. On page 80093, in Table 9, in the first column, in the 13th and 14th lines down, ''Hook-and-line catcher vessel ≤60 ft LOA'' should read, ''Hook-and-line catcher vessel ≥60 ft LOA''.

2. On the same page, in the same table, in the same column, in the 16th line down, ''Pot catcher vessel ≤60 ft LOA'' should read, ''Pot catcher vessel ≥60 ft LOA''.

[FR Doc. C1–2022–28343 Filed 1–4–23; 8:45 am]

BILLING CODE 0099–10–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 220216–0049; RTID 0648–XC650]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Using Hook-and-Line Gear in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using hook-and-line (HAL) gear in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2023 total allowable catch of Pacific cod by catcher vessels using HAL gear in the Western Regulatory Area of the GOA.

DATES: Effective 0001 hours, Alaska local time (A.l.t.), January 1, 2023, through 1200 hours, A.l.t., June 10, 2023.

FOR FURTHER INFORMATION CONTACT: Krista Milani, 907–581–2062.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season allowance of the 2023 Pacific cod total allowable catch (TAC) apportioned to catcher vessels using HAL gear in the Western Regulatory Area of the GOA is 35 metric tons (mt) as established by the final 2022 and 2023 harvest specifications for groundfish in the GOA (87 FR 11599, March 2, 2022) and inseason adjustment (87 FR 80088, December 29, 2022). The Regional Administrator has determined that the 2023 TAC apportioned to catcher vessels using HAL gear in the Western Regulatory Area of the GOA is necessary to account for the incidental catch of this species in other anticipated groundfish fisheries for the 2023 fishing year. Therefore, in accordance with § 679.20(d)(1)(i), the Regional Administrator establishes the directed fishing allowance for catcher vessels using HAL gear in the Western Regulatory Area of the GOA as 0 mt. Consequently, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing for catcher vessels using HAL gear in the Western Regulatory Area of the GOA.

While this closure is effective, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion, and would delay the closure of Pacific cod by catcher vessels using HAL gear in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of December 29, 2022.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 30, 2022.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–28629 Filed 12–30–22; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 88, No. 3
Thursday, January 5, 2023

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

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2022–BT–TP–0005]

RIN 1904–AF11

Energy Conservation Program: Test Procedure for Uninterruptible Power Supplies

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

ACTION: Notice of proposed rulemaking and announcement of public meeting.

SUMMARY: The U.S. Department of Energy (''DOE'') proposes to amend its test procedure for uninterruptible power supplies (''UPSs'') to consider the latest revision of the industry standard that is incorporated by reference and to provide an optional test method for measuring power consumption of a UPS at no-load conditions. DOE is seeking comment from interested parties on the proposal.

DATES: DOE will accept comments, data, and information regarding this proposal no later than March 6, 2023. See section V, ''Public Participation,'' for details.

DOE will hold a public meeting via webinar on Thursday, February 2, 2023, from 1:00 p.m. to 4:00 p.m. See section V, ''Public Participation,'' for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov* under docket number EERE–2022–BT–TP–0005. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2022–BT–TP–0005, by any of the following methods:

Email: UPS2022TP0005@ee.doe.gov. Include the docket number EERE–2022–BT–TP–0005 in the subject line of the message.

Postal Mail: Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–1445. If possible, please submit all items on a compact disc (''CD''), in which case it is not necessary to include printed copies.

Hand Delivery/Courier: Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW, 6th Floor, Washington, DC 20024. Telephone: (202) 287–1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimiles (''faxes'') will be accepted. For detailed instructions on submitting comments and additional information on this process, see section V of this document.

Docket: The docket for this activity, which includes **Federal Register** notices, public meeting attendee lists and transcripts (if a public meeting is held), comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The docket web page can be found at *www.regulations.gov/docket/EERE-2022-BT-TP-0005.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section [V] for information on how to submit comments through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

Mr. Jeremy Dommu, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–2J, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–9870. Email *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Kristin Koernig, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–3593. Email: *Kristin.koernig@hq.doe.gov.*

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

SUPPLEMENTARY INFORMATION: DOE proposes to incorporate by reference the following industry standard into 10 CFR part 430:

IEC 62040–3, ''Uninterruptible power systems (UPS)—Part 3: Method of specifying the performance and test requirements,'' Edition 3.0, copyright April 2021

Copies of IEC 62040–3 Ed. 3.0 are available from the International Electrotechnical Commission, 3 Rue de Varembe, Case Postale 131, 1211 Geneva 20, Switzerland; *webstore.iec.ch.*

For a further discussion of this standard, see section IV.M of this document.

Table of Contents

I. Authority and Background
A. Authority
B. Background
II. Synopsis of the Notice of Proposed Rulemaking
III. Discussion
A. Scope of Applicability
B. Definitions
C. Updates to Industry Standards
D. Loading Conditions
E. No-Load Test
F. Reference Test Load
G. Error Corrections
H. Test Procedure Costs and Harmonization
1. Test Procedure Costs and Impact
2. Harmonization With Industry Standards
I. Compliance Date
IV. Procedural Issues and Regulatory Review
A. Review Under Executive Orders 12866 and 13563
B. Review Under the Regulatory Flexibility Act
C. Review Under the Paperwork Reduction Act of 1995
D. Review Under the National Environmental Policy Act of 1969
E. Review Under Executive Order 13132
F. Review Under Executive Order 12988
G. Review Under the Unfunded Mandates Reform Act of 1995
H. Review Under the Treasury and General Government Appropriations Act, 1999
I. Review Under Executive Order 12630
J. Review Under Treasury and General Government Appropriations Act, 2001
K. Review Under Executive Order 13211
L. Review Under Section 32 of the Federal Energy Administration Act of 1974

M. Description of Materials Incorporated by Reference
V. Public Participation
A. Participation in the Webinar
B. Procedure for Submitting Prepared General Statements for Distribution
C. Conduct of the Webinar
D. Submission of Comments
E. Issues on Which DOE Seeks Comment
VI. Approval of the Office of the Secretary

I. Authority and Background

UPSs are a class of battery chargers and fall among the consumer products for which DOE is authorized to establish and amend energy conservation standards and test procedures. (42 U.S.C. 6295(u)) DOE's energy conservation standards and test procedure for UPSs are currently prescribed at title 10 of the Code of Federal Regulations (''CFR''), part 430 section 32(z)(3); and 10 CFR part 430, subpart B, appendix Y (''appendix Y'') and appendix Y1 (''appendix Y1''). The following sections discuss DOE's authority to establish a test procedure for UPSs and relevant background information regarding DOE's consideration of the test procedure for this product.

A. Authority

The Energy Policy and Conservation Act, Public Law 94–163, as amended (''EPCA''),[1] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B of EPCA [2] established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency. These products include UPSs, the subject of this document. (42 U.S.C. 6295(u))

The energy conservation program under EPCA consists essentially of four parts: (1) testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA specifically include definitions (42 U.S.C. 6291), test procedures (42 U.S.C. 6293), labeling provisions (42 U.S.C. 6294), energy conservation standards (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

The Federal testing requirements consist of test procedures that manufacturers of covered products must use as the basis for: (1) certifying to DOE that their products comply with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6295(s)), and (2) making other representations about the efficiency of those consumer products (42 U.S.C. 6293(c)). Similarly, DOE must use these test procedures to determine whether the products comply with relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

Federal energy efficiency requirements for covered products established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions of EPCA. (42 U.S.C. 6297(d))

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA requires that any test procedures prescribed or amended under this section be reasonably designed to produce test results which measure energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use, and not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

EPCA also requires that, at least once every seven years, DOE evaluate test procedures for each type of covered product, including UPSs, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle or period of use. (42 U.S.C. 6293(b)(1)(A))

If the Secretary determines, on her own behalf or in response to a petition by any interested person, that a test procedure should be prescribed or amended, the Secretary shall promptly publish in the **Federal Register** the proposed test procedure and afford interested persons an opportunity to present oral and written data, views, and arguments with respect to such procedure. The comment period on a proposed rule to amend a test procedure shall be at least 60 days and may not exceed 270 days. In prescribing or amending a test procedure, the Secretary shall take into account such information as the Secretary determines relevant to such procedure, including technological developments relating to energy use or energy efficiency of the type (or class) of covered products involved. (42 U.S.C. 6293(b)(2)). If DOE determines that test procedure revisions are not appropriate, DOE must publish its determination not to amend the test procedure. (42 U.S.C. 6293(b)(1)(A)(ii))

In addition, EPCA requires that DOE amend its test procedures for all covered products to integrate measures of standby mode and off mode energy consumption. (42 U.S.C. 6295(gg)(2)(A)). Standby mode and off mode energy consumption must be incorporated into the overall energy efficiency, energy consumption, or other energy descriptor for each covered product unless the current test procedures already account for and incorporate standby and off mode energy consumption or such integration is technically infeasible. If an integrated test procedure is technically infeasible, DOE must prescribe a separate standby mode and off mode energy use test procedure for the covered product, if technically feasible. (42 U.S.C. 6295(gg)(2)(A)(ii)). Any such amendment must consider the most current versions of the International Electrotechnical Commission (IEC) Standard 62301 [3] and IEC Standard 62087 [4] as applicable. (42 U.S.C. 6295(gg)(2)(A))

DOE is publishing this notice of proposed rulemaking (''NOPR'') in satisfaction of the 7-year review requirement specified in EPCA. (42 U.S.C. 6293(b)(1)(A))

B. Background

On December 12, 2016, DOE amended its battery charger test procedure by publishing a final rule in the **Federal Register** that added a discrete test procedure for UPSs. 81 FR 89806 (''December 2016 Final Rule''). The December 2016 Final Rule incorporated by reference specific sections of the relevant industry standard for UPSs, with additional instructions, into the current battery charger test procedure published at appendix Y. 81 FR 89806, 89810.

On September 8, 2022, DOE published a final rule in the **Federal Register** amending the existing test procedure at appendix Y for battery chargers and creating a new test procedure at appendix Y1 that

[1] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020), which reflect the last statutory amendments that impact Parts A and A–1 of EPCA.

[2] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[3] IEC 62301, *Household electrical appliances—Measurement of standby power* (Edition 2.0, 2011–01).

[4] IEC 62087, *Audio, video and related equipment—Methods of measurement for power consumption* (Edition 1.0, Parts 1–6: 2015, Part 7: 2018).

expanded the scope of the battery charger test method to include open placement and fixed-position wireless battery chargers and established separate metrics for active mode, standby mode, and off mode for all battery chargers other than UPSs. 87 FR 55090 (''September 2022 Final Rule''). Manufacturers will be required to continue to use the amended test procedure in appendix Y until the compliance date of any new final rule establishing amended energy conservation standards based on the newly established test procedure in appendix Y1. 87 FR 55090, 55122. At such time that DOE establishes new standards for battery chargers other than UPSs using these new metrics, manufacturers would no longer use appendix Y and instead would be required to determine compliance using the updated test procedure at Y1. *Id.* at 87 FR 55125. That final rule also replicated all aspects of testing UPSs from appendix Y to appendix Y1, ensuring that instructions for all battery chargers are consolidated in one location. *Id.* at 87 FR 55125–55132.

On February 2, 2022, DOE initiated a rulemaking process to consider amendments to the UPS test procedure by publishing in the **Federal Register** a request for information (''RFI'') seeking data and information regarding the existing DOE test procedure for UPSs (''February 2022 RFI''). 87 FR 5742. On May 11, 2022, DOE issued a correcting amendment to address an error in describing input dependency modes in the regulatory text as it appeared in the December 2016 Final Rule. 87 FR 28755.

DOE received comments in response to the February 2022 RFI from the interested parties listed in Table I.1.

TABLE I.1—LIST OF COMMENTERS WITH WRITTEN SUBMISSIONS IN RESPONSE TO THE FEBRUARY 2022 RFI

Commenter(s)	Reference in this NOPR	Comment No. in the docket	Commenter type
National Electrical Manufacturers Association	NEMA	2	Trade Association.
Appliance Standards Awareness Project, American Council for an Energy-Efficient Economy, Natural Resources Defense Council, New York State Energy Research and Development Authority.	Joint Commenters	3	Efficiency Organizations.
Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison; collectively, the California Investor-Owned Utilities.	CA IOUs	4	Utility Association.
Northwest Energy Efficiency Alliance	NEEA	5	Efficiency Organization.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[5]

II. Synopsis of the Notice of Proposed Rulemaking

In this NOPR, DOE proposes to amend appendices Y and Y1 as follows:

(1) Incorporate by reference the current revision to the applicable industry standard—IEC 62040–3 Ed. 3.0, ''Uninterruptible power systems (UPS)—Part 3: Method of specifying the performance and test requirements''—to reflect redesignated subsections in the latest version of that standard.

(2) Provide an optional test method for measuring the power consumption of UPSs at no-load conditions.

DOE's proposed actions are summarized in Table II.1 compared to the current test procedure, with the reason for the proposed change also provided.

TABLE II.1—SUMMARY OF CHANGES IN PROPOSED TEST PROCEDURE RELATIVE TO CURRENT TEST PROCEDURE

Current DOE test procedure	Proposed test procedure	Attribution
References IEC 62040–3 Ed. 2.0	Updates each reference to IEC 62040–3 Ed. 3.0.	To harmonize with the latest industry standard.
Provides definitions for UPS, total harmonic distortion, and certain types of UPSs that differ non-substantively from the definitions in IEC 62040–3 Ed. 3.0.	Harmonizes DOE definitions with definitions of UPS provided in IEC 62040–3 Ed. 3.0.	To harmonize with the latest industry standard.
Does not provide a method for testing the power consumption of UPSs at no-load conditions.	Incorporates the no-load test from Annex J of IEC 62040–3, Ed. 3.0 as an optional test method for voluntary representations of no-load power consumption.	To respond to comments received on the February 2022 RFI.

Discussion of DOE's proposed actions are addressed in detail in section III of this NOPR.

III. Discussion

In the following sections, DOE proposes certain amendments to its test procedure for UPSs. For each proposed amendment, DOE provides relevant background information, explains why the amendment merits consideration, discusses relevant public comments, and proposes a potential approach.

A. Scope of Applicability

The scope of the current test procedure at appendices Y and Y1, as applicable to UPSs, covers UPSs[6] that utilize the standardized National

[5] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop a test procedure for UPSs. (Docket NO. EERE–2022–BT–TP–0005, which is maintained at *www.regulations.gov*). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

[6] As discussed further in section III.B of this document, DOE defines a UPS as a battery charger consisting of a combination of convertors, switches, and energy storage devices (such as batteries), constituting a power system for maintaining continuity of load power in case of input power failure. Appendices Y and Y1, section 2.27.

Electrical Manufacturer Association (''NEMA'') plug, 1–15P or 5–15P,[7] and have an alternating current (''AC'') output. Appendices Y and Y1, section 1.

In the February 2022 RFI, DOE sought comment on whether the scope of the test procedure as it pertains to UPSs is still appropriate or whether DOE should consider any changes in scope. 87 FR 5742, 5744.

NEMA commented that it did not see any need for changes to the UPS test procedure with regards to scope. (NEMA, No. 2 at p. 2)

Conversely, the Joint Commenters recommended that DOE investigate opportunities to expand the scope of the UPS test procedure to cover back-up battery chargers such as portable power systems. (Joint Commenters, No. 3 at p. 1) The Joint Commenters stated that portable power systems are an emerging class of products that are becoming increasingly common for homes given the need for back-up power in climate emergencies and power outage situations. (*Id.*) The Joint Commenters encouraged DOE to consider incorporating such products into the scope of the test procedure given the substantial potential for growth of these products in the market. (*Id.*)

NEEA similarly encouraged DOE to expand the scope of the battery charger test procedure to include portable power stations that utilize batteries and to test them using the appendix Y battery charger test instructions. (NEEA, No. 5 at p. 7) NEEA stated that its research reveals that consumer portable power stations are experiencing rapid market adoption. (*Id.*) NEEA provided examples of products with a range of battery capacities and charge with a home wall outlet. (*Id.*) NEEA described the primary consumer use for such products as providing emergency home power—which NEEA asserted is a growing need due to the increased frequency of electrical power outages associated with extreme weather conditions—as well as outdoor recreation applications. (*Id.* at p. 8) *NEEA* stated that consumer portable power systems appear to be excluded by DOE's current test procedure, given that they are not strictly UPSs and may be considered within the definition of ''backup battery chargers,'' [8] which are explicitly omitted from the scope of appendix Y.[9] (*Id.*) Additionally, NEEA stated that it was not able to identify portable power stations listed in DOE's battery charger or UPS compliance certification database (''CCD''). (*Id.*)

However, NEEA stated that its technical research supported addressing consumer portable power stations within the non-UPS portion of the test procedure and not the UPS portion because (1) they supply loads when not connected to the grid, whereas the UPS test procedure focuses on the efficiency of a continuously grid-connected system; (2) they have a variety of duty cycles, such that the variety of use scenarios is like other consumer chargers covered by the non-UPS portion of the test procedure; and (3) they have different charge rates, and the battery charger test procedure already accommodates variations in charge rates. (*Id.* at pp. 8–9)

Relevant to consideration of these comments, the scope of DOE's battery charger test procedure includes all battery chargers operating at either direct current (''DC'') or United States AC line voltage (115V at 60Hz). Appendix Y, section 1. To the extent that a portable power system meets the definition of a battery charger, operates on DC or United States AC line voltage, but does not meet the definition of a back-up battery charger as defined by DOE, such a product is currently covered within the scope of the non-UPS portion of the battery charger test procedure. Based on the descriptions of products described by NEEA, DOE tentatively concludes that such products may not meet the definition of ''back-up battery charger'' because they are not embedded in a separate end-use product. Rather, the power station itself is the end-use product and is not used to maintain power in the event of mains power failure. In contrast to NEEA's findings, DOE has identified—based on a review of product literature—a wide range of portable power stations currently certified as non-UPS battery chargers and listed in the CCD,[10] suggesting that manufacturers have determined that such products meet these criteria and are therefore covered within the scope of the non-UPS portion of the battery charger test procedure. Because such products are already included within the scope of the non-UPS battery charger test procedure, DOE has tentatively determined that no changes are warranted to the scope of the UPS test procedure with respect to such products.

To the extent that a portable power station meets DOE's definition of a back-up battery charger, such a product is currently outside the scope of appendices Y and Y1. As suggested by NEEA, DOE tentatively agrees that the operational characteristics of portable power stations that are not back-up battery chargers are in the scope of the non-UPS portion of the appendices Y and Y1 test procedure and not the UPS portion. Therefore, changes to the non-UPS portion of appendices Y and Y1 are outside the scope of this rulemaking and DOE is not proposing any changes to the UPS portion of appendices Y and Y1 to address such products.

The CA IOUs noted that the current scope of the UPS test procedure is limited to UPSs that use standard NEMA 1–15P/5–15P wall plugs [11] and recommended that DOE review current shipments of UPS and UPS-like products to determine if the current method for limiting scope still provides sufficient coverage for this product category. (CA IOUs, No. 4 at pp. 1–2) The CA IOUs stated that they have identified a range of whole-home backup and portable outdoor power delivery devices that are UPS-like, which may offer the potential for energy savings. (*Id.* at p. 2) According to the CA IOUs, shipments of these two products have rapidly expanded since DOE's previous rulemaking for the UPS product category. (*Id.*) The CA IOUs commented that these products are currently outside the scope of DOE's test procedure either because they cannot use NEMA 1–15P/5–15P wall plugs (*e.g.,* whole-home backup products), or they typically do not use NEMA 1–15P/5–15P wall plugs when in service (*e.g.,* portable power stations). (*Id.*)

DOE's initial review of the market for the types of products discussed by the CA IOUs confirms the CA IOUs' findings that such products either do not appear to meet the definition of a UPS and/or do not use NEMA 1–15P/5–15P wall plugs. In addition, DOE tentatively determines that the test

[7] Plug designations are as specified in American National Standards Institute (''ANSI'')/NEMA WD 6–2016, incorporated by reference at 10 CFR 430.2.

[8] DOE defines a ''back-up battery charger'' as a battery charger excluding UPSs: (1) that is embedded in a separate end-use product that is designed to continuously operate using mains power (including end-use products that use external power supplies); and (2) whose sole purpose is to recharge a battery used to maintain continuity of power in order to provide normal or partial operation of a product in case of input power failure. 10 CFR 430.2. More broadly, DOE defines a ''battery charger'' as a device that charges batteries for consumer products, including battery chargers embedded in other consumer products. *Id.*

[9] Section 1 of appendix Y (''Scope'') states that the appendix does not provide a method for testing back-up battery chargers.

[10] For example, DOE has identified the following inexhaustive list of portable power stations models in the battery charger CCD: Jackery 550, DEWALT DXAEPS14, STANLEY J5C09, Anker A1710, Duracell PPS1000–1050–120–01.

[11] Section 1 of appendix Y specifies that this appendix provides the test requirements used to measure the energy efficiency of UPSs that utilize the standardized NEMA plug, 1–15P or 5–15P, as specified in ANSI/NEMA WD 6–2016 (incorporated by reference, see § 430.3) and have an AC output.

conditions specified by the current UPS test procedure would not provide a representative measure of energy use or energy efficiency for such products. However, DOE has tentatively determined that the markets for whole-home backup devices and portable outdoor power delivery devices are still nascent, albeit growing, and currently lack widespread use among consumers. DOE is concerned that defining such technologies and addressing them in the UPS test procedure at this time could potentially restrict the development of these less mature technologies. Furthermore, DOE does not have sufficient consumer usage data, nor have commenters provided any such information, that would be needed at this time to develop a test procedure that produces representative results for these products. For these reasons, DOE is not proposing to expand the scope of the UPS test procedure to include whole-home backup power systems or outdoor power delivery devices.

B. Definitions

As discussed, DOE defines a UPS as a battery charger consisting of a combination of convertors, switches, and energy storage devices (such as batteries), constituting a power system for maintaining continuity of load power in case of input power failure. Appendices Y and Y1, section 2.27. This definition aligns with the definition of a UPS provided in IEC 62040–3 Ed. 2.0, which is currently incorporated by reference in appendices Y and Y1.

In the February 2022 RFI, DOE sought comment on whether the current definition for a UPS is still appropriate or whether DOE should consider an amended definition. 87 FR 5742, 5744.

NEMA commented that the definition of a UPS should be updated to align with IEC 62040–3 Ed. 3.0. (NEMA, No. 2 at p. 2) Specifically, NEMA recommended amending the UPS definition to read ''. . . maintaining continuity of *AC* load power in case of *AC* input power failure'' [emphasis added]. (*Id.*)

DOE recognizes the benefit of harmonizing with the latest versions of industry standards where applicable and appropriate. DOE has tentatively determined that the addition of the term ''AC'' in the IEC 62040–3 Ed. 3.0 definition is consistent with the range of products that meet the current definition of a UPS and would not change the scope of products subject to the test procedure.[12] Therefore, DOE proposes to update its definition of a UPS to incorporate by reference the definition specified in IEC 62040–3 Ed. 3.0.

DOE requests comment on its proposal to harmonize its definition of a UPS with that of IEC 62040–3 Edition 3.0. Specifically, DOE requests comment on its tentative determination that such harmonization would not affect the current scope of the UPS test procedure.

NEMA also suggested that DOE adopt or harmonize several other definitions from IEC 62040–3 Ed. 3.0, specifically, total harmonic distortion (''THD''), voltage independent (''VI'') UPS, and voltage and frequency independent (''VFI'') UPS.[13] (NEMA, No. 2 at pp. 4–6)

Section 2.26 of appendices Y and Y1 defines THD, expressed as a percent, as the root mean square (''RMS'') value of an AC signal after the fundamental component is removed and interharmonic components are ignored, divided by the RMS value of the fundamental component. Section 3.5.49 of IEC 62040–3 Ed. 3.0 defines THD as the ratio of the RMS value of the sum of the harmonic components X_h of orders 2 to 40 to the RMS value of the fundamental component X_1, and also includes a mathematical formula accompanying this descriptive definition. The key difference between the definitions is that DOE refers to the RMS value of the AC signal, whereas the IEC 62040–3 Ed. 3.0 definition more narrowly specifies measuring the RMS value of harmonic components of order 2 through 40. DOE understands that, in measuring the RMS value of a signal, a laboratory would be required to determine the number of harmonics to include within the measurement. By specifying harmonic components of order 2 through 40, DOE tentatively concludes that the IEC definition may provide a more reproducible measurement among different laboratories compared to the current DOE definition, which requires a laboratory to determine which harmonic components to measure. For this reason, DOE proposes to update its definition of THD to incorporate by reference the definition specified in IEC 62040–3 Ed. 3.0.

DOE has carefully reviewed its definitions of VFD UPS,[14] VFI UPS,[15] and VI UPS [16] in comparison to the definitions provided in sections 5.3.4.2.2,[17] 5.3.4.2.3,[18] and 5.3.4.2.4,[19]

[12] DOE notes that use of NEMA 1–15P/5–15P wall plugs, as specified by the currently defined scope for UPSs, implies the use of AC input power.

[13] The comment from NEMA included a duplicate section regarding VFI UPS definitions. Based on the context of the discussion throughout NEMA's comments, DOE presumes that NEMA intended to also include voltage and frequency dependent (''VFD'') UPSs among the suggested definitions for harmonization with IEC 62040–3 Ed. 3.0.

[14] Section 2.27.1 of appendices Y and Y1 defines VFD UPS as a UPS that produces an AC output where the output voltage and frequency are dependent on the input voltage and frequency. This UPS architecture does not provide corrective functions like those in voltage independent and voltage and frequency independent systems. The definition also includes a *Note* specifying that VFD input dependency may be verified by performing the AC input failure test in section 6.2.2.7 of IEC 62040–3 Ed. 2.0 and observing that, at a minimum, the UPS switches from normal mode of operation to battery power while the input is interrupted.

[15] Section 2.27.2 of appendices Y andY1 defines VFI UPS as a UPS where the device remains in normal mode producing an AC output voltage and frequency that is independent of input voltage and frequency variations and protects the load against adverse effects from such variations without depleting the stored energy source. The definition also includes a *Note* specifying that VFI input dependency may be verified by performing the steady state input voltage tolerance test and the input frequency tolerance test in sections 6.4.1.1 and 6.4.1.2 of IEC 62040–3 Ed. 2.0, respectively, and observing that, at a minimum, the UPS produces an output voltage and frequency within the specified output range when the input voltage is varied by ±10 percent of the rated input voltage and the input frequency is varied by ±2 percent of the rated input frequency.

[16] Section 2.27.3 of appendices Y and Y1 defines VI UPS as a UPS that produces an AC output within a specific tolerance band that is independent of under-voltage or over-voltage variations in the input voltage without depleting the stored energy source. The output frequency of a VI UPS is dependent on the input frequency, similar to a voltage and frequency dependent system. The definition also includes a *Note* specifying that VI input dependency may be verified by performing the steady state input voltage tolerance test in section 6.4.1.1 of IEC 62040–3 Ed. 2.0 and ensuring that the UPS remains in normal mode with the output voltage within the specified output range when the input voltage is varied by ±10 percent of the rated input voltage.

[17] Section 5.3.4.2.2 of IEC 62040–3 Ed. 3.0 specifies that a UPS classified as VFD shall protect the load from a complete loss of AC input power. The output of the VFD UPS is dependent on changes in voltage and frequency of the AC input power and is not intended to provide additional voltage corrective functions, such as those arising from the use of tapped transformers. VFD classification is verified when performing the test described in section 6.2.2.7.

[18] Section 5.3.4.2.3 of IEC 62040–3 Ed. 3.0 specifies that a UPS classified VI shall protect the load as required for VFD and also from under-voltage applied continuously to the input, and over-voltage applied continuously to the input. The output voltage of the VI UPS shall remain within declared voltage limits (provided by voltage corrective functions, such as those arising from the use of active and/or passive circuits). The manufacturer shall declare an output voltage tolerance band narrower than the input voltage tolerance band. VI classification is verified when performing the tests described in section 6.4.1.2. The definition also includes a *Note* specifying that the energy storage device does not discharge when the AC input power is within the input voltage tolerance band.

[19] Section 5.3.4.2.4 of IEC 62040–3 Ed. 3.0 specifies that a UPS classified VFI is independent of AC input power voltage and frequency variations

respectively, of IEC 62040–3 Ed. 3.0. The IEC definitions closely align with the core capabilities described by the DOE definitions. However, DOE's definitions each include a ''Note'' that provides greater specificity regarding certain product characteristics than the definitions provided by IEC 62040–3 Ed. 3.0. For example, the Note to section 2.27.2 of appendices Y and Y1 (providing the definition for VFI UPS) specifies that, at a minimum, the VFI UPS produces an output voltage and frequency within the specified output range even when the input voltage is varied by ±10 percent of the rated input voltage and the input frequency is varied by ±2 percent of the rated input frequency. Whereas the definition of VFI UPS in IEC 62040–3 Ed. 3.0 specifies the AC input power voltage tolerance bands to be the greater of ±10 percent of the rated input voltage and what is declared by the manufacturer and the AC input power frequency to be the greater of ±2 percent of the rated input frequency and what is declared by the manufacturer. Similarly, the Note to section 2.27.3 of appendices Y and Y1 (providing the definition for VI UPS) specifies an input voltage variation of ±10 percent, whereas the corresponding definition in IEC 62040–3 Ed 3.0 specifies the voltage limits to be the greater of ±10 percent of the rated input voltage and what is declared by the manufacturer.

DOE notes that there are scenarios where using the manufacturer declared limits may result in a different input dependency classification of a UPS when compared to that conducted using DOE's current input voltage tolerance limits. For example, a manufacturer that declares an input voltage tolerance limit of ±15 percent for a VI basic model but could have a unit that is unable to maintain the required output when the input voltage is adjusted by more than 13 percent in real world testing. Per the IEC definition, this unit would fail the VI input dependency at the manufactured declared limits of ±15 percent and therefore be classified as a VFD UPS (the highest input dependent UPS topology). However, the same unit when tested per DOE's current input voltage limits of ±10 percent would continue to classify it as a VI.

To avoid such discrepancies, DOE proposes to harmonize its definitions of VFD UPS, VI UPS, and VFI UPSs with IEC 62040–3 Ed 3.0 but maintain the notes alongside each definition that currently establish the input voltage and frequency tolerance limits of ±10 percent and ±2 percent, respectively.

DOE notes that the section numbers of IEC 62040–3 Ed. 2.0 currently referenced by DOE's definitions have been updated to different section numbers in IEC 62040–3 Ed. 3.0. DOE proposes to update its definitions of VFD UPS, VI UPS, and VFI UPS to reference the corresponding updated section numbers within IEC 62040–3 Ed. 3.0.

DOE has initially determined that the proposed amended definitions would not substantively change the scope or applicability of the test procedure as compared to the current definitions.

DOE requests comment on its proposal to update its definitions of THD, VFD UPS, VI UPS, and VFI UPC to harmonize with the IEC 62040–3 Ed 3.0 definitions.

C. Updates to Industry Standards

As discussed, the current UPS test procedure incorporates by reference certain sections of IEC 62040–3 Ed. 2.0 regarding test setup, input and output power measurement, and the optional determination of UPS architecture. Specifically:

- The definitions of VFD UPS, VFI UPS, and VI UPS in sections 2.27.1 through 2.27.3 of appendices Y and Y1 reference: (1) the AC input failure test in section 6.2.2.7 of IEC 62040–3 Ed. 2.0, which in turn references section 5.3.4 and Annex G of IEC 62040–3 Ed. 2.0; (2) the steady state input voltage tolerance test in section 6.4.1.1 of IEC 62040–3 Ed. 2.0, as a subsection to section 6.4.1, which in turn references sections 5.2.1 and 5.2.2.k of IEC 62040–3 Ed. 2.0; and (3) the input frequency tolerance test in section 6.4.1.2 of IEC 62040–3 Ed. 2.0, which in turn references sections 5.3.2.d and 5.3.2.3 of IEC 62040–3 Ed. 2.0.
- Section 4.2.1 of appendices Y and Y1 specifies configuring the UPS according to Annex J.2 [of Annex J] of IEC 62040–3 Ed. 2.0.
- Section 4.3.3 of appendices Y and Y1 specifies measuring input and output power according to section J.3 of Annex J of IEC 62040–3 Ed. 2.0.

Since publication of the December 2016 Final Rule, IEC has updated the IEC 62040–3 standard to its third edition (*i.e.,* IEC 62040–3 Ed. 3.0). The following paragraphs summarize the key changes from the second edition, based on DOE's initial review of the revised standard.

Section 4 of IEC 62040–3 Ed. 3.0 includes updates to various environmental conditions, such as the general test environment and operating conditions when testing UPSs. Appendices Y and Y1, however, do not refer to section 4 of the IEC 62040–3 standard but instead provide their own environmental and operating conditions for testing purposes. DOE has therefore determined that its test procedure for measuring the efficiency of UPSs will remain unaffected by the updates to section 4 of the IEC 62040–3 Ed. 3.0.

Section 5.2 of IEC 62040–3 Ed. 2.0 addresses UPS input specifications, such as the input voltage range, input frequency range, and total harmonic distortions during which the UPS under test must remain in the normal mode of operation. While an initial review of IEC 62040–3 Ed. 3.0 shows significant editorial changes to the sections that define these parameters, the remainder of the parameters remain unchanged. Similarly, section 5.3 of IEC 62040–3 Ed. 3.0 provides the minimum output specifications for UPSs that must be declared by manufacturers, such as its input dependency, rated output voltage and RMS output voltage tolerance band, rated frequency tolerance band, rated output active and apparent power, total harmonic distortion, etc. As before, the majority of the changes to this section are editorial or a reorganization.

Section 6 of IEC 62040–3 Ed. 2.0 previously provided instructions for performing the AC input failure test (section 6.2.2.7), the steady-state input voltage tolerance test (section 6.4.1.1), and the input frequency tolerance test (section 6.4.1.2) that are used to classify the input dependency of a UPS as VI, VFD, or VFI. IEC 62040–3 Ed. 3.0 has since updated these subsections with the following changes: subsection titles and numbering have been updated to specifically refer to them as VI, VFD, and VFI input dependency tests; additional criteria have been added for meeting the VI, VFD, and VFI classifications; and a new test load condition at 0 percent (*i.e.,* no-load) has been added (see section III.E of this document for further discussion of a no-load test).

Additional updates to Annex J to IEC 62040–3 Ed. 3.0 require multi-mode UPSs to be tested at all dependency modes, whereas DOE's current test procedure explicitly requires UPSs to be tested at only their highest and lowest input dependency modes. Annex J has also been updated to allow manufacturers to test UPSs with functions or ports set to the lowest power-consuming mode or disconnected if they are not related to maintaining the energy storage device (*i.e.,* batteries) at full charge, along with added reporting requirements for manufacturers to report these features,

as specified and declared in section 5.2 and shall protect the load against adverse effects from such variations without discharging the energy storage device. VFI classification is verified when performing the tests described in section 6.4.1.3.

interfaces, or ports that have been turned off or set to the lowest power-consuming mode. This updated clarification regarding additional features is similar to DOE's current test procedure, which requires UPSs to be tested with such features off or disconnected; however, DOE currently does not require manufacturers to report these manually switched-off features.

In the February 2022 RFI, DOE requested comment on the updates made to IEC 62040–3 Ed. 3.0 and on whether DOE should revise all or parts of its incorporation by reference to harmonize with these changes. 87 FR 5742, 5745. DOE also requested feedback on whether any of the specific updates found in the new IEC standard has the potential to alter the recorded efficiency of UPSs as currently measured by appendix Y. *Id.*

DOE received several comments regarding aligning its reporting requirements for UPSs with the requirements in the revised Annex J in IEC 62040–3 Ed. 3.0 in response to the February 2022 RFI. The Joint Commenters, NEEA, and NEMA all requested that DOE require manufacturers to report which (if any) additional functionality was switched off for testing. (Joint Commenters, No. 3 at p. 2; NEEA, No. 5 at p. 7; NEMA, No. 2 at p. 4). NEMA commented that adding free text fields in the certification database spreadsheet template would reduce the reporting burden of uploading additional supplementary documentation to provide this information. (NEMA, No. 2 at p. 4) Additionally, NEEA noted that collecting this information increases stakeholder transparency and provides DOE with useful information for future analyses. (NEEA, No. 5 at p. 7)

DOE is not proposing to amend the certification or reporting requirements for UPSs in this NOPR. Instead, DOE may consider proposals to amend the certification requirements and reporting for UPSs under a separate rulemaking regarding appliance and equipment certification.

In response to the February 2022 RFI, NEMA suggested that DOE incorporate the 15-minute accumulated energy measurement method found in Annex J of IEC 62040–3 Ed. 3.0, commenting that it is the measurement method favored by DOE because DOE already includes such a method in appendices Y and Y1. (NEMA, No. 2 at p. 2) NEMA also recommended that DOE incorporate sections 5.2 and 5.3 of IEC 62040–3 or the entire standard and stated that doing so would not alter the measured efficiency of UPSs. (*Id.* at p. 3)

DOE has carefully reviewed IEC 62040–3 Ed. 3.0 as it relates to measuring the efficiency of a UPS. DOE has tentatively determined that the relevant updates to IEC 62040–3 Ed. 3.0 compared to IEC 62040–3 Ed. 2.0 are largely editorial, including renumbering of certain sections referenced by the DOE test procedure, and that updating DOE's existing references to IEC 62040–3 Ed. 3.0 would not alter the measured efficiency of basic models. As a result, DOE proposes to update its incorporation by reference of IEC 62040–3 Ed. 2.0 to IEC 62040–3 Ed. 3.0 in 10 CFR 430.3 and to update its references in appendices Y and Y1 accordingly to reflect the renumbering of sections in IEC 62040–3 Ed. 3.0.

As stated by NEMA in its written comment, DOE's existing test procedure for UPSs already allows recording of either instantaneous power or accumulated energy over a 15-minute period. DOE's review of Annex J in IEC 62040–3 Ed. 3.0 did not reveal any additional instructions that would further facilitate the use of the accumulated energy method. As such, DOE is not proposing any changes to its existing language in section 4.3.3 of appendices Y and Y1.

DOE requests comment on its proposal to incorporate by reference IEC 62040–3 Ed 3.0 and to update references in appendices Y and Y1 accordingly to reflect the renumbering of sections in IEC 62040–3 Ed 3.0.

D. Loading Conditions

Section 4.3.3 of appendices Y and Y1 requires that the efficiency of a UPS be measured at 100, 75, 50, and 25 percent of the device's rated output power. Each of these measured efficiencies is weighted according to values provided in Table 4.3.1 of appendices Y and Y1 and combined to determine a single weighted average output metric (*i.e.,* the average load adjusted efficiency) representing the UPS's overall efficiency. These load conditions and weightings were established in the December 2016 Final Rule consistent with the load weightings specified in ENERGY STAR UPS Specification Version 1.0.[20] 81 FR 89806, 89816. The current ENERGY STAR UPS Specification Version 2.0 [21] maintains these same load conditions and weightings. These load conditions and weightings are also consistent with those specified in section 6.4.1.6 of IEC 62040–3 Ed. 2.0 and section 6.4.1.9 of IEC 62040–3 Ed. 3.0.

In the February 2022 RFI, DOE requested comment on whether the UPS load weightings specified in Table 4.3.1 are representative of current UPS usage patterns. 87 FR 5742, 5746. DOE also requested data on the consumer usage profile of UPSs with respect to each architecture (*i.e.,* VFD, VI, and VFI). *Id.*

NEEA, the Joint Commenters, and the CA IOUs all recommended introducing a fifth loading test condition at 10 percent of the device's rated output power, asserting that such a loading condition is more representative of desktop computers and other loads typically protected by UPSs. They further asserted that adding a 10-percent loading condition to UPS testing, along with a revised load weighting, would provide a more accurate efficiency value. (NEEA, No. 5 at pp. 1–4; Joint Commenters, No. 3 at pp. 1–2; CA IOUs, No. 4 at pp. 2–3)

NEMA, however, advised against adding a 10-percent loading condition and adjusting the loading level weights without significant evidence to support making such adjustments, arguing that DOE should maintain harmonization with IEC 62040–3 Ed. 3.0. NEMA further asserted that additional load test points are mathematically unnecessary and would invalidate testing already performed, which would impose a significant burden on manufacturers with no tangible benefits. NEMA further commented that mathematical loss models can be used to accurately predict UPS efficiency at any load point based on the five measurements already required by the DOE test procedure. (NEMA, No. 2 at p. 6)

As discussed, EPCA requires that any test procedures prescribed or amended under this section be reasonably designed to produce test results that measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use, and not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) As such, DOE must weigh the representativeness of test results with the associated test burden in evaluating any amendments to its test procedures. Regarding the representativeness of the DOE test procedure, the commenters have not provided specific data, nor is DOE aware of any specific data, demonstrating that a 10-percent loading condition would produce a more representative measure of energy use or energy efficiency of UPSs. In addition,

[20] The ENERGY STAR UPS Specification Version 1.0 is available at *www.energystar.gov/products/spec/uninterruptible_power_supplies_specification_version_1_0_pd.*

[21] The ENERGY STAR UPS Specification Version 2.0 is available at *www.energystar.gov/sites/default/files/asset/document/ENERGY%20STAR%20Uninterruptible%20Power%20Supplies%20Final%20Version%202.0%20Specification_1.pdf.*

DOE's test procedure does not differentiate between specific end-use applications. Therefore, load profiles specific to certain applications (*e.g.,* desktop computers) may not be representative of overall average use of UPSs across all end-use applications. Further, were DOE to consider a 10-percent load condition, DOE is not aware of any data to suggest what corresponding weighting factor should be used to combine this loading condition with the other defined loading conditions comprising the overall efficiency metric.

Regarding test burden, as noted, the loading points currently specified in appendices Y and Y1 are consistent with the loading points defined by ENERGY STAR, as well as section 6.4.1.6 of IEC 62040–3 Ed. 3.0. DOE also notes that the requirements of IEC 62040–3 Ed. 3.0 are referenced by the European Union Code of Conduct on Energy Efficiency and Quality of AC UPSs Version 2.0.[22] Like many other types of consumer electronics, UPSs are manufactured and distributed globally by multi-national suppliers; as such, any differences between the DOE test procedure (applicable to products sold or imported into the United States) and internationally-recognized industry test methods impose a burden that is acutely impactful to the consumer electronics industry.

Having weighed the potential improvement to representativeness against the potential for increased test burden associated with adding a required 10-percent loading condition that would be applicable to all UPSs, DOE has tentatively concluded—based on information currently available—that the potential burden would outweigh any potential improvement in representativeness; *i.e.,* would introduce undue test burden. Consequently, DOE is not proposing to modify its existing loading points, weightings, or overall efficiency metric in this NOPR.

DOE requests comment on its proposal to not modify the existing loading points, weighting, or the overall efficiency metric in the current UPS test procedure.

E. No-Load Test

DOE's test procedure for UPSs does not currently specify a method for determining the energy consumption of a UPS at no-load (*i.e.,* 0 percent loading condition). As discussed in section III.C of this NOPR, IEC 62040–3 Ed. 3.0 adds a new test load condition at 0 percent (*i.e.,* no-load) at section 6.4.1.10. In addition, ENERGY STAR UPS Specification Version 2.0 specifies testing at a 0-percent load condition, and the resulting power measurement (in Watts) is one of the required reported values. In the February 2021 RFI, DOE requested information on whether incorporating the additional no-load test has the potential to cause currently reported UPS input-dependency classifications to change.

In response to the February 2022 RFI, the Joint Commenters recommended that DOE incorporate the no-load test condition into its UPS test procedure and establish a separate standby mode metric based on the no-load test condition. The Joint Commenters asserted that a standby mode measurement at the no-load test condition would provide consumers with a more accurate understanding of UPS energy consumption and would align DOE's UPS test procedure more closely with DOE's external power supply (''EPS'') and battery charger test procedures. The Joint Commenters asserted that the no-load condition of a UPS aligns closely with battery charger maintenance mode—in which a battery charger is connected to a battery and provides some limited charging in order to maintain the battery at full charge—and that because DOE determined that battery charge maintenance mode qualifies under EPCA's definition of standby mode,[23] that it would be appropriate for DOE to establish a standby metric for UPSs based on the no-load test condition. (Joint Commenters, No. 3 at p. 3)

NEEA also encouraged DOE to add a no-load test condition to the UPS test procedure. NEEA asserted that UPSs operate at no-load or low-load when attached equipment, such as desktop computers, are powered off or running in sleep or idle modes; that relevant studies suggest that desktop computers spend much of their time powered off or in sleep or idle modes; and that the substantial differences in no-load input power across UPS models suggest a significant energy savings opportunity. (NEEA, No. 5 at pp. 1–2) Based on its analysis of cited research, NEEA concluded that a no-load condition would effectively represent desktop computer off and sleep modes. (*Id.* at 2) NEEA encouraged DOE to require reporting of UPS no-load power draw separately from the current active mode efficiency because the no-load measurement would be a power value rather than a percent efficiency, and that such an approach would harmonize with DOE's no-load approach for EPSs, battery chargers, and ENERGY STAR's approach for UPSs. (NEEA, No. 5 at pp. 4–5)

DOE recognizes the usefulness of a no-load power consumption metric to the industry and stakeholders, as evidenced by the inclusion of a no-load test in IEC 62040–3 Ed. 3.0, its inclusion as a reporting requirement for the ENERGY STAR UPS Specification Version 2.0, and comments from interested parties in response to the February 2021 RFI. For these reasons, DOE proposes to incorporate by reference the no-load test condition specified in section 6.4.1.10 of IEC 62040–3 Ed. 3.0 as a test in section 4.3.3 of appendices Y and Y1 that would be used as the basis for any representations of no-load power consumption. However, DOE notes that manufacturers will not be required to certify no-load power consumption to DOE as a result of this proposal because the energy conservation standards for UPSs do not have a no-load requirement at this time.

DOE requests feedback on its proposal to add a method for measuring the power consumption of UPSs at no-load as a test to be used as the basis for any representations of no-load power consumption.

F. Reference Test Load

DOE's test procedure refers to the 25, 50, 75, and 100-percent loads as ''reference test loads.'' In general, test loads for testing consumer electronics can be either linear [24] or non-linear [25] in nature.

While IEC 62040–3 Ed. 2.0 provides a definition for reference test load,[26] it does not explicitly address whether such a test load is linear or non-linear in nature. Section 2.24 of appendices Y and Y1 defines ''reference test load'' as a load or condition with a power factor of greater than 0.99 in which the AC output socket of the UPS delivers the active power (W) for which the UPS is rated. By specifying a power factor requirement of greater than 0.99, DOE's

[22] The European Union Code of Conduct on Energy Efficiency and Quality of AC UPSs Version 2.0 is available at *e3p.jrc.ec.europa.eu/publications/code-conduct-energy-efficiency-and-quality-ac-uninterruptible-power-systems-ups-0.*

[23] The Joint Commenters cited DOE's battery charger test procedure NOPR published November 23, 2021. 86 FR 66878. DOE subsequently published a battery charger test procedure final rule on September 8, 2022, which includes a maintenance mode test for battery chargers. 87 FR 55090.

[24] IEC 62040–3 Ed 3.0 defines a linear load as a load wherein the load impedance is a constant.

[25] IEC 62040–3 Ed 3.0 defines a non-linear load as a load wherein the load impedance is a variable dependent on other parameters, such as voltage or time.

[26] IEC 62040–3 Ed. 2.0 defines ''reference test load'' as a load or condition in which the output of the UPS delivers the active power (W) for which the UPS is rated.

current definition necessitates the use of a test load that is both linear and resistive.

In response to the February 2022 RFI, NEEA recommended that to improve the representativeness of the UPS test procedure, DOE should require active mode testing employing the non-linear load specified in Annex E of IEC 62040–3 Ed. 3.0. NEEA stated that nearly all UPS loads are non-linear (*i.e.,* non-resistive) and have a power factor of less than one. NEEA explained that these non-linear loads increase current flows through the UPS, resulting in more losses and producing more heat. NEEA stated that manufacturers design UPSs to account for these types of loads, but that DOE's test procedure does not currently require non-linear loads in its efficiency measurements. (NEEA, No. 5 at p. 6)

Section D.2 in Annex D of IEC 62040–3 Ed. 3.0 explains that the diversity of types of load equipment and their relevant characteristics are always changing with technology. For this reason, the UPS output performance is characterized by loading with passive reference loads to simulate, as far as practical, the expected load types, but it cannot be taken that these load types are totally representative of the actual load equipment in a given application. The UPS industry has generally specified UPS output characteristics under conditions of linear loading, *i.e.,* resistive or resistive/inductive. The effect on the output of the UPS by non-linear loads both in steady state and dynamic is, in many cases, to cause deviation from the output characteristic specified by the manufacturer/supplier where these are quoted under linear load conditions.

While DOE recognizes that loads protected by UPSs can be non-linear, the use of non-linear loads for testing may create certain challenges or difficulties in meeting the specified test conditions, as described within section D.2 of IEC 62040–3 Ed. 3.0. This suggests that testing with non-linear loads may produce results that are less repeatable or reproducible than testing with linear loads. DOE has no information, nor have commenters provided any information, about how the use of non-linear loads for UPS testing may affect repeatability, reproducibility, or test burden. As a result, DOE is not proposing the use of non-linear test loads for testing UPSs at this time.

G. Error Corrections

At the time of the February 2022 RFI, paragraph (a) of section 4.2.1 of appendices Y and Y1, ''UPS Operating Mode Conditions,'' stated that if the UPS can operate in two or more distinct normal modes as more than one UPS architecture, conduct the test in its lowest input dependency as well as in its highest input dependency mode where VFD represents the *lowest* [emphasis added] possible input dependency, followed by VI and then VFI.

NEMA stated that specifying the ''lowest'' possible input dependency is a typographical error, and that VFD represents the highest possible input dependency rather than the lowest. (NEMA, No. 2 at p. 3) In a correcting amendment published May 11, 2022, DOE acknowledged that the text in paragraph (a) of section 4.2.1 of appendix Y erroneously identifies VFD as the lowest input dependency, whereas it is in fact the highest input dependency as identified in the referenced Annex J.2 of IEC 62040–3 Ed 2.0. 87 FR 28755, 28755. DOE corrected this error in the text by replacing the erroneous word ''lowest'' with ''highest.'' *Id.* As a result, DOE is not proposing any changes to that corrected text in this NOPR.

H. Test Procedure Costs and Harmonization

1. Test Procedure Costs and Impact

EPCA requires that test procedures proposed by DOE not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) In this NOPR, DOE proposes to amend the existing test procedure for UPSs by updating the industry standard incorporated by reference to its latest version, updating definitions consistent with the latest version of the industry standard, and introducing an optional test for measuring the power consumption of UPSs at no-load conditions. DOE has tentatively determined that these proposed amendments would not be unduly burdensome for manufacturers to conduct.

The proposed update to the latest version of the industry standard would not change the method of testing UPSs, but rather would only make non-substantive changes, such as section renumbering. The proposed amendments to harmonize certain definitions with the industry standard would not change the scope of products currently subject to the DOE test procedure or energy conservation standards. And the proposed test procedure for measuring the power consumption of UPSs at no-load conditions would not be required for demonstrating compliance with standards. Therefore, the proposed amendments will not alter the measured energy efficiency or energy use of UPSs. Manufacturers will be able to rely on data generated under the current test procedure. Further, the proposed changes would not require the purchase of additional equipment or increase test burden, and consequently would not impact testing costs. If manufacturers elected to continue to make representations or begin making representations regarding UPS power consumption at no-load conditions, they may need to retest the standby power portion of the test procedure for their UPS model. DOE estimates that this retest would cost approximately $1,700 per unit if the test is conducted by a third-party lab and substantially less if done by the manufacturer themselves. However, as stated previously, any representations from such a retest would not be required for demonstrating compliance with standards.

2. Harmonization With Industry Standards

DOE's established practice is to adopt relevant industry standards as DOE test procedures unless such methodology would be unduly burdensome to conduct or would not produce test results that reflect the energy efficiency, energy use, water use (as specified in EPCA), or estimated operating costs of that product during a representative average use cycle or period of use. Section 8(c) of appendix A of 10 CFR part 430 subpart C. In cases where the industry standard does not meet EPCA statutory criteria for test procedures, DOE will make modifications through the rulemaking process to these standards as the DOE test procedure.

The test procedure for UPSs at appendices Y and Y1 currently incorporates by reference IEC 62040–3 Ed. 2.0 regarding test setup, input and output power measurement, and the optional determination of UPS architecture. DOE is proposing to incorporate by reference the latest version of this industry standard (*i.e.,* IEC 62040–3 Ed. 3.0). Additional discussion of this proposed update is provided in section III.B of this document.

DOE requests comment on the benefits and burdens of the proposed updates and additions to the industry standard referenced in the test procedure for UPSs.

I. Compliance Date

EPCA prescribes that, if DOE amends a test procedure, all representations of energy efficiency and energy use, including those made on marketing materials and product labels, must be

made in accordance with that amended test procedure, beginning 180 days after publication of such a test procedure final rule in the **Federal Register**. (42 U.S.C. 6293(c)(2))

If DOE were to publish an amended test procedure, EPCA provides an allowance for individual manufacturers to petition DOE for an extension of the 180-day period if the manufacturer may experience undue hardship in meeting the deadline. (42 U.S.C. 6293(c)(3)) To receive such an extension, petitions must be filed with DOE no later than 60 days before the end of the 180-day period and must detail how the manufacturer will experience undue hardship. (*Id.*)

DOE also recognizes that the publication of two separate final rules (the September 2022 Final Rule amending the test procedure for battery chargers that are not UPSs and a potential future test procedure final rule for UPSs, if DOE were to publish an amended test procedure) amending the battery charger test procedures at appendix Y could cause confusion as to what version of these appendices is required to be used when making a representation. A further complication is that the September 2022 Final Rule created a new test procedure at appendix Y1 that expanded the scope of the battery charger test method and established a new multi-metric approach for all battery chargers other than UPSs. Manufacturers will be required to continue to use the amended test procedure in appendix Y until the compliance date of amended energy conservation standards for battery chargers established by an energy conservation standard final rule at some point in the future. Only upon the compliance date of amended energy conservation standards for battery chargers will manufacturers be required to begin using the test procedure in appendix Y1.

The September 2022 Final Rule amended appendix Y requiring manufacturers of battery chargers to use this recently updated version beginning March 7, 2023. While the sections in appendix Y that apply to UPSs remained unchanged by the September 2022 Final Rule, UPS manufacturers are required to use the version of appendix Y, as modified by the September 2022 Final Rule, beginning on March 7, 2023. Because there are no differences in how a UPS is tested between the two versions of appendix Y, DOE tentatively concludes that it would be preferable to refer to the same version of the Appendix (as finalized by the September 2022 Final Rule) for testing both battery chargers and UPSs, even though the UPS testing provisions remain unchanged. DOE also concludes that presenting these various compliance dates and references to different versions of the appendices in a tabular format would be more effective. Accordingly, in this NOPR, DOE is proposing to update the notes section at the beginning of appendices Y and Y1 to include a table that clearly identifies the appropriate appendix reference and compliance dates for each product.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

Executive Order (''E.O.'') 12866, ''Regulatory Planning and Review,'' as supplemented and reaffirmed by E.O. 13563, ''Improving Regulation and Regulatory Review,'' 76 FR 3821 (Jan. 21, 2011), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (''OIRA'') in the Office of Management and Budget (''OMB'') has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, this proposed regulatory action is consistent with these principles.

Section 6(a) of E.O. 12866 also requires agencies to submit ''significant regulatory actions'' to OIRA for review. OIRA has determined that this proposed regulatory action does not constitute a ''significant regulatory action'' under section 3(f) of E.O. 12866. Accordingly, this action was not submitted to OIRA for review under E.O. 12866.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (''IRFA'') for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website: *www.energy.gov/gc/office-general-counsel.* DOE reviewed this proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003.

For manufacturers of UPSs, the Small Business Administration (''SBA'') has set a size threshold, which defines those entities classified as ''small businesses'' for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. *See* 13 CFR part 121. The size standards are listed by the North American Industry Classification System (''NAICS'') code and industry description and are available at *www.sba.gov/document/support--table-size-standards.* Manufacturing of UPSs is classified under NAICS 335999, ''All Other Miscellaneous Electrical Equipment and Component Manufacturing.'' The SBA sets a threshold of 500 employees or less for an entity to be considered as a small business for this category.

To estimate the number small businesses that manufacture UPSs impacted by this rulemaking, DOE conducted a survey using information from DOE's Compliance Certification Database and previous rulemakings. DOE used information from these

sources to create a list of companies that potentially manufacture or sell UPSs. DOE screened out companies that do not offer products covered by this rulemaking, do not meet the definition of a ''small business,'' or are foreign owned and operated. DOE identified five companies that are small businesses manufacturing UPSs covered by this rulemaking.

However, DOE has tentatively concluded that the proposed updates to DOE's test procedure for UPSs do not involve substantive changes to the test setup and methodology and will not pose any additional test burden or additional test costs for any UPS manufacturers, large or small.

Therefore, DOE tentatively concludes that the impacts of the test procedure amendments proposed in this NOPR would not have a ''significant economic impact on a substantial number of small entities,'' and that the preparation of an IRFA is not warranted. DOE will transmit the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of UPSs must certify to DOE that their products comply with any applicable energy conservation standards. To certify compliance, manufacturers must first obtain test data for their products according to the DOE test procedures, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including UPSs. (*See generally* 10 CFR part 429.) The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (''PRA''). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

DOE is not proposing to amend the certification or reporting requirements for UPSs in this NOPR. Instead, DOE may consider proposals to amend the certification requirements and reporting for UPSs under a separate rulemaking regarding appliance and equipment certification. DOE will address changes to OMB Control Number 1910–1400 at that time, as necessary.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

In this NOPR, DOE proposes test procedure amendments that it expects will be used to develop and implement future energy conservation standards for UPSs. DOE has determined that this proposed rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, DOE has determined that adopting test procedures for measuring energy efficiency of consumer products and industrial equipment is consistent with activities identified in 10 CFR part 1021, appendix A to subpart D, A5 and A6. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (Aug. 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that executive agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any, (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction, (4) specifies the retroactive effect, if any, (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Publc Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b))

The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *www.energy.gov/gc/office-general-counsel.* DOE examined this proposed rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), that this proposed regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at *www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf.* DOE has reviewed this proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

The proposed regulatory action to amend the test procedure for measuring the energy efficiency of UPSs is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; ''FEAA'') Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (''FTC'') concerning the impact of the commercial or industry standards on competition.

The proposed modifications to the test procedure for UPSs would incorporate testing methods contained in certain sections of the following commercial standard: IEC 62040–3 Ed. 3.0. DOE has evaluated this standard and is unable to conclude whether it fully complies with the requirements of section 32(b) of the FEAA (*i.e.,* whether it was developed in a manner that fully provides for public participation, comment, and review.) DOE will consult with both the Attorney General and the Chairman of the FTC concerning the impact of this test procedure on competition, prior to prescribing a final rule.

M. Description of Materials Incorporated by Reference

IEC 62040–3 Ed. 3.0, ''Uninterruptible power systems (UPS)—Part 3: Method of specifying the performance and test requirements'' is an industry-accepted test standard that specifies methods for measuring the efficiency of a UPS. The test procedure proposed in this NOPR updates all references from the previous edition (IEC 62040–3 Ed. 2.0) to this most current edition (IEC 62040–3 Ed. 3.0). IEC 62040–3 Ed. 3.0 is readily available from ANSI at *webstore.ansi.org.*

In this NOPR, DOE proposes to add a new section 0 (Incorporation by Reference) to both appendices Y and Y1 listing the applicable sections of IEC 62040–3 Ed. 3.0 that are referenced by the test procedure.

V. Public Participation

A. Participation in the Webinar

The time and date of the webinar meeting are listed in the **DATES** section at the beginning of this document. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's website:*www.energy.gov/eere/buildings/public-meetings-and-comment-deadlines.* Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Prepared General Statements for Distribution

Any person who has an interest in the topics addressed in this document, or

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

C. Conduct of the Webinar

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

The webinar will be conducted in an informal, conference style. DOE will present a general overview of the topics addressed in this proposed rulemaking, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this proposed rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit, as time permits, other participants to comment briefly on any general statements.

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

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

D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule before or after the public meeting, but no later than the date provided in the **DATES** section at the beginning of this proposed rule.[27] Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this document.

Submitting comments via www.regulations.gov. The *www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (''CBI'')). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or postal mail. Comments and documents submitted via email, hand delivery/courier, or postal mail also will be posted to *www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via postal mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No telefacsimiles (''faxes'') will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file

[27] DOE has historically provided a 75-day comment period for test procedure NOPRs pursuant to the North American Free Trade Agreement, U.S.-Canada-Mexico (''NAFTA''), Dec. 17, 1992, 32 I.L.M. 289 (1993); the North American Free Trade Agreement Implementation Act, Public Law 103–182, 107 Stat. 2057 (1993) (codified as amended at 10 U.S.C.A. 2576) (1993) (''NAFTA Implementation Act''); and Executive Order 12889, ''Implementation of the North American Free Trade Agreement,'' 58 FR 69681 (Dec. 30, 1993). However, on July 1, 2020, the Agreement between the United States of America, the United Mexican States, and the United Canadian States (''USMCA''), Nov. 30, 2018, 134 Stat. 11 (*i.e.,* the successor to NAFTA), went into effect, and Congress's action in replacing NAFTA through the USMCA Implementation Act, 19 U.S.C. 4501 *et seq.* (2020), implies the repeal of E.O. 12889 and its 75-day comment period requirement for technical regulations. Thus, the controlling laws are EPCA and the USMCA Implementation Act. Consistent with EPCA's public comment period requirements for consumer products, the USMCA only requires a minimum comment period of 60 days. Consequently, DOE now provides a 60-day public comment period for test procedure NOPRs.

format. Provide documents that are not secured, written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: one copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

E. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

(1) DOE requests comment on its proposal to harmonize its definition of a UPS with that of IEC 62040–3 Edition 3.0. Specifically, DOE requests comment on its tentative determination that such harmonization would not affect the current scope of the UPS test procedure.

(2) DOE requests comment on its proposal to update its definitions of THD, VFD UPS, VI UPS, and VFI UPC to harmonize with the IEC 62040–3 Ed 3.0 definitions.

(3) DOE requests comment on its proposal to incorporate by reference IEC 62040–3 Ed 3.0 and to update references in appendices Y and Y1 accordingly to reflect the renumbering of sections in IEC 62040–3 Ed 3.0.

(4) DOE requests comment on its proposal to not modify the existing loading points, weighting, or the overall efficiency metric in the current UPS test procedure.

(5) DOE requests feedback on its proposal to add a method for measuring the power consumption of UPSs at no-load as a test to be used as the basis for any representations of no-load power consumption.

(6) DOE requests comment on the benefits and burdens of the proposed updates and additions to the industry standard referenced in the test procedure for UPSs.

Additionally, DOE welcomes comments on other issues relevant to the conduct of this rulemaking that may not specifically be identified in this document.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed rulemaking and announcement of public meeting.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Signing Authority

This document of the Department of Energy was signed on December 16, 2022, by Francisco Alejandro Moreno, Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on December 19, 2022.

Treena V. Garrett,

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

For the reasons stated in the preamble, DOE is proposing to amend part 430 of Chapter II of Title 10, Code of Federal Regulations as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Amend § 430.3 by revising paragraph (p)(4) to read as follows:

§ 430.3 Materials incorporated by reference.

* * * * *

(p) * * *

(4) IEC Standard 62040–3 Ed. 3.0 (''IEC 62040–3 Ed. 3.0'') *Uninterruptible power systems (UPS)—Part 3: Method of specifying the performance and test requirements,* Edition 3.0, 2011–03; IBR approved for appendices Y and Y1 to subpart B.

* * * * *

■ 3. Appendix Y to subpart B of part 430 is amended by:

■ a. Revising the introductory note;

■ b. Adding section 0;

■ c. Revising sections 2.26, 2.27, 2.27.1, 2.27.2, and 2.27.3;

■ d. Revising the introductory text of section 4.2.1;

■ e. Revising the introductory text of section 4.3.3; and

■ f. Adding section 4.3.3(c).

The revisions and additions read as follows:

Appendix Y to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Battery Chargers

Note 1: For all battery chargers, including UPSs, compliance with the relevant standard in § 430.32(z) or any representation must be based upon results generated under the corresponding appendix listed in the table below:

	Battery chargers other than UPSs	UPS
Before March 7, 2023	Use appendix Y as codified on either January 1, 2022, or October 11, 2022.	Use appendix Y as codified on either January 1, 2022, or October 11, 2022.
After March 7, 2023 and Before [date 30 days after UPS TP FR Publication].	Use appendix Y as codified on October 11, 2022.	Use appendix Y as codified on October 11, 2022.

	Battery chargers other than UPSs	UPS
After [date 30 days after UPS TP FR Publication] and Before [date 180 days after UPS TP FR publication].	Use appendix Y as codified on either October 11, 2022, or [date 30 days after UPS TP FR publication].	Use appendix Y as codified on either October 11, 2022, or [date 30 days after UPS TP FR publication].
After [date 180 days after UPS TP FR publication] and Before compliance date of any new or amended standards published any time after September 8, 2022.	Use appendix Y as codified on [date 30 days after UPS TP FR publication].	Use appendix Y as codified on [date 30 days after UPS TP FR publication].
After compliance date of any new or amended standards published any time after September 8, 2022.	Use appendix Y1	Use appendix Y1.

0. Incorporation by Reference

DOE incorporated by reference in § 430.3 the entire test standard for IEC 62040–3 Ed. 3.0. However, only enumerated provisions of this standard are applicable to this appendix, as follows. In cases in which there is a conflict, the language of the test procedure in this appendix takes precedence over the referenced test standard.

0.1 IEC 62040–3 Ed. 3.0:

(a) Section 3.5 Specified values;

(b) Section 3.5.49 total harmonic distortion

(c) 5, Electrical conditions, performance and declared values;

(d) Section 5, Electrical conditions, performance and declared values;

(e) Section 5.2, UPS input specification, as specified in section 2.27.2 of this appendix;

(f) Section 5.2.1—Conditions for normal mode of operation; Clause 5.2.1.a;

(g) Clause 5.2.1.b;

(h) Section 5.2.2—Conditions to be declared by the manufacturer; Clause 5.2.2.k;

(i) Clause 5.2.2.l;

(j) Clause 5.2.2.m;

(k) Section 5.3, UPS output specification; Section 5.3.2, Characteristics to be declared by the manufacturer; Clause 5.3.2.b;

(l) Clause 5.3.2.c;

(m) Clause 5.3.2.d;

(n) Clause 5.3.2.e;

(o) Section 5.3.4.2, Input dependency AAA;

(p) Section 6.2, Routine test procedure; Section 6.2.2, Electrical; Section 6.2.2.4, No load, as specified in section 4.3.3(c) of this appendix;

(q) Section 6.2.2.7, AC input failure, as specified in Note to section 2.27.1 of this appendix;

(r) Section 6.4, Type test procedure (electrical); Section 6.4.1, Input—AC input power compatibility; Section 6.4.1.2, Steady state input voltage tolerance and VI input independency, as specified in Note to section 2.27.3;

(s) Section 6.4.1.3, Combined input voltage/frequency tolerance and VFI input independency, as specified in Note to section 2.27.2 of this appendix;

(t) Annex G—AC input power failure—Test method

(u) Annex J—UPS efficiency and no load losses—Methods of measurement, as specified in sections 4.2.1, and 4.3.3 of this appendix.

0.2 [Reserved]

* * * * *

2.26. *Total harmonic distortion (THD),* expressed as a percent, is as defined in section 3.5.49 of IEC 62040–3 Ed. 3.0.

2.27. *Uninterruptible power supply or UPS* means a battery charger consisting of a combination of convertors, switches and energy storage devices (such as batteries), constituting a power system for maintaining continuity of load power in case of AC input power failure.

2.27.1. *Voltage and frequency dependent UPS or VFD UPS* means a UPS that protects the load from a complete loss of AC input power. The output of a VFD UPS is dependent on changes in voltage and frequency of the AC input power and is not intended to provide additional voltage corrective functions, such as those arising from the use of tapped transformers.

Note to 2.27.1: VFD input dependency may be verified by performing the AC input failure test in section 6.2.2.7 of IEC 62040–3 Ed. 3.0 and observing that, at a minimum, the UPS switches from normal mode of operation to battery power while the input is interrupted.

2.27.2. *Voltage and frequency independent UPS or VFI UPS* means a UPS that is independent of AC input power voltage and frequency variations as specified and declared in section 5.2 of IEC 62040–3 Ed. 3.0 and shall protect the load against adverse effects from such variations without discharging the energy storage device.

Note to 2.27.2: VFI input dependency may be verified by performing the combined input voltage/frequency tolerance and VFI input independency test in section 6.4.1.3 of IEC 62040–3 Ed. 3.0 respectively and observing that, at a minimum, the UPS produces an output voltage and frequency within the specified output range when the input voltage is varied by ±10% of the rated input voltage and the input frequency is varied by ±2% of the rated input frequency.

2.27.3. Voltage independent UPS or VI UPS means a UPS that protects the load as required for VFD and also from (a) under-voltage applied continuously to the input, and (b) over-voltage applied continuously to the input. The output voltage of a VI UPS shall remain within declared voltage limits (provided by voltage corrective functions, such as those arising from the use of active and/or passive circuits). The output voltage tolerance band shall be narrower than the input voltage tolerance band.

Note to 2.27.3: VI input dependency may be verified by performing the steady state input voltage tolerance test in section 6.4.1.2 of IEC 62040–3 Ed. 3.0 and ensuring that the UPS remains in normal mode with the output voltage within the specified output range when the input voltage is varied by ±10% of the rated input voltage.

* * * * *

4.2.1. General Setup

Configure the UPS according to Annex J.2 of IEC 62040–3 Ed. 3.0 with the following additional requirements:

* * * * *

4.3.3. Power Measurements and Efficiency Calculations

Measure input and output power of the UUT according to section J.3 of Annex J of IEC 62040–3 Ed. 3.0, or measure the input and output energy of the UUT for efficiency calculations with the following exceptions:

* * * * *

(c) For voluntary representations of no-load losses, measure the active power at the UPS input port with no load applied in accordance with section 6.2.2.4 of IEC 62040–3 Ed. 3.0.

* * * * *

■ 4. Appendix Y1 to subpart B of part 430 is amended by:

■ a. Revising the introductory note;

■ b. Adding section 0;

■ c. Revising sections 2.27, 2.28, 2.28.1, 2.28.2, and 2.28.3;

■ d. Revising the introductory text of section 4.2.1;

■ e. Revising the introductory text of section 4.3.3; and

■ f. Adding section 4.3.3(c).

The revisions and additions read as follows:

Appendix Y1 to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Battery Chargers

Note 1: For all battery chargers, including UPSs, compliance with the relevant standard in § 430.32(z) or any representation must be based upon results generated under the corresponding appendix listed in the table below:

	Battery chargers other than UPSs	UPS
Before March 7, 2023	Use appendix Y as codified on either January 1, 2022, or October 11, 2022.	Use appendix Y as codified on either January 1, 2022, or October 11, 2022.
After March 7, 2023 and Before [date 30 days after UPS TP FR Publication].	Use appendix Y as codified on October 11, 2022.	Use appendix Y as codified on October 11, 2022.
After [date 30 days after UPS TP FR Publication] and Before [date 180 days after UPS TP FR publication].	Use appendix Y as codified on either October 11, 2022, or [date 30 days after UPS TP FR publication].	Use appendix Y as codified on either October 11, 2022, or [date 30 days after UPS TP FR publication].
After [date 180 days after UPS TP FR publication] and Before compliance date of any new or amended standards published any time after September 8, 2022.	Use appendix Y as codified on [date 30 days after UPS TP FR publication].	Use appendix Y as codified on [date 30 days after UPS TP FR publication].
After compliance date of any new or amended standards published any time after September 8, 2022.	Use appendix Y1	Use appendix Y1.

Manufacturers may begin to use appendix Y1 to certify compliance with any new or amended energy conservation standards, published after September 8, 2022, prior to the applicable compliance date for those standards.

0. Incorporation by Reference

DOE incorporated by reference in § 430.3 the entire test standard for IEC 62040–3 Ed. 3.0. However, only enumerated provisions of this standard are applicable to this appendix, as follows. In cases in which there is a conflict, the language of the test procedure in this appendix takes precedence over the referenced test standard.

0.1 IEC 62040–3 Ed. 3.0:

(a) Section 3.5 Specified values;

(b) Section 3.5.49 total harmonic distortion;

(c) 5, Electrical conditions, performance and declared values;

(d) Section 5, Electrical conditions, performance and declared values;

(e) Section 5.2, UPS input specification, as specified in section 2.28.2 of this appendix;

(f) Section 5.2.1—Conditions for normal mode of operation; Clause 5.2.1.a;

(g) Clause 5.2.1.b;

(h) Section 5.2.2—Conditions to be declared by the manufacturer; Clause 5.2.2.k;

(i) Clause 5.2.2.l;

(j) Clause 5.2.2.m;

(k) Section 5.3, UPS output specification; Section 5.3.2, Characteristics to be declared by the manufacturer; Clause 5.3.2.b;

(l) Clause 5.3.2.c;

(m) Clause 5.3.2.d;

(n) Clause 5.3.2.e;

(o) Section 5.3.4.2, Input dependency AAA;

(p) Section 6.2, Routine test procedure; Section 6.2.2, Electrical; Section 6.2.2.4, No load, as specified in section 4.3.3(c) of this appendix;

(q) Section 6.2.2.7, AC input failure, as specified in Note to section 2.28.1 of this appendix;

(r) Section 6.4, Type test procedure (electrical); Section 6.4.1, Input—AC input power compatibility; Section 6.4.1.2, Steady state input voltage tolerance and VI input independency, as specified in Note to section 2.28.3 of this appendix;

(s) Section 6.4.1.3, Combined input voltage/frequency tolerance and VFI input independency, as specified in Note to section 2.28.2 of this appendix;

(t) Annex G—AC input power failure—Test method

(u) Annex J—UPS efficiency and no load losses—Methods of measurement, as specified in sections 4.2.1 and 4.3.2 of this appendix.

0.2 [Reserved]

* * * * *

2.27. *Total harmonic distortion (THD),* expressed as a percent, is as defined in section 3.5.49 of IEC 62040–3 Ed. 3.0.

2.28. *Uninterruptible power supply or UPS* means a battery charger consisting of a combination of convertors, switches and energy storage devices (such as batteries), constituting a power system for maintaining continuity of load power in case of AC input power failure.

2.28.1. *Voltage and frequency dependent UPS or VFD UPS* means a UPS that protects the load from a complete loss of AC input power. The output of a VFD UPS is dependent on changes in voltage and frequency of the AC input power and is not intended to provide additional voltage corrective functions, such as those arising from the use of tapped transformers.

Note to 2.28.1: VFD input dependency may be verified by performing the AC input failure test in section 6.2.2.7 of IEC 62040–3 Ed. 3.0 and observing that, at a minimum, the UPS switches from normal mode of operation to battery power while the input is interrupted.

2.28.2. *Voltage and frequency independent UPS or VFI UPS* means a UPS that is independent of AC input power voltage and frequency variations as specified and declared in section 5.2 of IEC 62040–3 Ed. 3.0 and shall protect the load against adverse effects from such variations without discharging the energy storage device.

Note to 2.28.2: VFI input dependency may be verified by performing the combined input voltage/frequency tolerance and VFI input independency test in section 6.4.1.3 of IEC 62040–3 Ed. 3.0 respectively and observing that, at a minimum, the UPS produces an output voltage and frequency within the specified output range when the input voltage is varied by ±10% of the rated input voltage and the input frequency is varied by ±2% of the rated input frequency.

2.28.3. *Voltage independent UPS or VI UPS* means a UPS that protects the load as required for VFD and also from (a) under-voltage applied continuously to the input, and (b) over-voltage applied continuously to the input. The output voltage of a VI UPS shall remain within declared voltage limits (provided by voltage corrective functions, such as those arising from the use of active and/or passive circuits). The output voltage tolerance band shall be narrower than the input voltage tolerance band.

Note to 2.28.3: VI input dependency may be verified by performing the steady state input voltage tolerance test in section 6.4.1.2 of IEC 62040–3 Ed. 3.0 and ensuring that the UPS remains in normal mode with the output voltage within the specified output range when the input voltage is varied by ±10% of the rated input voltage.

* * * * *

4.2.1. General Setup

Configure the UPS according to Annex J.2 of IEC 62040–3 Ed. 3.0 with the following additional requirements:

* * * * *

4.3.3. Power Measurements and Efficiency Calculations

Measure input and output power of the UUT according to section J.3 of Annex J of IEC 62040–3 Ed. 3.0, or measure the input and output energy of the UUT for efficiency calculations with the following exceptions:

* * * * *

(c) For voluntary representations of no-load losses, measure the active power at the UPS input port with no load applied in accordance with section 6.2.2.4 of IEC 62040–3 Ed. 3.0.

[FR Doc. 2022–27881 Filed 1–4–23; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2017–0015; FRL–5948.1–01–OAR]

RIN 2060–AV59

National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Plants Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing amendments to the National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants (Lime Manufacturing NESHAP), as required by the Clean Air Act (CAA). To ensure that all emissions of HAP from sources in the source category are regulated, the EPA is proposing hazardous air pollutant (HAP) emissions standards for the following pollutants: hydrogen chloride (HCl), mercury, total hydrocarbon (THC) as a surrogate for organic HAP, and dioxin/furans (D/F).

DATES: Comments must be received on or before February 21, 2023. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before February 6, 2023.

Public hearing: If anyone contacts us requesting a public hearing on or before January 10, 2023, we will hold a virtual public hearing. See **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–2017–0015, 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–2017–0015 in the subject line of the message.
- *Fax:* (202) 566–9744. Attention Docket ID No. EPA–HQ–OAR–2017–0015.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA–HQ–OAR–2017–0015, 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: For questions about this proposed action, contact Brian Storey, Sector Policies and Programs Division (Mail Code D243–04), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–1103; fax number: (919) 541–4991; and email address: *storey.brian@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 hearing will be held via virtual platform on January 20, 2023. The hearing will convene at 10:00 a.m. Eastern Time (ET) and will conclude at 4:00 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/lime-manufacturing-plants-national-emission-standards-hazardous.*

If a public hearing is requested, the EPA will begin pre-registering speakers for the hearing upon publication of this document in the **Federal Register**. To register to speak at the virtual hearing, please use the online registration form available at *https://www.epa.gov/stationary-sources-air-pollution/lime-manufacturing-plants-national-emission-standards-hazardous* 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 January 17, 2023. 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/lime-manufacturing-plants-national-emission-standards-hazardous.*

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 submit a copy of their 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/lime-manufacturing-plants-national-emission-standards-hazardous.* While the EPA expects the hearing to go forward as set forth above, please monitor our website or contact the public hearing team at (888) 372–8699 or by email at *SPPDpublichearing@epa.gov* to determine if there are any updates. The EPA does not intend to publish a document in the **Federal Register** announcing updates.

If you require the services of a translator or special accommodation such as audio description, please pre-register for the hearing with the public hearing team and describe your needs by January 12, 2023. 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–2017–0015. All documents in the docket are listed in *https://www.regulations.gov/.* Although listed, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy. With the exception of such material, publicly available docket materials are available electronically in *Regulations.gov.*

Instructions. Direct your comments to Docket ID No. EPA–HQ–OAR–2017–0015. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov/,* including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit electronically to *https://www.regulations.gov/* any information that you consider to be CBI or other information whose disclosure is restricted by statute. This type of information should be submitted as discussed below.

The EPA may publish any comment received to its public docket. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is

considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

The *https://www.regulations.gov/* website allows you to submit your comment anonymously, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *https://www.regulations.gov/,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any digital storage media you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *https://www.epa.gov/dockets.*

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 *Instructions* above. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI 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 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–2017–0015. 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 notice 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:

ACI activated carbon injection
APCD air pollution control device
BDL below detection level
CAA Clean Air Act
CBI Confidential Business Information
CFR Code of Federal Regulations
DB dead burned dolomitic lime
D/F dioxin/furans
DL dolomitic lime
DSI dry sorbent injection
EJ environmental justice
EPA Environmental Protection Agency
ESP electrostatic precipitator
FB fluidized bed
FF fabric filter
FR Federal Register
g/dscm grams of pollutant per dry standard cubic meter of air
HAP hazardous air pollutant(s)
HCl hydrogen chloride
IQV intra-quarry variability
lb/MMton pounds of pollutant per million tons of lime produced at the kiln
lb/tsf pounds of pollutant per ton of stone feed
MACT maximum achievable control technology
NESHAP national emission standards for hazardous air pollutants
NTTAA National Technology Transfer and Advancement Act
OAQPS Office of Air Quality Planning and Standards
OMB Office of Management and Budget
PM particulate matter
ppmvd parts per million by volume, dry
PR preheater rotary kiln
PRA Paperwork Reduction Act
PSH process stone handling
QL quick lime
RDL representative detection level
RFA Regulatory Flexibility Act
RTR residual risk and technology review
RTO regenerative thermal oxidizer
SR straight rotary kiln
SSM startup, shutdown, and malfunction
THC total hydrocarbons
tpy tons of pollutant per year
UMRA Unfunded Mandates Reform Act
UPL upper predictive limit
VK vertical kilns
VCS voluntary consensus standards

Organization of this document. The information in this preamble is organized as follows:

I. General Information
A. Does this action apply to me?
B. Where can I get a copy of this document and other related information?
II. Background
A. What is the statutory authority for this action?
B. What is this source category and how does the current NESHAP regulate its HAP emissions?
C. What data collection activities were conducted to support this action?
III. Analytical Procedures and Decision Making
A. How did we address unregulated emissions sources?
IV. Analytical Results and Proposed Decisions
A. What are the results of our analyses of unregulated pollutants and how did we set MACT standards?
B. What performance testing, monitoring, and recordkeeping and reporting are we proposing?
C. What other actions are we proposing?
D. What compliance dates are we proposing, and what is the rationale for the proposed compliance dates?
V. Summary of Cost, Environmental, and Economic Impacts
A. What are the affected sources?
B. What are the air quality impacts?
C. What are the cost impacts?
D. What are the economic impacts?
E. What analysis of environmental justice did we conduct?
VI. Request for Comments
VII. Submitting Data Corrections
VIII. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Paperwork Reduction Act (PRA)
C. Regulatory Flexibility Act (RFA)
D. Unfunded Mandates Reform Act (UMRA)

E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

I. General Information

A. Does this action apply to me?

Table 1 of this preamble lists the NESHAP and associated regulated industrial source category that is the subject of this proposal. Table 1 is not intended to be exhaustive, but rather provides a guide for readers regarding the entities that this proposed action is likely to affect. The proposed standards, once promulgated, will be directly applicable to the affected sources. Federal, state, local, and tribal government entities would not be affected by this proposed action. As defined in the Initial List of Categories of Sources Under Section112(c)(1) of the Clean Air Act Amendments of 1990 (57 FR 31576, July 16, 1992) and Documentation for Developing the Initial Source Category List, Final Report (EPA–450/3–91–030, July 1992), the Lime Manufacturing source category is ''any facility engaged in producing high calcium lime, dolomitic lime, and dead-burned dolomite.'' However, lime manufacturing plants located at pulp and paper mills or at beet sugar factories are not included in the source category (69 FR 394, 397, January 5, 2004).

TABLE 1—NESHAP AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS PROPOSED ACTION

Source Category	NESHAP	NAICS code [1]
Lime Manufacturing	Lime Manufacturing Plants	32741, 33111, 3314, 327125.

[1] North American Industry Classification System.

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/lime-manufacturing-plants-national-emission-standards-hazardous.* 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 redline version of the regulatory language that incorporates the proposed changes in this action is available in the docket for this action (Docket ID No. EPA–HQ–OAR–2017–0015).

II. Background

A. What is the statutory authority for this action?

On July 24, 2020, the EPA took final action on the risk and technology review required by Clean Air Act (CAA) sections 112(d)(6) and (f)(2) for the NESHAP for Lime Manufacturing Plants (2020 RTR).[1] The EPA is proposing in this action to amend the NESHAP to ensure that all emissions of HAP from sources in the source category are regulated.

In setting standards for major source categories under CAA 112(d), EPA has the obligation to address all HAP listed under CAA 112(b).[2] In the *Louisiana Environmental Action Network* v. *EPA (LEAN)* decision issued on April 21, 2020, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) held that the EPA has an obligation to address unregulated emissions from a major source category when the Agency conducts the 8-year technology review. This proposed rule addresses currently unregulated emissions of HAP from the lime manufacturing source category.

Emissions data collected for the 2020 RTR from the exhaust stack of existing lime kilns in the source category indicated the following unregulated pollutants were present: HCl, mercury, organic HAP (which we are proposing to regulate using THC as a surrogate), and D/F. Therefore, the EPA is proposing amendments establishing standards that reflect maximum achievable control technology (MACT) for these four pollutants emitted by the source category, pursuant to CAA sections 112(d)(2) and (3).

B. What is this source category and how does the current NESHAP regulate its HAP emissions?

The EPA promulgated the Lime Manufacturing NESHAP on January 5, 2004 (69 FR 394). The standards are codified at 40 CFR part 63, subpart AAAAA. The lime manufacturing industry consists of facilities that use a lime kiln to produce lime product from limestone by calcination. The source category covered by this MACT standard currently includes 35 facilities.

As promulgated in 2004, the current Lime Manufacturing NESHAP regulates HAP emissions from all new and existing lime manufacturing plants that are major sources, co-located with major sources, or are part of major sources. However, lime manufacturing plants located at pulp and paper mills or at beet sugar factories are not subject to the NESHAP.[3] Other lime manufacturing plants that are part of multiple operations, such as (but not limited to) those at steel mills and magnesia production facilities, are subject to the NESHAP. A lime manufacturing plant is defined as any plant which uses a lime kiln to produce lime product from limestone or other calcareous material by calcination. However, the NESHAP specifically excludes lime kilns that use only calcium carbonate waste sludge from water softening processes as the feedstock.

The Lime Manufacturing NESHAP defines the affected source as each lime kiln and its associated cooler and each individual processed stone handling (PSH) operations system. The PSH operations system includes all equipment associated with PSH operations beginning at the process stone storage bin(s) or open storage pile(s) and ending where the process stone is fed into the kiln. It includes man-made process stone storage bins (but not open process stone storage piles), conveying system transfer points, bulk loading or unloading systems,

[1] 85 FR 44960 July 24, 2020.

[2] *Desert Citizens against Pollution v EPA,* 699 F3d 524, 527 (D.C. Cir. 2012) (''[W]e have read subparagraphs (1) and (3) of § 112(d) to require the regulation of all HAPs listed in § 112(b)(1). See, *e.g., Nat'l Lime Ass'n* v. *EPA,* 233 F.3d 625, 633–34 (D.C. Cir. 2000), *Sierra Club* v. *EPA,* 479 F.3d 875, 883 (C. Cir. 2007).'')]

[3] 69 FR 394, January 5, 2004.

screening operations, surge bins, bucket elevators, and belt conveyors.

The current Lime Manufacturing NESHAP established particulate matter (PM) emission limits for lime kilns, coolers, and PSH operations with stacks. The NESHAP also established opacity limits for kilns equipped with electrostatic precipitators (ESP) and fabric filters (FF) and scrubber liquid flow limits for kilns equipped with wet scrubbers. Particulate matter serves as a surrogate for the non-mercury metal HAP. The NESHAP also regulates opacity or visible emissions from most of the PSH operations, with opacity also serving as a surrogate for HAP metals.

The PM emission limit for existing kilns and coolers is 0.12 pounds PM per ton of stone feed (lb/tsf) for kilns using dry air pollution control systems prior to January 5, 2004. Existing kilns that have installed and are operating wet scrubbers prior to January 5, 2004, must meet an emission limit of 0.60 lb/tsf. Kilns which meet the criteria for the 0.60 lb/tsf emission limit must continue to use a wet scrubber for PM emission control in order to be eligible to meet the 0.60 lb/tsf limit. If at any time such a kiln switches to a dry control, they would become subject to the 0.12 lb/tsf emission limit, regardless of the type of control device used in the future. The PM emission limit for all new kilns and lime coolers is 0.10 lb/tsf. As a compliance option, these emission limits (except for the 0.60 lb/tsf limit) may be applied to the combined emissions of all the kilns and coolers at the lime manufacturing plant. If the lime manufacturing plant has both new and existing kilns and coolers, then the emission limit would be an average of the existing and new kiln PM emissions limits, weighted by the annual actual production rates of the individual kilns, except that no new kiln may exceed the PM emission level of 0.10 lb/tsf. Kilns that are required to meet a 0.60 lb/tsf emission limit must meet that limit individually and may not be included in any averaging calculations.

Emissions from PSH operations that are vented through a stack are subject to a limit of 0.05 grams PM per dry standard cubic meter (g/dscm) and 7 percent opacity. Stack emissions from PSH operations that are controlled by wet scrubbers are subject to the 0.05 g PM/dscm limit but not subject to the opacity limit. Fugitive emissions from PSH operations are subject to a 10 percent opacity limit.

For each building enclosing any PSH operation, each of the affected PSH operations in the building must comply individually with the applicable PM and opacity emission limitations. Otherwise, there must be no visible emissions from the building, except from a vent, and the building's vent emissions must not exceed 0.05 g/dscm and 7 percent opacity. For each fabric filter that controls emissions from only an individual, enclosed processed stone storage bin, the opacity must not exceed 7 percent. For each set of multiple processed stone storage bins with combined stack emissions, emissions must not exceed 0.05 g/dscm and 7 percent opacity. The current Lime Manufacturing NESHAP does not allow averaging of PSH operations.

The 2020 amendments finalized the residual risk and technology review (RTR) conducted for the Lime Manufacturing NESHAP. The RTR found that the risk associated with air emissions from lime manufacturing was acceptable and that the current NESHAP provides an ample margin of safety to protect public health. The EPA determined that there were no developments in practices, processes, or control technologies that would warrant revisions to the standards. In addition, the 2020 amendments addressed periods of startup, shutdown, and malfunction (SSM) by removing any exemptions during SSM operations. Lastly, the 2020 amendments included provisions requiring electronic reporting.

C. What data collection activities were conducted to support this action?

During the development of 40 CFR part 63, subpart AAAAA, the EPA collected information on the emissions, operations, and location of lime manufacturing plants. Since this information was collected prior to the 2004 promulgation of 40 CFR part 63, subpart AAAAA, the EPA prepared a questionnaire in 2017 to collect updated information on the location and number of lime kilns, types and quantities of emissions, annual operating hours, types and quantities of fuels burned, and information on air pollution control devices and emission points. Nine companies completed the 2017 questionnaire for which they reported data for 32 of 35 major source facilities.

In this action, the EPA used the emissions data collected from the 2017 questionnaire to develop MACT standards for four unregulated pollutants (HCl, mercury, THC, D/F). In addition, supplemental information was provided by industry stakeholders on the mercury content of the raw material feed to the lime kiln, the types of lime kiln designs and their operations, and the types of lime produced. The data collected and used in this action are provided in the docket. In addition, the data collection and analysis of this action are described in detail in the document, ''Proposed Maximum Achievable Control Technology (MACT) Floor Analysis for the Lime Manufacturing Plant Industry,'' located in the docket (Docket ID No. EPA–HQ–OAR–2017–0015).

III. Analytical Procedures and Decision Making

A. How did we address unregulated emissions sources?

While evaluating the lime manufacturing source category and emissions data collected in support of the 2020 RTR, we identified several HAP which are not currently regulated by the Lime Manufacturing NESHAP. These HAP include HCl, mercury, and D/F. Additionally, multiple HAP that are classified as ''organic HAP'' were identified. The EPA has a ''clear statutory obligation to set emissions standards for each listed HAP''.[4] For these HAP, we are proposing emissions limits pursuant to CAA section 112(d)(2) and 112(d)(3). The results and proposed decisions based on the analyses performed pursuant to CAA section 112(d)(2) and 112(d)(3) are presented in section IV of this preamble.

1. Hydrochloric Acid

In response to the 2017 questionnaire, we received HCl emissions data that EPA did not have when we developed the 2004 NESHAP. Therefore, we are proposing a standard pursuant to CAA section 112(d)(2) and (d)(3), as described further in section IV.A.1 of this preamble.

2. Mercury

The 2004 NESHAP specified emissions limits for particulate metal HAP (*e.g.,* manganese, arsenic, nickel, chromium) in terms of a particulate matter emissions limit (*i.e.,* particulate matter is used as a surrogate for metal HAP that are emitted in particulate form). There is no explicit standard for mercury. The responses to the 2017 questionnaire indicated that mercury is emitted by the lime manufacturing process. Therefore, we are proposing a standard specifically for mercury pursuant to CAA section 112(d)(2) and (d)(3), as described further in section IV.A.2 of this preamble.

3. Total Hydrocarbons

In response to the 2017 questionnaire, we received THC emissions data that EPA did not have when we developed the 2004 NESHAP. The THC data

[4] *National Lime* v. *EPA,* 233 F. 3d 625, 634 (D.C. Cir. 2000).

indicated the presence of pollutants defined as organic HAP. Therefore, we are proposing a standard for THC as a surrogate for organic HAP pursuant to CAA section 112(d)(2) and (d)(3), as described further in section IV.A.3 of this preamble. We are accepting comment on a potential total organic HAP limit as an alternative. Comments should include emissions data to support a total organic HAP limit.

4. Dioxin/Furans

Lastly, the 2017 questionnaire identified the potential for sources in the lime manufacturing source category to emit congeners of D/F; therefore, we are proposing a standard for D/F pursuant to CAA section 112(d)(2) and (d)(3), as described in detail in section IV.A.4 of this preamble.

IV. Analytical Results and Proposed Decisions

The ''MACT floor'' for existing sources is calculated based on the average performance of the best-performing units in each category or subcategory and on a consideration of the variability of HAP emissions from these units. The MACT floor for new sources is based on the single best-performing source, with a similar consideration of variability. The MACT floor for new sources cannot be less stringent than the emissions performance that is achieved in practice by the best-controlled similar source. To account for variability in the lime manufacturing operations and resulting emissions, we calculated the MACT floors using the 99 percent Upper Predictive Limit (UPL) using available stack test data.[5]

The UPL approach addresses variability of emissions data from the best-performing source or sources in setting MACT standards. The UPL also accounts for uncertainty associated with emission values in a dataset, which can be influenced by components such as the number of samples available for developing MACT standards and the number of samples that will be collected to assess compliance with the emission limit. The UPL approach has been used in many environmental science applications. As explained in more detail in the UPL Memo cited above, the EPA uses the UPL approach to reasonably estimate the emissions performance of the best-performing source or sources to establish MACT floor standards.

In addition, the EPA must examine more stringent ''beyond-the-floor'' regulatory options to determine MACT. Unlike the floor minimum stringency requirements, the EPA must consider various impacts of the more stringent regulatory options in determining whether MACT standards are to reflect beyond-the-floor requirements. If the EPA concludes that the more stringent regulatory options have unreasonable impacts, the EPA selects the MACT floor as MACT. However, if the EPA concludes that impacts associated with beyond-the-floor levels of control are reasonable in light of additional emissions reductions achieved, the EPA selects those levels as MACT.

Data submitted to the EPA for the 2017 questionnaire included air emissions test results from 32 of the 35 lime manufacturing facilities in the source category. From the questionnaire responses, we also noted the types of kilns in use and types of lime being produced at the time of testing. The types of kilns used by the lime manufacturing industry include straight rotary kilns (SR), preheater rotary kilns (PR), vertical kilns (VK), and fluidized bed kilns (FB). The types of lime produced include refractory dead burned dolomitic lime (DB), dolomitic quick lime (DL), and high-calcium quick lime (QL).

A. What are the results of our analyses of unregulated pollutants and how did we set MACT standards?

1. Hydrochloric Acid Emissions

The 2017 data included the results of stack testing 30 kiln exhaust stacks for the presence of HCl, using EPA Methods 320 and 321. Data collected using the test method ASTM D6735–01 ''Standard Test Method for Measurement of Gaseous Chlorides and Fluorides from Mineral Calcining Exhaust Sources—Impinger Method'' were found to be invalid, based on the fact that the test method is no longer an active ASTM method. The ASTM method was never revised to reflect the change in probe and filter temperature as were included in EPA Method 26A. Because of this, the ASTM method is run hot enough to evaporate amonium chloride from the sample and bias the HCl results high. Additionally, we evaluated the types of kilns and lime produced for which we had data. From our discussions with industry representatives, and our review of the HCl emissions data, we found that the configuration of the different types of kilns (*i.e.,* SR, PR, VK, FB) warranted subcategorization by kiln configuration. In addition, the differences in residence time of the raw materials within the heating zone of the kiln during the production of the different types of lime also warranted subcategorization by the three types of lime produced (*i.e.,* DB, DL, QL).

To account for variability in the lime manufacturing operations and resulting emissions, the stack test data were used to calculate the HCl MACT floor limits based on the 99 percent UPL. In some instances, subcategorization resulted in limited datasets, and a single dataset was used to calculate both existing and new source HCl MACT floor limits. In these instances, the existing HCl MACT floor limit equals the new source HCl MACT floor limit. The HCl MACT floor limits were calculated based on concentration, in units of parts per million by volume, dry, corrected to 7 percent oxygen (ppmvd @7 percent O_2). Using known and assumed production rates recorded at the time of testing, we then converted the concentration-based limits to units of pounds of pollutant per tons of lime produced at the kiln (lb/ton lime produced). A summary of the proposed subcategories, and the associated proposed HCl MACT floor limits in units of lb/ton of lime produced for new and existing lime manufacturing sources is included as Table 2.

TABLE 2—PROPOSED HYDROGEN CHLORIDE MACT FLOOR LIMITS FOR NEW AND EXISTING LIME MANUFACTURING SOURCES

Kiln type[1]	Lime produced[2]	New source MACT floor limit (lb/ton of lime produced)	Existing source MACT floor limit (lb/ton of lime produced)
SR	DL, DB	1.6	2.2

[5] For more information regarding the general use of the UPL and why it is appropriate for calculating MACT floors, see *Use of Upper Prediction Limit for Calculating MACT Floors* (UPL Memo), which is available in the docket for this action.

TABLE 2—PROPOSED HYDROGEN CHLORIDE MACT FLOOR LIMITS FOR NEW AND EXISTING LIME MANUFACTURING SOURCES—Continued

Kiln type [1]	Lime produced [2]	New source MACT floor limit (lb/ton of lime produced)	Existing source MACT floor limit (lb/ton of lime produced)
SR	QL	0.021	0.58
PR	DL, DB	0.39	0.39
PR	QL	0.015	0.015
VK	QL, DL, DB	0.021	0.021

Note:
[1] Straight rotary (SR), preheater rotary (PR), vertical (VK).
[2] Dolomitic lime (DL), high-calcium quick lime (QL), dead burned dolomitic lime (DB).

We did not have emissions data from fluidized bed kilns, and after discussions with industry representatives, we understand that there are no fluidized bed kilns located at any major source facilities subject to the Lime Manufacturing NESHAP. There are fluidized bed kilns in use at area sources, but area sources are not subject to the Lime Manufacturing NESHAP. In addition, the 2017 questionnaire provided emissions data for vertical kilns producing high-calcium quick lime only. We have set the new and existing HCl MACT floor limits for vertical kilns producing dolomitic lime and dead burned dolomitic lime equal to the MACT floor for high-calcium quick lime. Lastly, we have set the MACT floor for preheater rotary kilns producing dead burned dolomitic lime, equal to those preheater rotary kilns producing dolomitic quick lime.

The EPA then compared the emission rates estimated in the 2020 RTR to the HCl MACT floor limits to determine the number of kilns in the source category that would require additional air pollution control devices (APCD) to meet the HCl MACT floor limit. We found that out of 96 existing kilns, 55 kilns would require additional controls to comply with the proposed HCl MACT floor limit. From this information, we evaluated the effectiveness of potential APCD for removal of HCl from kiln exhaust gas streams and found that dry sorbent injection has an estimated 98 percent removal efficiency for HCl.

Dry sorbent injection (DSI) removes HCl and other acid gases using a powdered alkali sorbent injected into the exhaust gas ductwork where it then reacts with the HCl in the exhaust stream. The sorbent solids are then collected in either an ESP or baghouse. The most commonly used sodium-based sorbent is Trona, typically used in situations where the goal is to remove sulfur dioxide and/or acid gases from an exhaust gas. Hydrated lime can be used in processes, such as lime manufacturing, where the goal is to reduce acid gas emissions only.

Applying the removal efficiency of DSI controls using hydrated lime to each of the 55 kilns identified would reduce HCl emissions from these sources to below the HCl MACT floor limit. This would result in a combined reduction of 1,163 tons of HCl per year from these sources. The total capital investment to retrofit 55 existing kilns with DSI controls are estimated to be $5,400,000 and the total annual costs are estimated to be $5,200,000 per year. The cost per ton of HCl removed is estimated to be $4,500 per ton of HCl removed.

We also conducted a beyond-the-floor analysis, where we evaluated whether existing kilns would be able to comply with the new source HCl MACT floor limits. We found that of the 96 existing kilns in the source category, 74 kilns would require a DSI as control in order to meet the new source HCl MACT floor limit. The estimated reduction in HCl emissions from a beyond-the-floor HCl limit is 1,754 tons of HCl per year. The estimated incremental reduction, where we compare the existing source beyond-the-floor limit to the existing source MACT floor limit, is 591 tons of HCl per year. We estimate the total capital investment to be $9,400,000 and total annual costs to be $7,500,000 per year for beyond-the-floor limits. This results in a cost effectiveness of approximately $4,300 per ton of HCl removal. We do not consider the control costs to be reasonable and therefore are not proposing a beyond-the-floor standard for HCl.

As part of our beyond-the-floor analysis, we typically identify control techniques that have the ability to achieve an emissions limit more stringent than the MACT floor. No techniques were identified that would achieve HAP reductions greater than the new source floors for the HCl subcategories. Therefore, the EPA is not proposing a beyond-the-floor HCl limit for new sources in this proposed rule.

A detailed description of the analysis of HCl emissions, the controls necessary to reduce HCl emissions, and the cost of these controls are included in the document, ''Proposed Maximum Achievable Control Technology (MACT) Floor Analysis for the Lime Manufacturing Plants Industry'', located in the docket (Docket ID No. EPA–HQ–OAR–2017–0015).

2. Mercury Emissions

The 2017 data included the results of stack testing 21 kiln exhaust stacks for the presence of mercury, using EPA Methods 29 and 30B. As with HCl, we evaluated the types of kilns and lime produced for which we had data. From our discussions with industry representatives and our review of the mercury emissions data, we found that the differences in residence time of the raw materials within the heating zone of the kiln during the production of the different types of lime produced warranted subcategorization by the three types of lime produced (*i.e.,* DB, DL, QL).

To account for variability in the lime manufacturing operations and resulting emissions, the stack test data were used to calculate the mercury MACT floor limits based on the 99 percent UPL. The mercury MACT floor limits were calculated in units of pounds of pollutant per million tons of lime produced (lb/MMton lime produced).

The EPA compared the mercury emission rates estimated in the 2020 RTR to the calculated MACT floor limits to determine the number of kilns in the source category that would require additional APCD to meet the mercury MACT floor limit. We found that out of 96 existing kilns, 75 kilns would require additional controls to comply with the calculated mercury MACT floor limits. We evaluated the effectiveness of potential APCD for removal of mercury from kiln exhaust gas streams and found

that activated carbon injection (ACI) has an estimated 90 percent removal efficiency for mercury.

Similar to the discussion on the mechanism of DSI controls, ACI removes gaseous mercury from an exhaust gas stream by injecting activated carbon into the exhaust gas ductwork where it then adsorbs the gaseous mercury. The mercury-laden carbon is then collected in either an ESP or baghouse as particulate.

Applying the removal efficiency of ACI controls to each of the 75 kilns identified would reduce mercury emissions from these sources to below the mercury MACT floor limits. This would result in a combined reduction of approximately 488.5 pounds, or 0.24 tons of mercury per year from these sources. The total capital investment to retrofit 75 existing kilns with ACI controls are estimated to be $7,300,000 and the total annual costs are estimated to be $18,900,000 per year. To comply with the mercury MACT floor limits, the cost per ton of mercury removed is estimated to be $39,000 per pound of mercury removed. The use of ACI controls also provides removal of THC and D/F, as discussed in sections IV.A.3 and IV.A.4 of this preamble.

For existing sources in each of the mercury subcategories we found it is cost-effective to set emissions limits that go beyond the calculated MACT floor limits. In the case of the quick lime and dolomitic lime subcategories, the new and existing MACT floor limits were similar in value (24.94 lb/MMton for new sources, and 25.58 lb/MMton for existing sources), such that with the suggested controls the existing sources would be able to comply with the new source standard with no additional costs. We therefore set the existing emission limit equal to the new source emission limit. For the dead burned dolomitic lime subcategory, we evaluated the use of APCD to control mercury from these sources and estimate that the cost effectiveness ($/lb) associated with the installation of ACI controls is $16,969 per pound of mercury removed. This cost-effectiveness value is well within the range that we have determined to be cost-effective for mercury in other rules, and therefore for the dead burned dolomitic lime subcategory we are proposing beyond-the-floor limits for new and existing sources based on the use of these controls. A more detailed discussion of the APCD selected to remove mercury, and the beyond-the-floor analysis is provided below.

A summary of the proposed subcategories, and the associated proposed mercury MACT floor limits in units of lb/MMton of lime produced for new and existing lime manufacturing sources is included as Table 3.

TABLE 3—PROPOSED MERCURY LIMITS FOR NEW AND EXISTING LIME MANUFACTURING SOURCES

Lime produced [1]	New source limit (lb/MMton lime produced)	Existing source limit (lb/MMton lime produced)
QL, DL	24.9 (MACT Floor)	24.9 (BTF).[2]
DB	24.4 (BTF)	33.1 (BTF).

Note:
[1] Dolomitic lime (DL), high-calcium quick lime (QL), dead burned dolomitic lime (DB).
[2] Beyond the floor (BTF) MACT limits.

In addition to the pooled variability factor in the UPL calculation, the EPA evaluated the possibility of considering the variability in mercury content of the raw material feed over the life of a quarry, consistent with the approach followed in other NESHAPs including the Portland Cement Manufacturing NESHAP (74 FR 21142), and the Brick and Structural Clay Products NESHAP (79 FR 75634). The pooled variability factor in the UPL accounts for short term variability in air emissions, and an ''intra-quarry variability'' (IQV) factor would account for variability in the mercury content of the raw material over the long-term life of the quarry.

Industry stakeholders provided the EPA with data from two separate lime manufacturing facilities, both of which were included in the mercury MACT floor calculations. At the first facility, the mercury content of the kiln feed was sampled, and the results tabulated. At the second facility the quarry was sampled, as well as the kiln feed, and the results tabulated. The EPA believes that from the kiln feed data provided, and the quarry sample data provided, the kiln feed data is more representative of the variability. This is based primarily on the fact that the mined quarry stone is first stored in open storage piles, where it can then mix with stone collected from the quarry over time. Therefore, the kiln feed represents a more homogenized sample of the storage pile and is more representative of the raw material fed to the lime kiln. The EPA considered the mercury content data of the kiln feed material of the two facilities and determined that we did not have enough data to establish an IQV factor. Additionally, from the data that was provided, the calculated IQV had little effect on the mercury MACT floor limits. A detailed description of this analysis is provided in the docket.

In the beyond-the-floor analysis for the quick lime and dolomitic lime subcategory, we evaluated whether existing kilns would be able to comply with the new source mercury MACT floor limit. Because facilities will require ACI controls to reduce mercury emissions in order to comply with the proposed limits, existing sources would be able to also meet the new source limit without any additional costs. Therefore, we are proposing to set the existing source limit equal to the new source limit for the quick lime and dolomitic lime subcategory. For the dead burned dolomitic lime subcategory, we performed a beyond-the-floor analysis where we analyzed the effects of ACI controls versus the costs associated with installation and maintenance of ACI controls. We determined that the cost for new and existing sources in the dead burned dolomitic lime subcategory to install and operate ACI controls to reduce their mercury emissions beyond the calculated MACT floor were reasonable. As part of this analysis, we considered the use of ACI to control THC emissions (discussed in section IV.A.3 of this preamble). Because facilities will incur costs associated with controlling THC emissions, we did not double-count those costs when assessing the dead burned dolomitic lime subcategory, where ACI controls are used to reduce their mercury emissions beyond the calculated MACT floor. The total annual costs for the dead burned dolomitic lime subcategory to go beyond the MACT floor by installing ACI controls is, therefore, zero, due to these sources already installing ACI controls to comply with the THC MACT floor limits.

No control techniques were identified that would achieve mercury reductions

greater than the new source mercury MACT floors for the dolomitic lime and quick lime subcategories. Therefore, the EPA is not proposing a beyond-the-floor mercury limit for new source dolomitic lime and quick lime subcategories in this proposed rule.

A detailed description of the analysis of mercury emissions, the controls necessary to reduce mercury emissions, and the cost of these controls are included in the document, ''Proposed Maximum Achievable Control Technology (MACT) Floor Analysis for the Lime Manufacturing Plant Industry'', located in the docket (Docket ID No. EPA–HQ–OAR–2017–0015).

3. Total Hydrocarbon Emissions

The 2017 data included the results of testing 34 kiln exhaust stacks for the presence of THC, using EPA Method 25A. In addition, industry stakeholders provided emissions testing data that identified nine non-dioxin organic HAP. These included the pollutants formaldehyde, benzene, toluene, styrene, o-, m-, and p-xylenes, acetaldehyde, and naphthalene. The EPA evaluated the organic HAP data and compared the list of nine pollutants with the THC test data which identified the nine, but also identified additional organic HAP pollutants in the analyses including the pollutants acrolein, carbon disulfide, ethyl benzene, and vinyl chloride. Based on the EPA's assessment of the available test data, the EPA concludes that compliance with a THC emissions standard would, therefore, limit and control emissions of total organic HAP being emitted from the lime manufacturing process. Therefore, the EPA is proposing to establish standards for THC as a surrogate for organic HAP. We also evaluated the types of kilns and lime produced for which we had data and determined that subcategorization by kiln type or lime produced was not warranted.

To account for variability in the lime manufacturing operations and resulting emissions, the stack test data were used to calculate the THC MACT floor limits based on the 99 percent UPL. The THC MACT floor limits were calculated based on concentration as propane, in units of ppmvd, corrected to 7 percent O_2. The new and existing source THC MACT floor limits are summarized in Table 4.

TABLE 4—PROPOSED THC MACT FLOOR LIMITS FOR NEW AND EXISTING LIME MANUFACTURING SOURCES

Lime produced [1]	New source MACT floor limit (ppmvd @7% O_2)	Existing source MACT floor limit (ppmvd @7% O_2)
QL, DL, DB	[2] 1.86	3.21

Note:
[1] Dolomitic lime (DL), high-calcium quick lime (QL), dead burned dolomitic lime (DB).
[2] The MACT floor limit was set based on the 3×RDL value of the test method.

The EPA compared the emission rates estimated in the 2020 RTR to the proposed THC MACT floor limits to determine the number of kilns in the source category that would require additional APCD to meet the THC MACT floor limit. We found that out of 96 existing kilns, 78 kilns would require additional controls to comply with the proposed THC MACT floor limit. From this information, we evaluated the potential effectiveness of APCD for removal of THC from kiln exhaust gas streams and found that an ACI has an estimated 60 percent THC removal efficiency. Of the 78 sources in the category, we determined that 74 sources could comply with the THC MACT floor limit using ACI, but four sources would be required to operate additional or alternative APCD to comply with the THC MACT floor limit. We therefore evaluated the use of a regenerative thermal oxidizer (RTO), which has a 99 percent THC removal efficiency. Based on our evaluation, the four sources would be required to install an RTO instead of ACI controls in order to comply with the proposed THC MACT floor limit.

As previously discussed, and similar to the control of mercury, ACI systems control THC emissions by injecting activated carbon into the exhaust gas stream. The activated carbon reacts with the organic HAP to form a reactant which can then be removed by an ESP or baghouse as particulate.

An RTO uses a high-density media to preheat the exhaust gas stream and to start the oxidation process. The gas then enters a combustion chamber, where high temperatures complete the oxidation process. Heat from the combustion chamber is then routed back to the high-density media chamber and provides the heat to preheat the incoming gas stream.

Applying the removal efficiency of ACI controls, and in four cases the removal efficiency of an RTO, to each of the 78 kilns previously identified, would reduce THC emissions from these sources to below the proposed THC MACT floor limit. This would result in a combined reduction of approximately 570 tons of THC per year from these sources. When calculating the capital investment and annual costs associated with controlling THC emissions, we also considered those facilities that would have to install ACI to control mercury emissions, as previously discussed in this preamble. The total capital investment to retrofit 78 existing kilns with the appropriate THC controls is estimated to be $14,600,000 and the total annual costs are estimated to be $7,800,000 per year. The cost per ton of THC removed is estimated to be $13,800 per ton of THC removed.

We also conducted a beyond-the-floor analysis where we evaluated whether existing kilns would be able to comply with the new source THC MACT floor limits. We found that of the 96 existing kilns in the source category, 36 kilns would require ACI as control and 47 would require an RTO as control, in order to meet the new source THC MACT floor limit. The estimated reduction in THC emissions from a beyond-the-floor THC limit is approximately 780 tons of THC per year. The incremental reduction, where we compare the existing source beyond-the-floor limit to the existing source MACT floor limit, is estimated to be approximately 210 tons of THC per year. We estimate the total capital investment to be $160,000,000 and total annual costs $52,000,000 per year for beyond-the-floor limits. This results in a cost effectiveness of $67,000 per ton of THC reduction.

We also assessed the costs associated with the use of RTO to control THC beyond the MACT floor limit. As previously stated, of the 96 existing kilns in the source category, 4 kilns will be required to install an RTO to comply with the THC MACT floor limit. The total capital investment for the remaining 92 existing kilns to install an RTO to go beyond-the-floor for THC would be $300,000,000, and the total annual cost is estimated as $99,000,000. We did not consider the costs of either of these beyond-the-floor options to be reasonable and therefore are not proposing a beyond-the-floor standard for THC.

A detailed description of the analysis of THC emissions, the controls necessary to reduce THC emissions, and the cost of these controls are included in the document, ''Proposed Maximum Achievable Control Technology (MACT) Floor Analysis for the Lime Manufacturing Plant Industry'', located in the docket (Docket ID No. EPA–HQ–OAR–2017–0015).

4. Dioxin/Furan Emissions

The 2017 data included the results of testing seven kiln exhaust stacks for the presence of D/F congeners using EPA Method 23. After review of the test reports, the EPA determined that five of the seven reports were not valid because each report only performed a 1-run test, which cannot be used to set a MACT floor limit. Two of the seven reports included valid 3-run tests. To account for variability in the lime manufacturing operations and resulting D/F emissions, the data were used to calculate the D/F MACT floor based on the 99 percent UPL. The 2017 D/F data included some congeners reported as below detection level (BDL). Because of this we followed the guidance of the June 5, 2014, memorandum from Steffan Johnson titled, ''Determination of 'non-detect' from EPA Method 29 (multi-metals) and EPA Method 23 (dioxin/furan) test data when evaluating the setting of MACT floors versus establishing work practice standards'' (Docket ID No. EPA–HQ–OAR–2017–0015), which provides guidance on using detection limits as an indicator of the measurable presence of a given pollutant, specifically where multi-component samples, such as with D/F congeners, are the pollutants of concern. Additionally, we reviewed the December 13, 2011, memorandum from Peter Westlin and Ray Merrill titled ''Data and procedure for handling below detection level data in analyzing various pollutant emissions databases for MACT and RTR emissions limits'' (Docket ID No. EPA–HQ–OAR–2017–0015), which describes the procedure for handling below detection level (BDL) data and developing representative detection level (RDL) data when setting MACT emission limits. In accordance with these guidance documents, the new and existing UPL for D/F were compared to the emission limit value determined to be equivalent to 3 times the RDL (3×RDL)[6] of the test method, and the 3×RDL value (0.028 ng/dscm TEQ @7 percent O_2) was greater than the UPL (0.019 ng/dscm TEQ @7 percent O_2). Therefore, the MACT floor limit for D/F was set based on the 3×RDL value of the test method. The D/F MACT floor limits for new and existing sources are summarized in Table 5.

TABLE 5—PROPOSED D/F MACT FLOOR LIMITS FOR NEW AND EXISTING LIME MANUFACTURING SOURCES

Lime produced[1]	New source MACT floor limit (ng/dscm TEQ @7% O_2)	Existing source MACT floor limit (ng/dsc TEQ @7% O_2)
QL, DL, DB	0.028	0.028

Note:
[1] Dolomitic lime (DL), high-calcium quick lime (QL), dead burned dolomitic lime (DB).

The EPA recognizes that these proposed limits are based on a limited D/F emissions dataset. The EPA will accept any additional D/F test data relevant to lime manufacturing operations during the public comment period.

The EPA then compared the emission rates estimated in the 2020 RTR to the proposed D/F MACT floor limits to determine the number of kilns in the source category that would require additional APCD to meet the MACT floor limit. We found that 1 of the 96 kilns in the source category would require additional controls in order to be able to comply with the proposed D/F MACT floor limit. From this information, we evaluated the potential effectiveness of APCD for removal of D/F from kiln exhaust gas streams and found that an ACI has an estimated 85 percent D/F removal efficiency. The total capital investment for the use of ACI as control of D/F is estimated to be $98,000, and the total annual cost is estimated to be $251,000.

We did not perform a beyond-the-floor analysis for D/F. The proposed limit is based on the detection limit of the method and represents the lowest concentration of D/F that can be measured; therefore, no further emissions reduction can be achieved that is measurable.

A detailed description of the analysis of D/F emissions, the comparison with the 3×RDL value, the controls necessary to reduce D/F emissions, and the cost of these controls are included in the document, ''Proposed Maximum Achievable Control Technology (MACT) Floor Analysis for the Lime Manufacturing Plants Industry'', located in the docket (Docket ID No. EPA–HQ–OAR–2017–0015).

5. Summary of Proposed New and Existing Source Limits for Lime Kilns

The proposed emission limits for new and existing sources in the Lime Manufacturing NESHAP are summarized in Table 6.

[6] The factor of three used in the 3×RDL calculation is based on a scientifically accepted definition of level of quantitation—simply stated, the level where a test method performs with acceptable precision. The level of quantitation has been defined as ten times the standard deviation of seven replicate analyses of a sample at a concentration level close to the MDL units of the emission standard is then compared to the MACT floor value to ensure that the resulting emission limit is in a range that can be measured with reasonable precision. In other words, if the 3×RDL value were less than the calculated floor (*e.g.,* calculated from the UPL), we would conclude that measurement variability has been adequately addressed; if it were greater than the calculated floor, we would adjust the emissions limit to comport with the 3×RDL value to address measurement variability.

TABLE 6—SUMMARY OF PROPOSED NEW AND EXISTING SOURCE LIMITS FOR THE LIME MANUFACTURING NESHAP

Pollutant [1]	Kiln type [2]	Lime produced [3]	New source limit	Unit of measure	Existing source limit	Unit of measure
HCl	SR	DL, DB	1.6	lb/ton lime produced	2.2	lb/ton lime produced.
	SR	QL	0.021	lb/ton lime produced	0.58	lb/ton lime produced.
	PR	DL, DB	0.39	lb/ton lime produced	0.39	lb/ton lime produced.
	PR	QL	0.015	lb/ton lime produced	0.015	lb/ton lime produced.
	VK	All	0.021	lb/ton lime produced	0.021	lb/ton lime produced.
Mercury	All	QL, DL	24.9	lb/MMton lime produced	24.9	lb/MMton lime produced.
	All	DB	24.4	lb/MMton lime produced	33.1	lb/MMton lime produced.
THC	All	All	1.86	ppmvd as propane @7% O_2	3.21	ppmvd as propane @7% O_2.
D/F	All	All	0.028	ng/dscm (TEQ) @7% O_2	0.028	ng/dscm (TEQ) @7% O_2.

Note:
[1] Hydrogen chloride (HCl), total hydrocarbon (THC), dioxin/furans (D/F).
[2] Straight rotary (SR), preheater rotary (PR), vertical (VK).
[3] Dolomitic lime (DL), quick lime (QL), dead burned dolomitic lime (DB).

B. What performance testing, monitoring, and recordkeeping and reporting are we proposing?

1. Performance Testing

We are proposing, based on the new and existing source limits for lime kilns, that new sources demonstrate initial compliance within 180 days after start-up, and existing sources demonstrate initial compliance within 3 years after the promulgation of the final rule. We are proposing that the initial performance tests to demonstrate compliance with the MACT standards of Table 6 of this preamble are conducted using the methods identified in Table 7.

TABLE 7—SUMMARY OF PROPOSED TEST METHODS

Pollutant	EPA method
HCl	320 or 321.
Mercury	29 or 30B.
THC	25A.
D/F	23.

Additionally, consistent with the existing performance testing requirements of the Lime Manufacturing NESHAP (40 CFR 63.7111), subsequent performance testing will be required every 5 years, using the methods identified in Table 7.

2. Parameter Monitoring

Under this proposal, continuous compliance with the emission limits would be demonstrated through control device parameter monitoring coupled with periodic emissions testing described above.

In addition to the parametric monitoring currently specified in the rule for wet scrubbers and baghouses (40 CFR 63.7113), we are proposing to add to Table 3 of the NESHAP the following parameter monitoring requirements for the types of APCDs that we expect would be used to comply with the standards:

- For DSI, monitor and record the sorbent injection flow rate, and gas flow rate.
- For ACI, monitor and record the activated carbon injection rate, and the gas flow rate.
- For RTO, monitor and record the combustion chamber temperature.

The operating limits for these parameters are set consistent with the existing provisions of 40 CFR 63.7112(j), as the average of the three test run averages during the performance test. In addition, consistent with NESHAP general provisions, a source owner will be required to operate and maintain the source, its air pollution control equipment, and its monitoring equipment in a manner consistent with safety and good air pollution control practices for minimizing emissions, to include operating and maintaining equipment in accordance with manufacturer's recommendations. Owners will be required to prepare and keep records of calibration and accuracy checks of the continuous parameter monitoring system (CPMS) to document proper operation and maintenance of the monitoring system.

3. Recordkeeping and Reporting

Under this proposal, and consistent with existing requirements in the Lime Manufacturing NESHAP, a source owner will be required to submit semi-annual compliance summary reports which document both compliance with the requirements of the Lime Manufacturing NESHAP and any deviations from compliance with any of those requirements.

Owners and operators would be required to maintain the records specified by 40 CFR 63.10 and, in addition, would be required to maintain records of all inspection and monitoring data, in accordance with the Lime Manufacturing NESHAP (40 CFR 63.7132).

C. What other actions are we proposing?

We are proposing to update the electronic reporting requirements found in 40 CFR 63.7131(g) and 40 CFR 63.7131(h)(3) to reflect new procedures for reporting CBI. The update provides an email address that source owners and operators can electronically mail CBI to the OAQPS CBI Office when submitting compliance reports.

D. What compliance dates are we proposing, and what is the rationale for the proposed compliance dates?

Amendments to the Lime Manufacturing NESHAP proposed in this rulemaking for adoption under CAA section 112(d)(2) and (3) are subject to the compliance deadlines outlined in the CAA under section 112(i). For existing sources, CAA section 112(i)(3) provides there shall be compliance ''as expeditiously as practicable, but in no event later than 3 years after the effective date of such standard'' subject to certain exemptions further detailed in the statute.[7] In determining what compliance period is as ''expeditious as practicable,'' we consider the amount of time needed to plan and construct projects and change operating procedures. As provided in CAA section 112(i), all new affected sources would comply with these provisions by the effective date of the final amendments to the Lime Manufacturing NESHAP or upon startup, whichever is later.

The EPA projects that many existing sources would need to install add-on controls to comply with the proposed limits. These sources would require

[7] *Association of Battery Recyclers* v. *EPA*, 716 F.3d 667, 672 (D.C. Cir. 2013) (''Section 112(i)(3)'s 3-year maximum compliance period applies generally to any emission standard . . . promulgated under [section 112]'' (brackets in original)).

time to construct, conduct performance testing, and implement monitoring to comply with the revised provisions. Therefore, we are proposing to allow 3 years for existing source to become compliant with the new emission standards.

All affected facilities would have to continue to meet the current provisions of 40 CFR part 63, subpart AAAAA until the applicable compliance date of the amended rule. The final action is not a ''major rule'' as defined by 5 U.S.C. 804(2), so the effective date of the final rule will be the promulgation date as specified in CAA section 112(d)(10).

For all affected sources that commence construction or reconstruction on or before January 5, 2023, we are proposing that it is necessary to provide 3 years after the effective date of the final rule (or upon startup, whichever is later) for owners and operators to comply with the provisions of this action. For all affected sources that commenced construction or reconstruction after January 5, 2023, we are proposing that owners and operators comply with the provisions by the effective date of the final rule (or upon startup, whichever is later).

We solicit comment on these proposed compliance periods, and we specifically request submission of information from sources in this source category regarding specific actions that would need to be undertaken to comply with the proposed amended provisions and the time needed to make the adjustments for compliance with any of the revised provisions. We note that information provided may result in changes to the proposed compliance dates.

V. Summary of Cost, Environmental, and Economic Impacts

A. What are the affected sources?

As previously indicated, there are currently 35 major sources subject to the Lime Manufacturing NESHAP that are operating in the United States. An affected source under the NESHAP is the owner or operator of a lime manufacturing plant that is a major source, or that is located at, or is a part of, a major source of HAP emissions, unless the lime manufacturing plant is located at a kraft pulp mill, soda pulp mill, sulfite pulp mill, beet sugar manufacturing plant, or only processes sludge containing calcium carbonate from water softening processes. A lime manufacturing plant is an establishment engaged in the manufacture of lime products (calcium oxide, calcium oxide with magnesium oxide, or dead burned dolomite) by calcination of limestone, dolomite, shells, or other calcareous substances. A major source of HAP is a plant site that emits or has the potential to emit any single HAP at a rate of 9.07 megagrams (10 tons) or more, or any combination of HAP at a rate of 22.68 megagrams (25 tons) or more per year from all emission sources at the plant site.

The Lime Manufacturing NESHAP applies to each existing or new lime kiln and their associated cooler(s). In addition, the NESHAP applies to each PSH operation located at the plant. This includes storage bins, conveying systems and transfer points, bulk loading and unloading operations, screening operations, surge bins, and bucket elevators.

B. What are the air quality impacts?

This action proposes first-time standards for HCl, mercury, THC, and D/F that will limit emissions and require, in some cases, the installation of additional controls at lime manufacturing plants at major sources. We estimate that the lime manufacturing industry will comply with the D/F standards without the addition of controls. For HCl, mercury, and THC, installation of controls will result in a combined reduction of total HAP of 1,730 tons of HAP per year (tpy). Specifically, installation of controls will reduce HCl emissions by 1,163 tpy. The installation of controls will reduce mercury emissions by 488 lbs per year (0.24 tpy). The installation of controls will reduce THC emissions by 570 tpy. Finally, the installation of controls will reduce D/F emissions by 9.5×10^{-5} lbs per year (4.7×10^{-8} tpy).

Indirect or secondary air emissions impacts are impacts that would result from the increased electricity usage associated with the operation of control devices (*e.g.,* increased secondary emissions of criteria pollutants from power plants). Energy impacts consist of the electricity and steam needed to operate control devices and other equipment. We find that the secondary impacts of this action are minimal, consisting of the natural gas required to maintain the RTO. Refer to the ''Lime Impacts Memorandum'' for a detailed discussion of the analyses performed on potential secondary impacts. This memorandum is located in the docket (Docket ID No. EPA–HQ–OAR–2017–0015).

C. What are the cost impacts?

This action proposes emission limits for new and existing sources in the lime manufacturing source category. Although the action contains requirements for new sources, we are not aware of any new sources being constructed now or planned in the next year, and, consequently, we did not estimate any cost impacts for new sources. We estimate the total annualized cost of the proposed rule to existing sources in the lime manufacturing source category to be $32,000,000 per year. The annual costs are expected to be based on operation and maintenance of the added control systems. A memorandum titled ''Proposed Maximum Achievable Control Technology (MACT) Floor Analysis for the Lime Manufacturing Plants Industry'' includes details of tour cost assessment and is included in the docket for this action (Docket ID EPA–HQ–OAR–2017–0015).

D. What are the economic impacts?

For the proposed rule, the EPA estimated the cost of installing additional APCD in order to comply with the proposed emission limits. This includes the capital costs of the initial installation, and subsequent maintenance and operation of the controls. To assess the potential economic impacts, the expected annual cost was compared to the total sales revenue for the ultimate owners of affected facilities. For this rule, the expected annual cost is $920,000 (on average) for each facility, with an estimated nationwide annual cost of $32,000,000 per year. The 35 affected facilities are owned by 12 parent companies, and the total costs associated with the proposed amendments are expected to be less than one percent of annual sales revenue per ultimate owner.

The EPA also prepared a small business screening assessment to determine if any of the identified affected entities are small entities, as defined by the U.S. Small Business Administration. This analysis is available in the Docket for this action (Docket ID No. EPA–HQ–OAR–2017–0015). Because the total costs associated with the proposed amendments are expected to be less than one percent of annual sales revenue per owner in the lime manufacturing source category, there are, therefore, no significant economic impacts from these proposed amendments on the three affected facilities that are owned by small entities.

Information on our cost impact estimates on the sources in the lime manufacturing source category is available in the docket for this proposed rule (Docket ID No. EPA–HQ–OAR–2017–0015).

E. What analysis of environmental justice did we conduct?

Consistent with EPA's commitment to integrating environmental justice (EJ) in the Agency's actions, and following the directives set forth in multiple Executive Orders, the Agency has carefully considered the impacts of this action on communities with EJ concerns. 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 and/or Indigenous peoples) and low-income populations (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 25, 2021). The EPA defines EJ as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies''.[8] The EPA further defines 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.

To examine the potential for any EJ issues that might be associated with lime manufacturing facilities, we performed a demographic analysis, which is an assessment of individual demographic groups of the populations living within 5 kilometers (km) and 50 km of the 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 8) indicate that the population percentages for certain demographic groups within 5 km of the 35 facilities are greater than the corresponding nationwide percentages. The demographic percentage for populations residing within 5 km of facility operations is 18 percentage points greater than its corresponding nationwide percentage for the Hispanic and Latino population (37 percent within 5 km of the facilities compared to 19 percent nationwide), 16 percentage points greater than its corresponding nationwide percentage for the population living in linguistic isolation (21 percent within 5 km of the facilities compared to 5 percent nationwide), 14 percentage points greater than its corresponding nationwide percentage for the population living below the poverty level (27 percent within 5 km of the facilities compared to 13 percent nationwide), 10 percentage points greater than its corresponding nationwide percentage for the minority population (50 percent within 5 km of the facilities compared to 40 percent nationwide), and 5 percentage points greater than its corresponding nationwide percentage for the population 25 years old and older without a high school diploma (17 percent within 5 km of the facilities compared to 12 percent nationwide). The remaining demographic groups within 5 km of facility operations are less than, or within one percentage point of, the corresponding nationwide percentages.

In addition, the proximity results presented in Table 8 indicate that the population percentages for certain demographic groups within 50 km of the 35 facilities are greater than the corresponding nationwide percentages. The demographic percentage for populations residing within 50 km of the facility operations is 5 percentage points greater than its corresponding nationwide percentage for the African American population (17 percent within 50 km to the facilities compared to 12 percent nationwide), 3 percentage points greater than its corresponding nationwide percentage for the population living below the poverty level (16 percent within 50 km of the facilities compared to 13 percent nationwide), and 2 percentage points greater than its corresponding nationwide percentage for the population living in linguistic isolation (7 percent within 50 km of the facilities compared to 5 percent nationwide). The remaining demographic percentages within 50 km of the facilities are less than, or within one percentage point of, the corresponding nationwide percentages.

A summary of the proximity demographic assessment performed for the major source lime manufacturing facilities is included as Table 8. The methodology and the results of the demographic analysis are presented in a technical report, *Analysis of Demographic Factors for Populations Living Near Lime Manufacturing Facilities,* available in this docket for this action (Docket ID EPA–HQ–OAR–2017–0015).

TABLE 8—PROXIMITY DEMOGRAPHIC ASSESSMENT RESULTS FOR MAJOR SOURCE LIME MANUFACTURING FACILITIES

Demographic group	Nationwide	Population within 50 km of 35 facilities	Population within 5 km of 35 facilities
Total Population	328,016,242	21,999,863	473,343
	Race and Ethnicity by Percent		
White	60%	60%	50%
African American	12%	17%	9%
Native American	0.7%	0.3%	0.9%
Hispanic or Latino (includes white and nonwhite)	19%	17%	37%
Other and Multiracial	8%	6%	3%
	Income by Percent		
Below Poverty Level	13%	16%	27%
Above Poverty Level	87%	84%	73%

[8] *https://www.epa.gov/environmentaljustice.*

TABLE 8—PROXIMITY DEMOGRAPHIC ASSESSMENT RESULTS FOR MAJOR SOURCE LIME MANUFACTURING FACILITIES—Continued

Demographic group	Nationwide	Population within 50 km of 35 facilities	Population within 5 km of 35 facilities
	Education by Percent		
Over 25 and without a High School Diploma	12%	12%	17%
Over 25 and with a High School Diploma	88%	88%	83%
	Linguistically Isolated by Percent		
Linguistically Isolated	5%	7%	21%

Notes:
• The nationwide population count, and all demographic percentages are based on the Census' 2015–2019 American Community Survey 5-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.
• Minority population is the total population minus the white population.
• 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.

The human health risk estimated for this source category for the July 24, 2020, RTR (85 FR 44960) was determined to be acceptable, and the standards were determined to provide an ample margin of safety to protect public health. Specifically, the maximum individual cancer risk was 1-in-1 million for actual emissions (2-in-1 million for allowable emissions) and the noncancer hazard indices for chronic exposure were well below 1 (0.04 for actual emissions, 0.05 for allowable emissions). The noncancer hazard quotient for acute exposure was 0.06, also below 1. The proposed changes to the NESHAP subpart AAAAA will reduce emissions by 1,730 tons of HAP per year, and therefore, further improve human health exposures for populations in these demographic groups. The proposed changes will have beneficial effects on air quality and public health for populations exposed to emissions from lime manufacturing facilities.

VI. Request for Comments

We solicit comments on this proposed action. In addition to general comments on this proposed action, we are also interested in additional data that may improve the analyses. We are specifically interested in receiving any information regarding developments in practices, processes, and control technologies that reduce HAP emissions.

VII. Submitting Data Corrections

The site-specific emissions data used in setting MACT standards for HCl, mercury, THC, and D/F, as emitted from the lime manufacturing source category, are provided in the docket (Docket ID EPA–HQ–OAR–2017–0015).

If you believe that the data are not representative or are inaccurate, please identify the data in question, provide your reason for concern, and provide any ''improved'' data that you have, if available. When you submit data, we request that you provide documentation of the basis for the revised values to support your suggested changes.

For information on how to submit comments, including the submittal of data corrections, refer to the instructions provided in the introduction of this preamble.

VIII. 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 the Office of Management and Budget (OMB) under the PRA. The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR number 2072.10. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

We are proposing changes to the reporting and recordkeeping requirements for the Lime Manufacturing Plants NESHAP by incorporating the reporting and recordkeeping requirements associated with the new and existing source MACT standards for HCl, mercury, THC, and D/F.

Respondents/affected entities: Owners or operators of lime manufacturing plants that are major sources, or that are located at, or are part of, major sources of HAP emissions, unless the lime manufacturing plant is located at a kraft pulp mill, soda pulp mill, sulfite pulp mill, sugar beet manufacturing plant, or only processes sludge containing calcium carbonate from water softening processes.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart AAAAA)

Estimated number of respondents: On average over the next 3 years, approximately 35 existing major sources will be subject to these standards. It is also estimated that no additional respondent will become subject to the emission standards over the 3-year period.

Frequency of response: The frequency of responses varies depending on the burden item.

Total estimated burden: The average annual burden to industry over the next 3 years from the proposed recordkeeping and reporting requirements is estimated to be 8.392 hours per year. Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: The annual recordkeeping and reporting cost for all facilities to comply with all of the requirements in the NESHAP is estimated to be $3,570,000 per year, of which $1,370,000 (first year) is for this

rule, and the rest is for other costs related to continued compliance with the current NESHAP requirements including $1,005,000 in annualized capital and operation and maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for 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 March 6, 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, as defined by the U.S. Small Business Administration. The Agency has determined that 3 lime manufacturing parent companies out of 35 may experience an impact 0.5 percent to 0.9 percent of annual sales. Details of this analysis are presented in ''Economic Impact and Small Business Screening Assessments for Proposed Amendments to the National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Facilities'', located in the docket for this action (Docket ID No. EPA–HQ–OAR–2017–0015).

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. The EPA does not know of any lime manufacturing facilities owned or operated by Indian tribal governments. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's proposes emission standards for four previously unregulated pollutants; therefore, the rule should result in health benefits to children by reducing the level of HAP emissions emitted from the lime manufacturing process.

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

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. In this proposed action, the EPA is setting emission standards for previously unregulated pollutant. This does not impact energy supply, distribution, or use.

I. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51

This action involves technical standards. Therefore, the EPA conducted searches for the Lime Manufacturing NESHAP through the Enhanced National Standards Systems Network (NSSN) Database managed by the American National Standards Institute (ANSI). We also conducted a review of voluntary consensus standards (VCS) organizations and accessed and searched their databases. We conducted searches for EPA Methods 23, 25A, 29, 30B, 320, and 321. 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 referenced method, the EPA ordered a copy of the standard and 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 referenced methods. The EPA may reconsider determinations of impracticality when additional information is available for any particular VCS.

Two VCS were identified as acceptable alternatives to the EPA test methods for this proposed rule. The VCS ASTM D6784–16, ''Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method)'' is an acceptable alternative to EPA Method 29 (portion for mercury only) as a method for measuring mercury. The VCS ASTM D6348–12e1, ''Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform (FTIR) Spectroscopy'' is an acceptable alternative to EPA Method 320 with certain conditions. Detailed information on the VCS search and determination can be found in the memorandum, ''Voluntary Consensus Standard Results for National Emission Standards for Hazardous Air Pollutants: Lime Manufacturing Technology Review,'' which is available in the docket for this action (Docket ID No. EPA–HQ–OAR–2017–0015). The two VCS may be obtained from *https://www.astm.org* or from the ASTM Headquarters at 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, Pennsylvania, 19428–2959.

The EPA is incorporating by reference the VCS ASTM D6348–12e1, ''Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform (FTIR) Spectroscopy,'' as an acceptable alternative to EPA Method 320. ASTM D6348–03(2010) was determined to be equivalent to EPA Method 320 with caveats. ASTM D6348–12e1 is a revised version of ASTM D6348–03(2010) and includes a new section on accepting the results from the direct measurement of a certified spike gas cylinder, but lacks the caveats placed on the ASTM D6348–03(2010) version. ASTM D6348–12e1 is an extractive FTIR field test method used to quantify gas phase concentrations of multiple analytes from stationary source effluent and is an acceptable alternative to EPA Method 320 at this time with caveats requiring

inclusion of selected annexes to the standard as mandatory. When using ASTM D6348–12e1, the following conditions must be met:

- The test plan preparation and implementation in the Annexes to ASTM D6348–03, Sections A1 through A8 are mandatory; and
- In ASTM D6348–03, Annex A5 (Analyte Spiking Technique), the percent (%) R must be determined for each target analyte (Equation A5.5).

In order for the test data to be acceptable for a compound, percent R must be 70 percent ≥ R ≤ 130 percent. If the percent R value does not meet this criterion for a target compound, the test data is not acceptable for that compound and the test must be repeated for that analyte (*i.e.,* the sampling and/or analytical procedure should be adjusted before a retest). The percent R value for each compound must be reported in the test report, and all field measurements must be corrected with the calculated percent R value for that compound by using the following equation:

Reported Results = ((Measured Concentration in Stack))/(percent R) × 100.

The EPA is incorporating by reference the VCS ASTM D6784–16), ''Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury in Flue Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method),'' as an acceptable alternative to EPA Method 29 (portion for mercury only) as a method for measuring elemental, oxidized, particle-bound, and total mercury concentrations ranging from approximately 0.5 to 100 micrograms per normal cubic meter. This test method describes equipment and procedures for obtaining samples from effluent ducts and stacks, equipment and procedures for laboratory analysis, and procedures for calculating results. VCS ASTM D6784–16 allows for additional flexibility in the sampling and analytical procedures for the earlier version of the same standard VCS ASTM D6784–02 (Reapproved 2008).

Additionally, EPA is incorporating by reference ''Recommended Toxicity Equivalence Factors (TEFs) for Human Health Risk Assessments of 2, 3, 7, 8-Tetrachlorodibenzo-p-dioxin and Dioxin-Like Compounds'' (EPA/100/R–10/005 December 2010), which is the source of the toxicity equivalent factors for dioxins and furans used in calculating the toxic equivalence quotient of the proposed dioxin and furan standard.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations (people of color and/or Indigenous peoples) and low-income populations.

The EPA believes that the human health or environmental conditions that exist prior to this action result in or have the potential to result in disproportionate and adverse human health or environmental effects on people of color, low-income populations and/or Indigenous peoples. The assessment of populations in close proximity of lime manufacturing facilities shows the percentage of Hispanic or Latino, below poverty level, and linguistically isolated groups are higher than the national average (see section V.E. of the preamble). The higher percentages are driven by 4 of the 35 facilities in the source category.

The EPA believes that this action is likely to reduce existing disproportionate and adverse effects on people of color, low-income populations and/or Indigenous peoples. The EPA is proposing MACT standards for HCl, mercury, THC as a surrogate for organic HAP, and D/F. EPA expects that the four facilities would have to implement control measures to reduce emissions to comply with the MACT standards and that HAP exposures for the people of color and low-income individuals living near these four facilities would decrease.

The EPA will additionally identify and address environmental justice concerns by conducting outreach after signature of this proposed rule. The EPA will reach out to tribes through a monthly policy call and with consultation letters. Additionally, the EPA will address this rule during the monthly Environmental Justice call for communities burdened by disproportionate environmental impacts.

The information supporting this Executive Order review is contained in section V.E of this preamble.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements.

Michael S. Regan,

Administrator.

[FR Doc. 2022–27994 Filed 1–3–23; 11:15 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 88

RIN 0945–AA18

Safeguarding the Rights of Conscience as Protected by Federal Statutes

AGENCY: Office for Civil Rights, Office of the Secretary, HHS.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Department proposes to partially rescind the May 21, 2019, final rule entitled, ''Protecting Statutory Conscience Rights in Health Care; Delegations of Authority'' (''2019 Final Rule''), while leaving in effect the framework created by the February 23, 2011, final rule, entitled, ''Regulation for the Enforcement of Federal Health Care Provider Conscience Protection Laws.'' (''2011 Final Rule''). The Department also proposes to retain, with some modifications, certain provisions of the 2019 Final Rule regarding federal conscience protections but eliminate others because they are redundant or confusing, because they undermine the balance Congress struck between safeguarding conscience rights and protecting access to health care access, or because significant questions have been raised as to their legal authorization. Further, the Department seeks to determine what additional regulations, if any, are necessary to implement certain conscience protection laws. The Department is seeking public comment on the proposal to retain certain provisions of the 2019 Final Rule, including on any alternative approaches for ensuring compliance with the conscience protection laws.

DATES: Written comments must be received on or before March 6, 2023.

ADDRESSES: You may submit comments, identified by the Regulatory Information Number (RIN) [RIN 0945–AA18] by any of the following methods. The first is the preferred method. Please submit your comments in only one of these ways to minimize the receipt of duplicate submissions.

1. *Federal eRulemaking Portal.* You may submit comments electronically to *https://www.regulations.gov*. Submit

your comments as an attachment to your message or cover letter. [Attachments should be in Microsoft Word, WordPerfect, or Excel; however, Microsoft Word is preferred.] Follow the instructions for sending comments contained in the website link ''Comment or Submission'' and enter the keywords, ''Conscience Recission NPRM.''

2. *By regular, express or overnight mail.* You may mail written comments to the following address only: U.S. Department of Health and Human Services, Office for Civil Rights, Attention: Conscience NPRM, RIN 0945–AA18, Hubert H. Humphrey Building, Room 509F, 200 Independence Avenue SW, Washington, DC 20201. Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *Delivery by hand (in person or by courier).* If you prefer, you may deliver your written comments before the close of the comment period to the same address: U.S. Department of Health and Human Services, Office for Civil Rights, Attention: Conscience NPRM, RIN 0945–AA18, Hubert H. Humphrey Building, Room 509F, 200 Independence Avenue SW, Washington, DC 20201.

Because of staffing and resource limitations, and to ensure that no comments are misplaced, the agency cannot accept comments by facsimile (FAX) transmission. All comments received on a timely basis will be posted without change to *https://www.regulations.gov,* including any personal information provided.

Docket: For complete access to the docket to read background documents or comments received, go to *https://www.regulations.gov* and search for Docket ID number HHS–OCR–0945–AA18.

FOR FURTHER INFORMATION CONTACT: Pamela Barron at (800) 368–1019 or (800) 537–7697 (TDD).

SUPPLEMENTARY INFORMATION: The Department of Health and Human Services (HHS) urges all interested parties to examine this regulatory proposal carefully and to share your views with us, including any data to support your positions. If you have questions before submitting comments, please see **FOR FURTHER INFORMATION CONTACT** for the name and contact information of the Office for Civil Rights point of contact for this proposed regulation.

If you are a person with a disability and/or a user of assistive technology who has difficulty accessing this document, please contact the Office for Civil Rights using the name and contact information provided in **FOR FURTHER INFORMATION CONTACT** to obtain this information in an accessible format. Please visit *https://www.HHS.gov/regulations* for more information on HHS rulemaking and opportunities to comment on proposed and existing rules.

I. Background

Statutory Background

Several provisions of Federal law prohibit recipients of certain Federal funds from coercing individuals and entities in the health care field into participating in actions they find religiously or morally objectionable. They include the following provisions.

The Church Amendments [42 U.S.C. 300a–7]

The conscience provisions contained in 42 U.S.C. 300a–7 (collectively known as the ''Church Amendments'') were enacted at various times during the 1970s in response to debates over whether receipt of Federal funds required the recipients of such funds to perform abortions or sterilizations. The first conscience provision in the Church Amendments, 42 U.S.C. 300a–7(b), provides that ''[t]he receipt of any grant, contract, loan, or loan guarantee under [certain statutes implemented by the Department of Health and Human Services] by any individual or entity does not authorize any court or any public official or other public authority to require'' (1) the individual to perform or assist in a sterilization procedure or an abortion, if it would be contrary to their religious beliefs or moral convictions; (2) the entity to make its facilities available for sterilization procedures or abortions, if the performance of sterilization procedures or abortions in the facilities is prohibited by the entity on the basis of religious beliefs or moral convictions; or (3) the entity to provide personnel for the performance or assistance in the performance of sterilization procedures or abortions, if it would be contrary to the religious beliefs or moral convictions of such personnel.

The second conscience provision in the Church Amendments, 42 U.S.C. 300a–7(c)(1), prohibits any entity that receives a grant, contract, loan, or loan guarantee under certain Department-implemented statutes from discriminating against any physician or other health care personnel in employment, promotion, termination of employment, or the extension of staff or other privileges because the individual ''performed or assisted in the performance of a lawful sterilization procedure or abortion, because he refused to perform or assist in the performance of such a procedure or abortion on the grounds that his performance or assistance in the performance of the procedure or abortion would be contrary to his religious beliefs or moral convictions, or because of his religious beliefs or moral convictions respecting sterilization procedures or abortions.''

The third conscience provision, contained in 42 U.S.C. 300a–7(c)(2), prohibits any entity that receives a grant or contract for biomedical or behavioral research under any program administered by the Department from discriminating against any physician or other health care personnel in employment, promotion, termination of employment, or extension of staff or other privileges ''because he performed or assisted in the performance of any lawful health service or research activity, because he refused to perform or assist in the performance of any such service or activity on the grounds that his performance or assistance in the performance of such service or activity would be contrary to his religious beliefs or moral convictions, or because of his religious beliefs or moral convictions respecting any such service or activity.''

The fourth conscience provision, 42 U.S.C. 300a–7(d), provides that ''[n]o individual shall be required to perform or assist in the performance of any part of a health service program or research activity funded in whole or in part under a program administered by [the Department] if his performance or assistance in the performance of such part of such program or activity would be contrary to his religious beliefs or moral convictions.''

The final conscience provision contained in the Church Amendments, 42 U.S.C. 300a–7(e), prohibits any entity that receives a grant, contract, loan, loan guarantee, or interest subsidy under certain Departmentally implemented statutes from denying admission to, or otherwise discriminating against, ''any applicant (including applicants for internships and residencies) for training or study because of the applicant's reluctance, or willingness, to counsel, suggest, recommend, assist, or in any way participate in the performance of abortions or sterilizations contrary to or consistent with the applicant's religious beliefs or moral convictions.''

Public Health Service Act Sec. 245 [42 U.S.C. 238n] (Coats-Snowe Amendment)

Enacted in 1996, section 245 of the Public Health Service Act (PHS Act) prohibits the Federal Government and

any State or local government receiving Federal financial assistance from discriminating against any health care entity on the basis that the entity (1) ''Refuses to undergo training in the performance of induced abortions, to require or provide such training, to perform such abortions, or to provide referrals for such training or such abortions;'' (2) refuses to make arrangements for such activities; or (3) ''attends (or attended) a post-graduate physician training program, or any other program of training in the health professions, that does not (or did not) perform induced abortions or require, provide, or refer for training in the performance of induced abortions, or make arrangements for the provision of such training.'' For the purposes of this protection, the statute defines ''financial assistance'' as including, ''with respect to a government program,'' ''governmental payments provided as reimbursement for carrying out health-related activities.'' In addition, PHS Act Sec. 245 requires that, in determining whether to grant legal status to a health care entity (including a State's determination of whether to issue a license or certificate), the federal government and any State or local government receiving federal financial assistance shall deem accredited any post-graduate physician training program that would be accredited, but for the reliance on an accrediting standard that, regardless of whether such standard provides exceptions or exemptions, requires an entity: (1) to perform induced abortions; or (2) to require, provide, or refer for training in the performance of induced abortions, or make arrangements for such training.

Medicaid and Medicare

The Medicaid and Medicare statutes include certain conscience provisions as well. In particular, the Balanced Budget Act of 1997, Public Law 105–33, 111 Stat. 251 (1997), prohibits Medicaid managed care-managed organizations and Medicare Advantage plans from prohibiting or restricting a physician from informing a patient about his or her health and full range of treatment options. *See id.* 40011852(j)(3)(A), 111 Stat. at 295 (codified at 42 U.S.C. 1395w–22(j)(3)(A)) (Medicare Advantage); *id.* 4704(b)(3)(A), 111 Stat. at 496 (codified at 42 U.S.C. 1396u–2(b)(3)(A)) (Medicaid managed care). However, it also provides that Medicaid managed care-managed organizations and Medicare Advantage plans are not required to provide, reimburse for, or cover a counseling or referral service if the organization or plan objects to the service on moral or religious grounds. *See id.* 40011852(j)(3)(B), 111 Stat. at 295 (codified at 42 U.S.C. 1395w–22(j)(3)(B)) (Medicare Advantage); *id.* 4704(b)(3)(B), 111 Stat. at 496–97 (codified at 42 U.S.C. 1396u–2(b)(3)(B)) (Medicaid). The organization or plan must, however, provide sufficient notice of its moral or religious objections to prospective enrollees. 42 U.S.C. 1395w–22(j)(3)(B)(ii) (Medicare Advantage), 1396u–2(b)(3)(B)(ii) (Medicaid managed care).

These Medicare and Medicaid statutes also contain conscience provisions related to the performance of advanced directives. *See* 42 U.S.C. 1395cc(f), 1396a(w)(3), and 14406(2). And finally, they contain provisions related to religious nonmedical health care providers and their patients. *See* 42 U.S.C. 1320a–1(h), 1320c–11, 1395i–5, 1395x(e), 1395x(y)(1), 1396a(a) and 1397j–1(b).

Weldon Amendment

The Weldon Amendment, originally adopted as section 508(d) of the Labor-HHS Division (Division F) of the 2005 Consolidated Appropriations Act, Public Law 108–447, 118 Stat. 2809, 3163 (Dec. 8, 2004), has been readopted (or incorporated by reference) in each subsequent legislative measure appropriating funds to HHS. *See, e.g.,* Consolidated Appropriations Act, 2022, Public Law 117–103, div. H, title V General Provisions, section 507(d)(1) (Mar.15, 2022).

The Weldon Amendment provides that ''[n]one of the funds made available in this Act [making appropriations for the Departments of Labor, Health and Human Services, and Education] may be made available to a Federal agency or program, or to a State or local government, if such agency, program, or government subjects any institutional or individual health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions.'' It also defines ''health care entity'' to include ''an individual physician or other health care professional, a hospital, a provider-sponsored organization, a health maintenance organization, a health insurance plan, or any other kind of health care facility, organization, or plan.''

Affordable Care Act

In 2010, Congress passed the Patient Protection and Affordable Care Act (ACA), Public Law 111–148, 124 Stat. 119 (2010) (codified at 42 U.S.C. 18001, *et seq.*). This statute also includes certain other provisions including specific conscience provisions in sections 1553, 1303(a)(3)–(b)(2), and 1411(b)(5)(A).

Section 1553 provides that the federal government, any state or local government, and any health care provider that receives federal funding under the ACA, or any health plan created under the ACA, may not subject an individual or health care entity to discrimination on the ground that the individual or entity does not provide services for the purpose of causing or assisting in the death of any individual, including through assisted suicide, euthanasia, and mercy killing. *See* 42 U.S.C. 18113(a). Section 1553 provides that the Department's Office for Civil Rights (''OCR'') will receive complaints of discrimination related to that section. *Id.* 18113(d).

Section 1303 provides that a State may choose to prohibit abortion coverage in its qualified health plans, 42 U.S.C. 18023(a)(1), and that such a plan is not required to provide abortion coverage as part of its ''essential health benefits,'' *id.* 18023(b)(1)(A)(i). However, a qualified health plan that declines to provide abortion coverage must provide notice of this exclusion to potential enrollees. *Id.* 18023(b)(3)(A). And no qualified health plan may discriminate against any health care provider or facility because it refuses to provide, pay for, cover, or refer for abortions. *Id.* 18023(b)(4). Section 1303 states that nothing in the ACA shall be construed to preempt state laws on abortion or federal laws on conscience protection, willingness or refusal to provide abortion, and discrimination based on that willingness or refusal to provide, pay for, cover, or refer for abortion or to provide or participate in training to provide abortion, *id.* 18023(c)(1)–(2), or to relieve health care providers of their obligations to provide emergency services under federal or state laws, including the Emergency Medical Treatment and Labor Act, *id.* 18023(d). Section 1303 also states that it does not ''alter the rights and obligations of employees and employers'' under Title VII. *See id.* 18023(c)(3).

Section 1411 addresses exemptions to the ACA's ''individual responsibility requirement.'' 42 U.S.C. 18081(b)(5)(A). Under this section, the Department may grant exemptions based on hardship (which the Department has stated includes an individual's inability to secure affordable coverage that does not provide for abortions (84 FR 23172), membership in a particular religious

organization, or membership in a ''health care sharing ministry.'' [1]

Other Provisions

A number of additional provisions relating to conscience and religious liberty have also been the subject of previous HHS rulemaking. These include provisions related to compulsory health care services generally (42 U.S.C. 1396f and 5106i(a)), under hearing screening programs (42 U.S.C. 280g–1(d)), occupational illness testing (29 U.S.C. 699(a)(5)), vaccination programs (42 U.S.C. 1396s(c)(2)(B)(ii)), and mental health treatment (42 U.S.C. 290bb–36(f)). These also include conscience and nondiscrimination provisions tied to certain funding in global health programs and other funds administered by the Secretary. *See* 22 U.S.C. 7631(d) and 22 U.S.C. 2151b(f).

Rulemaking

No statutory provision requires the promulgation of rules to implement the conscience provisions outlined above. On August 26, 2008, however, the Department exercised its discretion and issued a proposed rule entitled ''Ensuring that Department of Health and Human Services Funds Do Not Support Coercive or Discriminatory Policies or Practices in Violation of Federal Law'' (73 FR 50274) to address the conscience provisions in effect at that time. In the preamble to the 2008 Final Rule, the Department concluded that regulations were necessary in order to:

1. Educate the public and health care providers on the obligations imposed, and protections afforded, by Federal law;

2. Work with state and local governments and other recipients of funds from the Department to ensure compliance with the nondiscrimination requirements embodied in the Federal health care provider conscience protection statutes;

3. When such compliance efforts prove unsuccessful, enforce these nondiscrimination laws through the various Department mechanisms, to ensure that Department funds do not support coercive or discriminatory practices, or policies in violation of Federal law; and

4. Otherwise take an active role in promoting open communication within the health care industry, and between providers and patients, fostering a more inclusive, tolerant environment in the health care industry than may currently exist.

''Ensuring That Department of Health and Human Services Funds Do Not Support Coercive or Discriminatory Policies or Practices in Violation of Federal Law,'' 73 FR 78072, 78074.

The final rule went into effect on January 20, 2009, except that a certification requirement it imposed never took effect, as it was subject to the information collection approval process under the Paperwork Reduction Act, which was never completed.

On March 10, 2009, the Department proposed rescinding, in its entirety, the 2008 Final Rule, and sought public comment to determine whether or not to rescind the 2008 Final Rule in part or in its entirety (74 FR 10207). On February 23, 2011, after receiving more than 300,000 comments, the Department issued a final rule entitled ''Regulation for the Enforcement of Federal Health Care Provider Conscience Protection Laws'' (2011 Final Rule) (76 FR 9968). Concluding that parts of the 2008 Final Rule were unclear and potentially overbroad in scope, the 2011 Final Rule rescinded much of the 2008 Final Rule, including provisions defining certain terms used in one or more of the conscience provisions and requiring entities that received Department funds, both as recipients and subrecipients, to provide a written certificate of compliance with the 2008 Final Rule. The 2011 Final Rule retained a provision designating OCR to receive and coordinate the handling of complaints of violations of the three conscience provisions that were the subject of the 2008 Final Rule: the Church Amendments, the Weldon Amendment, and the Coats-Snowe Amendment.

On January 26, 2018, the Department issued a new proposed rule entitled ''Protecting Statutory Conscience Rights in Health Care; Delegations of Authority'' (83 FR 3880) (2018 Proposed Rule). Citing a desire to ''enhance the awareness and enforcement of Federal health care conscience and associated nondiscrimination laws, to further conscience and religious freedom, and to protect the rights of individuals and entities to abstain from certain activities related to health care services without discrimination or retaliation,'' the rule proposed reinstating several rescinded provisions of the Final 2008 Rule while also expanding upon that rule in a number of respects. Among other things, the 2018 proposed rule added a number of additional statutes and a detailed provision that would apply to alleged violations of any of the statutes covered by the rule.

In response to the 2018 Proposed Rule, the Department received more than 242,000 comments, from a wide variety of individuals and organizations, including private citizens, individual and institutional health care providers, religious organizations, patient advocacy groups, professional organizations, universities and research institutions, consumer organizations, and State and Federal agencies and representatives. Comments dealt with a range of issues surrounding the proposed rule, including the Department's authority to issue the rule, the need for the rule, what kinds of workers would be protected by the proposed rule, the rule's relationship to Title VII of the Civil Rights Act and other statutes and protections, what services are covered by the rule, whether the regulation might be used to discriminate against patients, how the rule would affect access to care, legal arguments, and the cost impacts and public health consequences of the rule.

On May 21, 2019, the Department issued a final rule (84 FR 23170) (2019 Final Rule). The Department concluded that the withdrawal of the 2008 Final Rule had created confusion about the various conscience provisions, citing what the Department determined was a significant increase in complaints alleging violations of a conscience provision that it had received since November 2016. The Department consequently reinstated the 2008 rule while revising and expanding on its provisions, including by (1) adding additional statutory provisions to the rule's enforcement scheme; (2) adopting definitions of various statutory terms; (3) imposing assurance and certification requirements; (4) reaffirming OCR's enforcement authority; (5) imposing record-keeping and cooperation requirements; (6) establishing enforcement provisions and penalties; and (7) adopting a voluntary notice provision.

Following the issuance of the 2019 Final Rule, a number of States, localities, and non-governmental parties filed suit challenging the rule in the Southern District of New York, the Northern District of California, the Eastern District of Washington, and the District of Maryland. Before the rule took effect, the New York, California, and Washington district courts granted summary judgment to the respective plaintiffs and vacated the rule in its entirety and on a nationwide basis. *See Washington* v. *Azar,* 426 F. Supp. 3d 704 (E.D. Wash. 2019), *appeal pending,* No. 20–35044 (9th Cir.); *City & Cnty. of*

[1] In 2017 Congress effectively nullified the practical effect of this provision by setting the related payment associated with noncompliance to $0. *See* Tax Cuts and Jobs Act of 2017, Public Law 115–97, 11081, 131 Stat. 2092 (codified in 26 U.S.C. 5000A(c)).

San Francisco v. *Azar,* 411 F. Supp. 3d 1001 (N.D. Cal. 2019), *appeal pending,* Nos. 20–15398 et al. (9th Cir.); *New York* v. *HHS,* 414 F. Supp. 3d 475 (S.D.N.Y. 2019), *appeal pending,* Nos. 19–4254 et al. (2d Cir.).[2] The courts' rationales were not identical, but they collectively concluded that the rule was defective in a number of respects. One or more courts held that: (i) the rule exceeded the Department's authority; (ii) its provisions were inconsistent in certain respects with the conscience statutes or other statutes, including the Emergency Medical Treatment & Labor Act (EMTALA) and Title VII of the Civil Rights Act; (iii) the rule was arbitrary and capricious in its evaluation of the record, its treatment of the Department's conclusions underlying the 2011 Final Rule and reliance interests of funding recipients, and its consideration of certain issues relating to access to care and medical ethics raised by commenters; (iv) a particular definitional provision of the rule was not promulgated in compliance with the notice-and-comment requirements of the Administrative Procedure Act; and (v) the rule's penalties for non-compliance with conscience provisions violated the separation of powers and the Spending Clause.

Because the 2019 Final Rule never took effect, HHS has been operating under the 2011 Final Rule continuously since it was finalized. It currently accepts, investigates, and processes complaints under the framework created by the 2011 Final Rule. There are no significant reliance interests stemming from the 2019 Final Rule because the rule was vacated before it became effective. Because the 2019 Final Rule never went into effect, no person or entity could have reasonably relied on its provisions. It is possible that health care providers or individuals have reasonably relied on the 2011 Final Rule because it has remained operational.

As part of this proposed rulemaking, HHS seeks comments on the approach contemplated by the 2019 Final Rule as well as comments on the general framework that OCR has been employing since 2011—applying the plain text of the underlying statutes to the facts at issue on a case-by-case basis.

[2] Each court held that the portions of the rule deemed unlawful were so intertwined with any lawful portions that the entire rule would be vacated, rather than individual provisions. *See City & Cnty. of San Francisco* v. *Azar,* 411 F. Supp. 3d at 1024–25 (''When a rule is so saturated with error, as here, there is no point in trying to sever the problematic provisions. The whole rule must go.''); *New York* v. *HHS.,* 414 F. Supp. 3d at 577 (''[T]he rulemaking exercise here was sufficiently shot through with glaring legal defects as to not justify a search for survivors.'').

II. Proposed Rule

The Department is proposing to partially rescind the final rule entitled ''Protecting Statutory Conscience Rights in Health Care; Delegations of Authority,'' published in the **Federal Register** on May 21, 2019 (84 FR 23170), while leaving in effect the framework created by the February 23, 2011, Final Rule and retaining, with some modifications, certain provisions of the 2019 Final Rule.

Though the Department received comments supporting and opposing the 2018 Proposed Rule (the basis for the 2019 Final Rule), the overwhelming majority of comments were in opposition to the rule.

Groups supporting the 2018 Proposed Rule said it would provide needed clarity and strengthen protections for conscience rights in health care. For example, a comment jointly filed by the U.S. Conference of Catholic Bishops, the National Association of Evangelicals, the Southern Baptist Ethics & Religious Liberty Commission, the Christian Legal Society, the Catholic Medical Association, and the Family Research Council commended the Department on the breadth of the proposed regulations, saying they would ''provide much needed guidance as to the meaning of the conscience statutes.'' [3] The Catholic Health Association (CHA) filed a separate comment supporting the proposed rule, noting its belief that ''[a]ccess to health care is essential to promote and protect the inherent and inalienable worth and dignity of every individual,'' and that ''organizations and individuals should not be required to participate in, pay for, provide coverage for or refer for services that directly contradict their deeply held religious or moral beliefs and convictions.'' [4] According to CHA, ''[t]he lack of implementing regulations and of clarity concerning enforcement mechanisms for these laws has stymied their effectiveness.'' Thus, CHA welcomed the proposed rule, saying it ''effectively reflects the intent and content of the underlying laws. . . .'' [5]

Other commenters opposed to the 2018 Proposed Rule raised a number of concerns, including that the rule would create confusion, place unnecessary burdens on covered entities, limit access to patient care, and result in individuals being denied access to services, with vulnerable populations being particularly affected. The American Medical Association, for example, commented that the proposed rule would undermine patients' access to care and information, impede research, and create confusion among providers about their legal and ethical obligations to treat patients.[6] The American Academy of Family Physicians, American Nurses Association, American Academy of Nursing, American Congress of Obstetricians and Gynecologists, American College of Emergency Physicians and American Academy of Pediatrics, similarly raised concerns about the rule's effect on patients' abilities to access critical care.[7] The American Psychological Association raised concerns about the rule's potential harm to women and sexual and gender minorities.[8] The Association of American Medical Colleges commented that the rule was overly expansive and incongruous with medical professionalism, among other concerns.[9] A coalition of state attorneys general commented that the rule would, among other things, undermine state health care laws and policies that protect patients, and lead to discrimination against patients.[10] Several reproductive health organizations similarly commented that the proposed rule would upset the statutory balance between protecting providers' conscience rights and patients' ability to access reproductive care.[11] The National Coalition for LGBTQ Health commented that the

[3] Letter from USCCB, NAE, CMA, CLS, ELRC, and FRC to HHS (Mar. 16, 2018) *available at https://www.regulations.gov/comment/HHS-OCR-2018-0002-27795.* The American Association of Pro-Life Obstetricians and Gynecologists also filed comments in support of the proposed rule. Letter from AAPLOG to HHS (Mar. 26, 2018), *available at https://www.regulations.gov/comment/HHS-OCR-2018-0002-67019.*

[4] Letter from the Catholic Health Association to HHS (Mar. 27, 2018), *available at https://www.regulations.gov/comment/HHS-OCR-2018-0002-70534.*

[5] *Id.*

[6] Letter from the AMA to HHS (Mar. 27, 2018), *available at https://www.regulations.gov/comment/HHS-OCR-2018-0002-70564.*

[7] *See* Letter from AAFP to HHS (Mar. 20, 2018) *available at https://www.regulations.gov/document/HHS-OCR-2018-0002-34646;* Letter from ANA–AAN to HHS (Mar. 23, 2018) *available at https://www.regulations.gov/document/HHS-OCR-2018-0002-55870;* Letter from ACOG to HHS (Mar. 27, 2018) *available at https://www.regulations.gov/document/HHS-OCR-2018-0002-70647;* Letter from ACEP to HHS (Mar. 27, 2018); and Letter from AAP to HHS (Mar. 27, 2018) *available at https://www.regulations.gov/document/HHS-OCR-2018-0002-71022.*

[8] Letter from APA to HHS (Mar. 26, 2018) *available at https://www.regulations.gov/document/HHS-OCR-2018-0002-71056.*

[9] Letter from AAMC to HHS (Mar. 26, 2018) *available at https://www.regulations.gov/document/HHS-OCR-2018-0002-67592.*

[10] Letter from Attorneys General to HHS (Mar. 27, 2018) *available at https://www.regulations.gov/comment/HHS-OCR-2018-0002-70188.*

[11] *E.g.,* Letter from Nat'l Family Planning and Reproductive Health Assoc. to HHS (Mar. 27, 2018) *available at https://www.regulations.gov/comment/HHS-OCR-2018-0002-70260.*

proposed rule would lead to increased discrimination and denials of care for vulnerable members of the LGBTQ community.[12]

Comments received on the 2018 Proposed Rule made valuable points about the importance of federal conscience protections as well as the importance of access to care free from discrimination. For this and other reasons, the Department is proposing to retain certain provisions from the 2019 Final Rule with modifications while rescinding others, and generally reinstating 2011 framework that has been in effect for some time.

The Department proposes to retain three aspects of the 2019 Final Rule: (1) the application to statutes first referenced in the 2019 Final Rule; (2) several enforcement provisions; and (3) a voluntary notice provision. The provisions proposed to be retained have been modified to address concerns raised by many of the commenters—and echoed in federal district court decisions—about the Department's underlying rulemaking authority.[13] The new proposed rule relies on the Department's housekeeping authority under 5 U.S.C. 301, which permits the Department to issue regulations concerning its own internal procedures and operations, and therefore allows for the modifications in this proposed rule.

First, the Department proposes to expand the category of ''federal health care provider conscience protection statutes'' covered by the rule to include the statutes that HHS added to § 88.3 in the 2019 Final Rule. Those statutes, which are described above, include conscience protections embedded in a wide range of Department programs, including Medicare and Medicaid, the administration of the Affordable Care Act, global health programs, health screenings, and more. Retaining these provisions as part of the rule, and maintaining OCR as the centralized HHS office tasked with receiving and investigating complaints under these provisions, will aid the public by increasing awareness of the rights protected by the various statutes and where to file complaints alleging violations of those rights.

Second, the Department proposes to retain a number of provisions from the 2019 Final Rule related to complaint handling and investigations. In the proposed § 88.2, the Department expands upon the 2011 Final Rule's description of complaint handling and investigation. Paragraph (a) describes OCR's authority to receive and handle complaints, seek voluntary compliance, and work with relevant Department components to ensure compliance through existing enforcement mechanisms. Paragraph (b) describes how OCR will conduct investigations. Paragraph (c) describes how OCR will proceed if an investigation reveals a violation of a federal health care provider conscience protection statute, and paragraph (d) provides that OCR will seek voluntary resolution of violations and will inform relevant parties if it has found no violation.

Finally, the Department proposes to retain the 2019 Final Rule's voluntary notice provisions, with some modifications to address concerns identified above. Notice of conscience protections and nondiscrimination laws under those provisions is an important means of promoting compliance. Such notices inform the public, patients, and workforce, which may include students or applicants for employment or training, of protections under the Federal conscience and nondiscrimination laws and this rule.

This proposed notice would advise persons and covered entities about their rights and the Department's and/or recipients' obligations under Federal conscience and nondiscrimination laws. The notice may also provide information about how to file a complaint with OCR if an individual believes that these laws have been violated, and may provide additional information to the patient on how to seek care.

Proposed paragraph (b) sets forth locations where the notice should appear: on the Department's and recipient's website(s), and in a physical location of each Department and recipient establishment where notices to the public and notices to their workforce are customarily posted. Proposed paragraph (c) would encourage covered entities to utilize the model notice and, if the recipient does not have a conscience-based objection to doing so, to provide information about alternative providers that may offer patients services the recipient does not provide for reasons of conscience. The Department proposes that recipients should be permitted to tailor their notice to their particular circumstances and communities, and paragraph (d) of § 88.3 proposes to permit recipients to combine the text of the notice specified in paragraph (a) with other notices.

The 2019 Final Rule, at § 88.5(A), provided that the OCR director would consider whether a covered entity posted OCR's model notice as non-dispositive evidence of compliance with the underlying federal conscience protection statute where relevant. This proposed rule modifies that provision to avoid implying that covered entities can substantively comply with the underlying statute by simply posting a notice. The Department believes such an implication could undermine the conscience and nondiscrimination protections provided by the underlying statutes themselves, and therefore the goal of this rule. While the Department considers posting a notice to be a best practice and encourages covered entities to post the model notice included in the proposed rule, we wish to avoid the implication that a covered entity can satisfy the substantive obligations imposed upon it by the underlying statutes by taking an action that none of the underlying statues designates as a method of demonstrating compliance with their substantive provisions.with. Covered entities must comply with the requirements of each of the federal health care provider conscience protection statutes identified in § 88.1 of the proposed rule, regardless of whether the notice is posted. We solicit comments on these voluntary notice provisions and specifically seek comment on whether posting a notice should be mandatory as contemplated by the 2018 Proposed Rule.

We encourage any relevant comments, including those that will assist the Department in assessing alternatives and reevaluating the necessity for additional regulations implementing the statutory requirements.

The Department proposes to rescind the other portions of the 2019 Final Rule because those portions are redundant, unlawful, confusing or undermine the balance Congress struck between safeguarding conscience rights and protecting access to health care, or because significant questions have been raised as to their legal authorization. This includes the purpose provision at § 88.1, the definitions that appeared at § 88.2, the applicable requirements and prohibitions that appeared at § 88.3, the assurance and certification requirements at § 88.4, compliance requirements at § 88.6, the relationship to other laws provision at § 88.8, and the rule of construction and severability provisions at § 88.9 and § 88.10. Those portions of the 2019 Rule were either: (1) redundant and unnecessary, because they simply repeated the language of the underlying statute; (2) have been deemed unlawful in district court decisions that raise

[12] Letter from The Nat'l Coalition for LGBT Health to HHS (Mar. 27, 2018) *available at https://www.regulations.gov/comment/HHS-OCR-2018-0002-71195*.

[13] *See, e.g., New York* v. *United States Dep't of Health & Hum. Servs.,* 414 F. Supp. 3d 475, 521–22 (S.D.N.Y. 2019) (neither housekeeping authority nor general compliance powers are a basis for substantive rulemaking).

significant questions as to whether they exceed the scope of the Department's housekeeping authority; or (3) created confusion or harm by undermining the balance struck by Congress in the statutes themselves. For example, the district court for the Southern District of New York found that the 2019 Final Rule's purpose, definitions, and assurance and certification requirements ''impose[d] new substantive duties on regulated entities in the health care sector'' and did not fall within the agency's housekeeping authority. *New York,* 414 F. Supp. 3d. at 523. The district court for the Northern District of California similarly found that the 2019 Final Rule, including the definitions and enforcement provisions, were not ''mere housekeeping.'' *City and Cty. of San Francisco,* 411 F. Supp. 3d at 1023. The ''expansive definitions,'' which departed from the federal statutes, coupled with the termination of all HHS funding as a consequence of noncompliance, deemed the rule ''undoubtedly substantive.'' *Id.*

The proposed partial rescission n is informed by the three district court decisions that vacated the 2019 Final Rule prior to it taking effect and identified a number of serious questions that warrant additional careful consideration. Among other things, the litigation has raised significant questions regarding the complaints of statutory violations that served as a predicate for the 2019 Final Rule.

The Federal health conscience protection and nondiscrimination statutes represent Congress' attempt to strike a careful balance. Some doctors, nurses, and hospitals, for example, object for religious or moral reasons to providing or referring for abortions or assisted suicide, among other procedures. Respecting such objections honors liberty and human dignity. It also redounds to the benefit of the medical profession.

Patients also have autonomy, rights, and moral and religious convictions. And they have health needs, sometime urgent ones. Our health care systems must effectively deliver services—including safe legal abortions—to all who need them in order to protect patients' health and dignity.

Congress sought to balance these considerations through a variety of statutes. The Department will respect that balance. The Department remains committed to educating patients, providers, and other covered entities about their rights and obligations under the conscience statutes and remains committed to ensuring compliance. In light of the decisions discussed above, issues raised by commenters, and concerns about how the 2019 Final Rule approached the balance struck by Congress in the underlying statutes, the Department proposes to partially rescind the 2019 Final Rule, while maintaining some of its provisions, but otherwise preserve the status quo from 2011, which continues to be in effect. We solicit public comment to aid our consideration of the many complex questions surrounding the issue and the need for regulation in this area.

III. Statutory Authority

The Secretary proposes to partially rescind the May 21, 2019, Final Rule entitled ''Protecting Statutory Conscience Rights in Health Care; Delegations of Authority.'' As discussed above, the Church Amendments, section 245 of the PHS Act, the Weldon Amendment, and the Affordable Care Act require, among other things, that the Department and recipients of Department funds (including State and local governments) refrain from discriminating against institutional and individual health care entities for their participation in, abstention from, or objection to certain medical procedures or services, including certain health services, or research activities funded in whole or in part by the federal government. No statutory provision, however, requires promulgation of regulations for their interpretation or implementation. This proposed rule is being issued pursuant to the authority of 5 U.S.C. 301, which empowers the head of an Executive department to prescribe regulations ''for the government of his department, the conduct of his employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property.''

IV. Request for Comment

The Department seeks comments in order to determine whether or not to rescind the 2019 Final Rule in part or in its entirety or to modify that rule or parts of it, as well as to determine whether or not to leave in place the framework created by 2011 Final Rule, with additional authorities added to that framework, or otherwise to modify it. In particular, the Department seeks the following:

1. Information, including specific examples where feasible, addressing the scope and nature of the problems giving rise to the need for rulemaking, and whether those problems could be addressed by different regulations than those adopted in 2019 or by sub-regulatory guidance;

2. Information, including specific examples where feasible, supporting or refuting allegations that the 2019 Final Rule hindered, or would hinder, access to information and health care services, particularly sexual and reproductive health care and other preventive services;

3. Information, including specific examples where feasible, regarding complaints of discrimination on the basis that an individual or health care entity did not provide services for the purpose of causing or assisting in the death of any individual, including through assisted suicide, euthanasia, and mercy killing, as described in section 1553 of the ACA, and comments on whether additional regulations under this authority are necessary;

4. Information, including specific examples where feasible, regarding complaints of discrimination by a qualified health plan under the ACA on the basis that a health care provider or facility refused to provide, pay for, cover, or refer for abortions, as described in section 1303 of the ACA and comments on whether additional regulations under this authority are necessary;

5. Information, including specific examples where feasible, from health care providers regarding alleged violations of the conscience provisions provided for in the Medicaid and Medicare statutes, including the provisions codified at 42 U.S.C. 1320a–1(h), 1320c–11, 1395i–5, 1395w–22(j)(3), 1395x(e), 1395x(y)(1), 1395cc(f), 1396a(a), 1396a(w)(3), 1396u–2(b)(3), 1397j–1(b), and 14406(2) and comments on whether additional regulations under these authorities are necessary;

6. Information, including specific examples where feasible, regarding alleged violations of any of the other authorities that appeared in the 2019 Final Rule but not the 2011 Final Rule;

7. Comment on whether the 2019 Final Rule provided sufficient clarity to minimize the potential for harm resulting from any ambiguity and confusion that may exist because of the rule, and whether any statutory terms require additional clarification;

8. Comment on whether the provisions added by the 2019 Final Rule are necessary, collectively or with respect to individual provisions, to serve the statutes' or the rule's objectives, including with regard to whether the Department accurately evaluated the need for additional regulation in the 2019 Final Rule, and whether those provisions should be modified, or whether the rule's objectives may also be accomplished through alternative means, such as outreach and education;

9. Comment on the proposal to retain a voluntary notice provision, including comments on whether such notice should be mandatory, and what a model notice should include; and

10. Comment on the proposal to retain portions of the 2019 Final Rule's enforcement provisions in the proposed § 88.2.

V. Preliminary Regulatory Impact Analysis

Introduction

We have examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct us to assess all 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, and other advantages; distributive impacts; and equity). We believe that this proposed rule is an economically significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this proposed rule would result in either a small reduction in costs to small entities or no impact on costs to small entities, we propose to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. This finding is consistent with the regulatory flexibility analysis of the final rule that would be partially rescinded by this regulatory action, which ''concluded that this rule does not have a significant economic impact on a substantial number of small entities'' (84 FR 23255).

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $165 million, using the most current (2021) Implicit Price Deflator for the Gross Domestic Product. This proposed rule would not create an unfunded mandate under the Unfunded Mandates Reform Act because it does not impose any new requirements resulting in unfunded expenditures by state, local, and tribal governments, or by the private sector.

Detailed Economic Analysis

HHS considered several policy alternatives, in addition to the approach of the proposed rule. This economic analysis considers the likely impacts associated with the following three policy options: (1) rescinding the 2019 Final Rule without exceptions; (2) adopting the approach of the proposed rule, which partially rescinds the 2019 Final Rule, and modifies other provisions; and (3) adopting the approach of the proposed rule, except further modifying the notice provision to require mandatory notices instead of voluntary notices. To simplify the narrative of this RIA, we present the impacts of rescinding the 2019 Final Rule in its entirety first, and then present the impacts of a partial rescission with modifications. These modifications correspond to the policy option of the proposed rule, and the policy option of mandatory notices. This RIA then summarizes the impacts of each policy option against common assumptions about the baseline scenario of no further regulatory action.

Policy Option 1: Rescinding the 2019 Final Rule

Rescinding the final rule entitled ''Protecting Statutory Conscience Rights in Health Care; Delegations of Authority,'' published in the **Federal Register** on May 21, 2019 (84 FR 23170, 45 CFR part 88) (hereafter, ''2019 Final Rule'') would prevent the realization of the anticipated impacts of the 2019 Final Rule. For the purposes of this economic analysis, we provisionally adopt the characterization and quantification of these impacts that were presented in the regulatory impact analysis (RIA) of the 2019 Final Rule. The potential impacts identified and estimated in the RIA covered a five-year time horizon following the effective date of the 2019 Final Rule. However, because the 2019 Final Rule has been vacated by three federal district courts, these impacts have mostly not occurred and are not likely to occur. The litigation status of the 2019 Final Rule introduces substantial analytic uncertainty into any characterization of the baseline scenario of no further regulatory action. We address this uncertainty directly by analyzing the potential impacts of Policy Option 1 under two discrete baseline scenarios. First, for the purposes of this economic analysis, we adopt a primary baseline scenario that the 2019 Final Rule would take effect. Second, we adopt an alternative baseline scenario that the 2019 Final Rule would never take effect, even without any subsequent regulatory action.

Under our primary baseline scenario, Policy Option 1 would entirely reverse the impacts of the 2019 Final Rule. To analyze the impacts of Policy Option 1 under this scenario, we provisionally adopt the estimates of the likely impacts of the 2019 Final Rule in its RIA, although we understand that commenters raised questions whether, for example, certain of the non-quantified benefits that the 2019 Final Rule anticipated would in fact be realized. The RIA identified five categories of quantified costs: (1) familiarization; (2) assurance and certification; (3) voluntary actions to provide notices of rights; (4) voluntary remedial efforts; and (5) OCR enforcement and associated costs. The narrative of the RIA described an approach for estimating each of these costs, and Table 6 of the RIA summarized the timing and magnitude of these quantified costs (84 FR 23240). In addition to identifying quantified costs, the RIA identified non-quantified costs associated with compliance procedures and non-quantified costs associated with seeking alternative providers of certain objected to medical services or procedures. The RIA did not identify any quantified benefits, but identified non-quantified benefits associated with compliance with the law; protection of conscience rights, the free exercise of religion and moral convictions; more diverse and inclusive providers and health care professionals; improved provider-patient relationships that facilitate improved quality of care; equity, fairness, nondiscrimination; increased access to care. We request public comment on whether the non-quantified benefits and costs identified in the 2019 Final Rule's RIA would likely be realized, absent any further regulatory action.

Table 1 of the 2019 Final Rule's RIA reported the present value and annualized value of the quantified costs and summarized the non-quantified costs and benefits of the 2019 Final Rule (84 FR 23227). That RIA reported estimates of the present value of the total costs over a 5-year time horizon of $900.7 million using a 3-percent discount rate and $731.5 million using a 7-percent discount rate. That RIA also reported annualized estimates of the costs of $214.9 million under a 3-percent discount rate and $218.5 million using a 7-percent discount rate. Both sets of these cost estimates were

reported in year 2016 dollars. We updated these estimates to year 2021 dollars using the Implicit Price Deflator for the Gross Domestic Product and report the present value of costs of $1,008.0 million using a 3-percent discount rate and $818.6 million using a 7-percent discount rate; and annualized costs of $240.5 million using a 3-percent discount rate and $244.5 million using a 7-percent discount rate. Under our primary baseline scenario, the impacts of Policy Option 1 would be approximately the inverse of the impacts contained in the 2019 Final Rule's RIA. Table A in this preliminary regulatory impact analysis reports the impacts of the Policy Option 1 under this baseline scenario in millions of 2021 dollars, covering a 5-year time horizon.

Under our alternative baseline scenario, we assume that the 2019 Final Rule would never take effect, even without any additional regulatory action. Under this baseline scenario, Policy Option 1 would maintain the current status quo, which is characterized by the 2011 Final Rule (76 FR 9968). Thus, for this baseline scenario, we conclude that Policy Option 1 would result in only *de minimis* impacts that we do not quantify, such as resolving any regulatory uncertainty associated with the 2019 Final Rule, which has been vacated by three federal courts but not rescinded. We report the impacts of Policy Option 1 under this alternative baseline scenario in Table A.

Policy Option 2: The Proposed Rule

The proposed rule would partially rescind the 2019 Final Rule, with certain exceptions. Specifically, the Department proposes to retain three aspects of the 2019 Final Rule: (1) the addition to part 88 of statutes including the 2019 Final Rule; (2) several enforcement provisions; and (3) a voluntary notice provision. However, as described in greater detail in the Preamble, the Department is also proposing to modify each of these provisions of the 2019 Final Rule. For example, the voluntary notice provision in the proposed rule would clarify that providing these voluntary notices would not satisfy an entity's substantive obligations imposed upon covered entities by the underlying statutes.

We considered the likely impacts of each of the three retained aspects of the 2019 Final Rule. We identify quantifiable impacts associated with retaining the aspects of the 2019 Final Rule related to the enforcement provisions and quantifiable impacts related to the voluntary notice provision. We adopt the analytic approach contained in the 2019 Final Rule's RIA to quantify these impacts, including an assumption in that RIA that about half of covered entities would provide notices voluntarily. For the provisions related to enforcement, the 2019 RIA estimated an annual impact of about $3 million in costs to the Department and $15 million in total costs over five years. For the provisions related to voluntary notices, that RIA estimated an impact of about $93.4 million in costs in the first year of the analysis, and about $14.1 million in costs in subsequent years, or about $150 million over five years. Combined, the 2019 RIA estimated 5-year costs for these two provisions of $165 million; in present value terms, these estimates are $142 million using a 3-percent discount rate and $118 million using a 7-percent discount rate. The 2019 RIA reported these costs in 2016 dollars.

To quantify the net impact of the proposed rule, we subtract the costs associated with enforcement and voluntary notice provisions from our earlier estimates of the total cost savings of rescinding the 2019 Final Rule. As an intermediate step, we converted the 2016 dollar estimates to 2021 dollars using the Implicit Price Deflator for the Gross Domestic Product. Compared to our primary baseline, we estimate that the proposed rule, if finalized, would result in annualized cost savings in 2021 dollars of $202.5 million using a 3-percent discount rate and $205.2 million using a 7-percent discount rate. We report these estimates in Table A, which also reports comparable estimates corresponding to our alternative baseline scenario.

Policy Option 3: The Proposed Rule With an Alternative Notice Provision

We analyzed a third policy option, which is similar to the proposed rule, but would further modify the notice provision by requiring covered entities to post these notices in designated places. The 2019 Final Rule's RIA assumes that about half of covered entities would provide these notices on a voluntary basis, and we carried this assumption through in this analysis, including in our analysis of the costs of the proposed rule. Under Policy Option 3, we anticipate that all covered entities would provide notices, and therefore estimate that costs of mandatory notices would be double that of our estimates of the costs of voluntary notices.

To quantify the net impact of Policy Option 3, we subtract the costs associated with enforcement and mandatory notice provisions from our earlier estimates of the total cost savings of rescinding the 2019 Final Rule. Compared to our primary baseline, we estimate that Policy Option 3 would result in annualized cost savings in 2021 dollars of $168.0 million using a 3-percent discount rate and $169.2 using a 7-percent discount rate. We report these estimates in Table A, which also reports comparable estimates corresponding to our alternative baseline scenario.

Summary of Impacts

This analysis estimates the costs associated with the proposed rule and for two policy alternatives. For the proposed rule, we estimate the present value of the costs of −$834.2 million using a 3-percent discount rate and −$657.2 million using a 7-percent discount rate. Alternatively stated, we estimate that the proposed rule would generate cost savings of $834.2 million using a 3-percent discount rate and $657.2 million using a 7-percent discount rate. Table A reports cost estimates for the proposed rule and for the two policy alternatives. These estimates are reported in millions of 2021 dollars over a 5-year time horizon. Table A presents these cost estimates in present value terms and as annualized values for both a 3-percent and a 7-percent discount rate. Table A reports these estimates for our primary baseline scenario that the 2019 Final Rule would take effect, and for an alternative baseline scenario that the 2019 Final Rule would never take effect, even without any subsequent regulatory action. We do not identify any quantified benefits for the proposed rule or for the two policy alternatives.

TABLE A—ACCOUNTING TABLE OF COSTS

[Millions of 2021 dollars over a 5-year time horizon]

Baseline scenario and policy option	Present value by discount rate		Annualized value by discount rate	
	3 Percent	7 Percent	3 Percent	7 Percent
Primary Baseline:				
Option 1	−$1,008.0	−$818.6	−$240.5	−$244.5
Option 2	−834.2	−657.2	−202.5	−205.2
Option 3	−675.7	−509.6	−168.0	−169.2
Alternative Baseline:				
Option 1	0.0	0.0	0.0	0.0
Option 2	173.8	161.4	37.9	39.4
Option 3	332.2	309.0	72.5	75.4

Notes: Option 2 corresponds to the Proposed Rule. Negative costs indicate the Policy Option, if finalized would result in cost savings.

The RIA of the 2019 Final Rule also identified certain non-quantifiable impacts. That RIA discussed potential impacts related to compliance with the law; impacts related to conscience rights; impacts related to the composition of providers and health care professionals; impacts related to provider-patient relations; impacts related to equity, fairness, and nondiscrimination; impacts related to access to care; and additional non-quantified cost savings associated with compliance procedures (recordkeeping and compliance reporting) and seeking of alternative providers of certain objected to medical services or procedures. We request public comment on whether the non-quantified impacts identified in the 2019 Final Rule's RIA would likely be realized, absent any further regulatory action; and request comment on the extent to which each of the Policy Options, including the proposed rule, would result in comparable impacts.

We also request comment on whether covered entities have incurred costs attributable to the 2019 Final Rule that would not be averted by the proposed rule, if it is finalized; and further request data that would allow us to refine our quantified cost-savings estimates. For example, we request information that would allow us to quantify costs that covered entities previously incurred and are not recoverable, such as the costs associated with familiarization of the 2019 Final Rule.

List of Subjects in 45 CFR Part 88

Adult education, Authority delegations (Government agencies), Civil rights, Colleges and universities, Community facilities, Conflicts of interest, Educational facilities, Employment, Family planning, Freedom of information, Government contracts, Government employees, Grant programs-health, Grants administration, Health care, Health facilities, Health insurance, Health professions, Hospitals, Immunization, Indians—Tribal government, Insurance, Insurance companies, Intergovernmental relations, Laboratories, Maternal and child health, Medicaid, Medical and dental schools, Medical research, Medicare, Mental health programs, Nursing homes, Occupational safety and health, Prescription drugs, Public assistance programs, Public health, Religious discrimination, Reporting and recordkeeping requirements, Research, Scholarships and fellowships, Schools, Scientists.

■ For the reasons set forth in the preamble, the Department proposes to revise 45 CFR part 88 as follows:

PART 88—ENSURING THAT DEPARTMENT OF HEALTH AND HUMAN SERVICES FUNDS DO NOT SUPPORT COERCIVE OR DISCIMINATORY POLICIES OR PRACTICES IN VIOLATION OF FEDERAL LAW

Sec.

88.1 Purpose.
88.2 Complaint handling and investigating.
88.3 Voluntary Notice of Federal conscience and nondiscrimination laws.
88.4 Severability.
Appendix A to Part 88—Model Text: Notice of Rights Under Federal Conscience and Nondiscrimination Laws

Authority: 5 U.S.C. 301.

§ 88.1 Purpose.

The purpose of this part is to provide for the enforcement of the Church Amendments, 42 U.S.C. 300a–7; the Coats-Snowe Amendment, section 245 of the Public Health Service Act, 42 U.S.C. 238n; the Weldon Amendment, Consolidated Appropriations Act, 2022, Pub. L. 117–103, div. H, title V General Provisions, section 507(d)(1) (Mar.15, 2022); Sections 1303, 1411, and 1553 of the ACA, 42 U.S.C. 18023, 18081, and 18113; certain Medicare and Medicaid provisions, 42 U.S.C. 1320a–1(h), 1320c–11, 1395i–5, 1395w–22(j)(3)(A)–(B), 1395x(e), 1395x(y)(1), 1395cc(f), 1396a(a), 1396a(w)(3), 1396u–2(b)(3)(A)–(B), 1397j–1(b), and 14406; Consolidated Appropriations Act, 2022, Pub. L. 115–245, div. H, section 209, div. K, title VII, section 7018; 22 U.S.C. 7631(d); 22 U.S.C. 2151b(f); 42 U.S.C. 280g–1(d), 290bb–36(f), 1396f, 1396s(c)(2)(B)(ii); 5106i(a)); and 29 U.S.C. 669(a)(5), referred to collectively as the ''federal health care provider conscience protection statutes.''

§ 88.2 Complaint handling and investigating.

(a) *Delegated authority.* OCR has been delegated the authority to facilitate and coordinate the Department's enforcement of the Federal health care provider conscience protection statutes, which includes the authority to:

(1) Receive and handle complaints;

(2) Conduct investigations;

(3) Consult on compliance within the Department;

(4) Seek voluntary resolutions of complaints; and

(5) Consult and coordinate with the relevant Departmental funding component, and utilize existing regulations enforcement, such as those that apply to grants, contracts, or other programs and services..

(b) *Investigations.* An OCR investigation of a complaint alleging failure to comply with the Federal health care provider conscience protection statutes may include, a review of the pertinent practices, policies, communications, documents, compliance history, circumstances under which the possible noncompliance occurred, and other factors relevant to determining whether the Department, Department component, recipient, or sub-recipient has failed to comply. OCR may use fact-finding methods including site visits; interviews with the

complainants, Department component, recipients, sub-recipients, or third-parties; and written data or discovery requests. OCR may seek the assistance of any State agency.

(c) *Supervision and coordination.* If as a result of an investigation OCR makes a determination of noncompliance with responsibilities under the Federal health care provider conscience protection statutes, OCR will coordinate and consult with the Departmental component responsible for the relevant funding to undertake appropriate action with the component to assure compliance.

(d) *Resolution of matters.* (1) If an investigation reveals that no action is warranted, OCR will in writing so inform any party who has been notified by OCR of the existence of the investigation.

(2) If an investigation indicates a failure to comply with the Federal health care provider conscience protection statutes, OCR will so inform the relevant parties and the matter will be resolved by informal means whenever possible.

§ 88.3 Voluntary Notice of Federal conscience and nondiscrimination laws.

(a) *In general.* OCR considers the posting of a notice consistent with this part as a best practice, and encourages all entities subject to the federal health care provider statutes to post the model notice provided in Appendix A.

(b) *Placement of the notice text.* The model notice in Appendix A should be posted in the following places, where relevant:

(1) On the Department or recipient's website(s);

(2) In a prominent and conspicuous physical location in the Department's or covered entity's establishments where notices to the public and notices to its workforce are customarily posted to permit ready observation;

(3) In a personnel manual, handbook, orientation materials, trainings, or other substantially similar document likely to be reviewed by members of the covered entity's workforce;

(4) In employment applications to the Department or covered entity, or in applications for participation in a service, benefit, or other program, including for training or study; and

(5) In any student handbook, orientation materials, or other substantially similar document for students participating in a program of training or study, including for postgraduate interns, residents, and fellows.

(c) *Format of the notice.* The text of the notice should be large and conspicuous enough to be read easily and be presented in a format, location, or manner that impedes or prevents the notice being altered, defaced, removed, or covered by other material.

(d) *Content of the notice text.* A recipient or the Department should consider using the model text provided in Appendix A for the notice, but may tailor its notice to address its particular circumstances and to more specifically address the conscience laws covered by this rule that apply to it. Where possible, and where the recipient does not have a conscience-based objection to doing so, the notice should include information about alternative providers that may offer patients services the recipient does not provide for reasons of conscience.

(e) *Combined nondiscrimination notices.* The Department and each recipient may post the notice text provided in Appendix A of this part, or a notice it drafts itself, along with the content of other notices (such as other nondiscrimination notices).

§ 88.4 Severability.

Any provision of this part held to be invalid or unenforceable either by its terms or as applied to any entity or circumstance 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 utter invalidity or unenforceability, in which event such provision shall be severable from this part, which shall remain in full force and effect to the maximum extent permitted by law. A severed provision shall not affect the remainder of this part or the application of the provision to other persons or entities not similarly situated or to other, dissimilar circumstances.

Appendix A to Part 88—Model Text: Notice of Rights Under Federal Conscience and Nondiscrimination Laws

[Name of entity] complies with applicable Federal health care provider conscience protection statutes, including [list applicable conscience statutes]. If you believe that [Name of entity] has violated any of these provisions, you can file a complaint with the U.S. Department of Health and Human Services, Office for Civil Rights, electronically through the Office for Civil Rights Complaint Portal, available at *https://ocrportal.hhs.gov/ocr/portal/lobby.jsf* or by mail or phone at: U.S. Department of Health and Human Services, 200 Independence Avenue SW, Room 509F, HHH Building Washington, DC 20201, 1–800–368–1019, 800–537–7697 (TDD). Complaint forms and more information about Federal conscience protection laws are available at *https://www.hhs.gov/conscience.*

* * * * *

Dated: December 28, 2022.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2022–28505 Filed 12–30–22; 11:15 am]

BILLING CODE 4153–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 386 and 387

[Docket No. FMCSA–2016–0102]

RIN 2126–AC10

Broker and Freight Forwarder Financial Responsibility

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

ACTION: Notice of proposed rulemaking.

SUMMARY: FMCSA proposes the implementation of certain requirements under the Moving Ahead for Progress in the 21st Century Act (MAP–21). Previously, FMCSA implemented the MAP–21 requirement to increase the financial security amount for brokers from $25,000 to $75,000 for household brokers and from $10,000 to $75,000 for all other property brokers and, for the first time, established financial security requirements for freight forwarders. The agency proposes regulations in five separate areas: Assets readily available; immediate suspension of broker/freight forwarder operating authority; surety or trust responsibilities in cases of broker/freight forwarder financial failure or insolvency; enforcement authority; and entities eligible to provide trust funds for form BMC–85 trust fund filings.

DATES: Comments must be received on or before March 6, 2023.

ADDRESSES: You may submit comments identified by Docket Number FMCSA-2016–0102 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov/docket/FMCSA-2016-0102/document.* Follow the online instructions for submitting comments.
- *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:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC

20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

- *Fax:* (202) 493–2251.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey L. Secrist, Chief, Registration, Licensing, and Insurance Division, Office of Registration, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 or by phone at (202) 385–2367; *Jeffery.Secrist@dot.gov.* If you have questions on viewing or submitting material to the docket, call Dockets Operations at (202) 366–9826.

SUPPLEMENTARY INFORMATION: FMCSA organizes this notice of proposed rulemaking (NPRM) as follows:

I. Public Participation and Request for Comments
  A. Submitting Comments
  B. Viewing Comments and Documents
  C. Privacy
  D. Comments on the Information Collection
II. Executive Summary
  A. Purpose and Summary of the Regulatory Action
  B. Summary of Major Provisions
  C. Costs and Benefits
III. Abbreviations
IV. Legal Basis
V. Background
VI. Comments on the Advance Notice of Proposed Rulemaking (ANPRM)
  A. Group Surety Bond and Group Trust Fund
  B. Assets Readily Available
  C. Immediate Suspension of Broker and Freight Forwarder Operating Authority
  D. Surety or Trust Responsibilities in Cases of Broker or Freight Forwarder Financial Failure or Insolvency
  E. Enforcement Authority
  F. Entities Eligible To Provide BMC–85 Trust Fund Filings
  G. Revisions to Forms BMC–84 and BMC–85
  H. Household Goods (HHG)
  I. Market's Ability To Address Broker/Freight Forwarder Noncompliance
  J. Comments on Impact of Regulatory Changes
  K. Miscellaneous Comments on the ANPRM
VII. Discussion of Proposed Rulemaking
VIII. Section-by-Section Analysis
IX. Regulatory Analyses
  A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures
  B. Congressional Review Act
  C. Advance Notice of Proposed Rulemaking
  D. Regulatory Flexibility Act (Small Entities)
  E. Assistance for Small Entities
  F. Unfunded Mandates Reform Act of 1995
  G. Paperwork Reduction Act (Collection of Information)
  H. E.O. 13132 (Federalism)
  I. Privacy
  J. E.O. 13175 (Indian Tribal Governments)
  K. National Environmental Policy Act of 1969

I. Public Participation and Request for Comments

A. Submitting Comments

If you submit a comment, please include the docket number for this NPRM (FMCSA–2016–0102), indicate the specific section of this document to which your comment applies, and provide a reason for each suggestion or recommendation. 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 FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *https://www.regulations.gov/docket/FMCSA-2016-0102/document,* click on this NPRM, click ''Comment,'' and type your comment into the text box on the following screen.

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.

Confidential Business Information (CBI)

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to the 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 the NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as ''PROPIN'' to indicate it contains proprietary information. FMCSA will treat such marked submissions as confidential under the Freedom of Information Act, and they will not be placed in the public docket of the NPRM. Submissions containing CBI should be sent to Mr. Brian Dahlin, Chief, Regulatory Analysis Division, Office of Policy, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Any comments FMCSA receives not specifically designated as CBI will be placed in the public docket for this rulemaking.

B. Viewing Comments and Documents

To view any documents mentioned as being available in the docket, go to *https://www.regulations.gov/docket/FMCSA-2016-0102/document* and choose the document to review. To view comments, click this NPRM, then click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

C. Privacy

DOT solicits comments from the public to better inform its regulatory process, in accordance with 5 U.S.C. 553(c). 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—Federal Docket Management System), which can be reviewed at *https://www.govinfo.gov/content/pkg/FR-2008-01-17/pdf/E8-785.pdf.*

D. Comments on the Information Collection

Written comments and recommendations for the information collection discussed in this NPRM should be sent within 60 days of publication to *www.reginfo.gov/public/do/PRAMain.* Find this information collection by clicking the link that reads ''Currently under Review—Open for Public Comments'' or by entering Office of Management and Budget (OMB) information request control number 2126–0017 in the search bar and clicking on the last entry to reach the ''comment'' button.

II. Executive Summary

A. Purpose and Summary of the Regulatory Action

FMCSA proposes modifications to broker and freight forwarder financial responsibility requirements.

B. Summary of Major Provisions

This NPRM proposes modification in five regulatory areas.

Assets Readily Available. The NPRM proposes allowing brokers or freight forwarders to meet the MAP–21 requirement to have ''assets readily available'' by maintaining trusts that meet certain criteria, including that the assets can be liquidated within 7 calendar days of the event that triggers a payment from the trust, and that do not contain certain assets as specified in this NPRM.

Immediate Suspension of Broker/Freight Forwarder Operating Authority. The NPRM proposes that ''available financial security'' falls below $75,000 when there is a drawdown on the broker or freight forwarder's surety bond or trust fund. This would happen when a broker or freight forwarder consents to a drawdown, or if the broker or freight forwarder does not respond to a valid notice of claim from the surety or trust provider, causing the provider to pay the claim, or if the claim against the broker or freight forwarder is converted to a judgment and the surety or trust provider pays the claim. FMCSA also proposes that, if a broker or freight forwarder does not replenish funds within 7 business days after notice by FMCSA, the agency will issue a notification of suspension of operating authority to the broker or freight forwarder.

Surety or trust responsibilities in cases of broker/freight forwarder financial failure or insolvency. FMCSA proposes to define ''financial failure or insolvency'' as bankruptcy filing or State insolvency filing. This proposal also requires that if the surety/trustee is notified of any insolvency of the broker or freight forwarder, it must notify FMCSA and initiate cancelation of the financial responsibility. In addition, FMCSA proposes to publish a notice of failure in the FMCSA Register immediately.[1]

Enforcement Authority. FMCSA proposes that to implement MAP–21's requirement for suspension of a surety provider's authority, the agency would first provide notice of the suspension to the surety/trust fund provider, followed by 30 calendar days for the surety or trust fund provider to respond before a final Agency decision is issued. The agency also proposes to add penalties in 49 CFR part 386, appendix B, for violations of the new requirements.

Entities Eligible To Provide Trust Funds for BMC–85 Filings. FMCSA proposes to remove the rule allowing loan and finance companies to serve as BMC–85 trustees.

C. Costs and Benefits

Brokers and freight forwarders, surety bond and trust fund providers, and the Federal Government would incur costs for compliance and implementation. The quantified costs of the proposed rule include notification costs related to a drawdown on a surety bond or trust fund, and immediate suspension proceedings, FMCSA costs to hire new personnel, and costs associated with the development and maintenance of the BMC–84/85 Filing and Management Information Technology (IT) System. As shown in Table 1, FMCSA estimates that the 10-year cost of the proposed rule would total $5.4 million on an undiscounted basis, $3.8 million discounted at 7 percent, and $4.6 million discounted at 3 percent (all in 2020 dollars). The annualized cost of the rule would be $545,505 discounted at 7 percent and $542,343 at 3 percent. Ninety-eight percent of the costs would be incurred by the Federal Government.

TABLE 1—TOTAL COST OF THE PROPOSED RULE

[In 2020 $]

Year	Undiscounted				Discounted	
	Brokers and freight forwarders	Financial responsibility providers	Federal govt.	Total [a]	Discounted at 7 percent	Discounted at 3 percent
2025	$2,600	$3,800	$691,900	$698,200	$652,600	$677,900
2026	2,800	4,100	512,000	518,900	453,200	489,100
2027	3,100	4,500	512,000	519,600	424,200	475,500
2028	3,400	4,900	512,100	520,400	397,000	462,400
2029	3,700	5,400	512,200	521,300	371,700	449,700
2030	4,000	5,900	512,300	522,200	348,000	437,300
2031	4,400	6,500	512,400	523,300	325,900	425,500
2032	4,800	7,100	512,500	524,400	305,200	414,000
2033	5,300	7,700	512,600	525,600	285,900	402,800
2034	5,800	8,500	512,700	527,000	267,900	392,100
Total	39,800	58,400	5,302,700	5,400,900	3,831,400	4,626,300
Annualized	.....	.....	.....	.....	545,505	542,343

Notes:
[a] Total cost values may not equal the sum of the components due to rounding (the totals shown in this column are the rounded sum of unrounded components).

This proposed rule would result in benefits to motor carriers. FMCSA is aware that some brokers improperly choose to withhold payment to motor carriers for services rendered. Motor carriers can then submit claims to the financial responsibility provider in an attempt to receive payment. If the financial responsibility provider has received claims against an individual broker that exceed $75,000, the financial responsibility provider will often submit the claims to a court in an interpleader action [2] to determine how to allocate the broker bond or trust fund. The interpleader process can be costly and time consuming for motor carriers, and generally results in motor carrier claims being paid pro rata, depending on the number of claims against the broker bond or trust fund. FMCSA

[1] The FMCSA Register is available at *https://li-public.fmcsa.dot.gov/LIVIEW/pkg_menu.prc_menu.*

[2] ''By definition, interpleader is a suit to determine a right to property held by a disinterested third party who is in doubt about ownership and who deposits the property with the court so that interested parties can litigate ownership.'' *Scottrade, Inc.* v. *Davenport,* No. CV–11–03–BLG–RFC, 2011 WL 153999, at *1 (D. Mont. Apr. 21, 2011).

believes that most brokers operate with integrity and uphold the contracts made with motor carriers and shippers. However, a minority of brokers with unscrupulous business practices can create unnecessary financial hardship for unsuspecting motor carriers.

FMCSA is relying on available data from which to draw an estimated percentage of how many brokers fail to pay motor carriers. The Agency's best estimate is that approximately 1.3 percent of brokers (approximately 440 in 2022) would experience a drawdown on their surety bond or trust fund within a given year, with average claim amounts of approximately $1,700 per claim submitted. Of these brokers, 17 percent may receive total claims in excess of $75,000, potentially leading to interpleader proceedings. Because this data is limited in scope, FMCSA cannot quantify benefits resulting from this proposal. It is FMCSA's intent that the provisions in this rule, if finalized, would mitigate the need to initiate interpleader proceedings and alleviate the concern of broker non-payment of claims.

III. Abbreviations

ANPRM Advance Notice of Proposed Rulemaking
ATA American Trucking Associations
CSBS Conference of State Banking Supervisors
DOT Department of Transportation
E.O. Executive Order
FDIC Federal Deposit Insurance Corporation
FMC Federal Maritime Commission
FR Federal Register
HHG Household Goods
ILOC Irrevocable Letter of Credit
IT Information Technology
IRFA Initial Regulatory Flexibility Analysis
MAP–21 The Moving Ahead for Progress in the 21st Century Act
NPRM Notice of Proposed Rulemaking
NRSRO Nationally Recognized Statistical Rating Organization
OIRA Office of Information and Regulatory Affairs
OMB Office of Management and Budget
OOIDA Owner-Operator Independent Driver's Association
TIA Transportation Intermediaries Association
Treasury United States Department of the Treasury, Federal Insurance Office
UMRA The Unfunded Mandates Reform Act of 1995
U.S.C. United States Code

IV. Legal Basis for the Rulemaking

In 2012, Congress enacted MAP–21 (Pub. L. 112–141, 126 Stat. 405, 822), section 32918 which contained requirements for the financial security of brokers and freight forwarders in amendments to 49 U.S.C. 13906(b) and (c). Section 32918(b) of MAP–21 (note to 49 U.S.C. 13906) directed the Secretary to issue regulations to implement and enforce the requirements under subsections (b) and (c) of section 13906. Authority to carry out and enforce these provisions has been delegated to the Administrator of FMCSA. (49 CFR 1.87(a)(5))

V. Background

A ''broker'' is a ''person . . . that as a principal or agent sells, offers for sale, negotiates for, or holds itself out by solicitation, advertisement, or otherwise as selling, providing, or arranging for, transportation by motor carrier for compensation.'' 49 U.S.C. 13102(2); see also 49 CFR 371.2(a)(FMCSA regulatory definition of ''Broker''). A ''freight forwarder'' is defined as ''a person holding itself out to the general public (other than as a pipeline, rail, motor, or water carrier) to provide transportation of property for compensation and in the ordinary course of its business'' (1) performs certain services including assembly, break-bulk or distribution services, (2) ''assumes responsibility for the transportation from the place of receipt to the place of destination'' and (3) ''uses for any part of the transportation a carrier'' such as a motor carrier. 49 U.S.C. 13102(8); see also 49 CFR 387.401(a)(FMCSA regulatory definition of freight forwarder).

Pursuant to 49 U.S.C. 13906(b), (c), brokers and freight forwarders must maintain financial security for the circumstance in which the broker or freight forwarder does not pay a motor carrier for services it provides. Prior to MAP–21, FMCSA required brokers to maintain financial security in the amount of $10,000 ($25,000 for household goods brokers). In MAP–21, Congress increased the broker financial responsibility requirement to $75,000 and extended those requirements to freight forwarders for the first time. (codified at 49 U.S.C. (b)(3), (c)(4)).

FMCSA implemented those MAP–21 financial responsibility limit requirements in a 2013 Omnibus rulemaking, 78 FR 60226 (Oct. 1, 2013), codified at 49 CFR 387.307(a) (brokers) and 49 CFR 387.403T(c) and 387.405 (freight forwarders). As a condition to obtain registration, brokers and freight forwarders must provide evidence of either a surety bond by filing a form BMC–84 or a trust fund by filing a form BMC–85 with the Agency.

A. Rulemaking History

In May 2016, FMCSA gathered stakeholders for an informal roundtable discussion on broker/freight forwarder financial responsibility (81 FR 24935, 24936, Apr. 27, 2016). Representatives of brokers, freight forwarders, motor carriers, surety providers, and trust fund providers participated in the roundtable and provided public comments to the docket established for the meeting. A transcript of this meeting is available in the docket for this rulemaking.

On September 27, 2018, FMCSA published an advance notice of proposed rulemaking (83 FR 48779) (ANPRM). The ANPRM indicated that the Agency was considering changes or additions in eight separate areas: Group surety bonds/trust funds; assets readily available; immediate suspension of broker/freight forwarder operating authority; surety or trust responsibilities in cases of broker/freight forwarder financial failure or insolvency; enforcement authority; entities eligible to provide trust funds for form BMC–85 trust fund filings; Form BMC–84 and BMC–85 trust fund revisions; and household goods (HHG). The Agency sought comments and data in response to the ANPRM.

B. Related Activities

When considering the data FMCSA received from its ANPRM, the Agency sought input from two Federal regulatory agencies, and based upon their suggestions reached out to several non-Federal entities as well. FMCSA appreciates the information shared by these entities, some of which helped inform our responses to comments on the ANPRM below. FMCSA met with the following entities:

1. United States Department of the Treasury, Federal Insurance Office (Treasury) on September 24, 2020.

2. Federal Deposit Insurance Corporation (FDIC) on October 13, 2020. In addition to offering their own thoughts, FDIC representatives suggested that FMCSA contact the Conference of State Banking Supervisors (CSBS) regarding relevant State regulations, sureties, trusts, and the regulation of broker and freight forwarder trust fund providers.

3. CSBS. FMCSA met with CSBS staff on October 14, 2020. FMCSA asked CSBS about oversight of financial companies including ''loan or finance companies,'' as well as definitions.

4. Florida Office of Financial Regulation on February 4, 2021. FMCSA asked for input regarding State regulation of entities providing financial responsibility.

5. Texas Office of Consumer Credit Commissioner on February 11, 2021. FMCSA shared relevant regulatory text and forms, as well as information regarding BMC–85 trust fund filers based in Texas.

VI. Comments and Resposes to the ANPRM

FMCSA received 33 comments responsive to the ANPRM: 18 from individuals, 2 from a motor carrier and an owner-operator, 6 from trade organizations, 1 from a factoring company, 6 from surety providers or trust fund providers. Of the surety providers, one provided both BMC–84 surety bonds and BMC–85 trust funds and three provided BMC–84 sureties only. Two commenters provided BMC–85 trust funds. Seven commenters, including the Transportation Intermediaries Association (TIA), American Trucking Associations (ATA), and the Owner-Operator Independent Driver's Association (OOIDA), voiced their general support for the agency's plan to implement rulemaking. Two commenters objected to any rulemaking.

In the ANPRM, FMCSA asked for comments and data on eight areas related to broker and freight forwarder financial responsibility. To organize responses, the agency provided a list of 17 issues and asked commenters to address their comments to these issues (83 FR at 48786).

A. Group Surety Bond and Group Trust Fund

FMCSA specifically sought comment on the definitions of *group surety bond* and *group trust fund* and how the agency could administer such a group surety or trust option given its limited resources.

Definition of Group Surety Bond or Group Trust Fund Including Responses to ''How could the Agency administer a group surety bond or group trust fund?''

Only one commenter attempted to provide a definition of *group surety bond.* The surety provider would define a *group bond* to mean ''any number of Freight Brokers and/or Freight Forwarders who operate as a group or association under the MAP–21 section 32918 and file a surety instrument collectively to ensure compliance individually to the financial responsibility requirement of the above section. This surety instrument shall be available to pay any claim pursuant to the above regulations.'' Based on the success of the Federal Maritime Commission (FMC) in administering a group surety bond option, this commenter recommended that FMCSA follow the guidelines of the FMC group bond, stating that FMCSA and FMC share common objectives. A trade organization appeared to define *group financial responsibility* by referencing the FMC regulations in 46 CFR 515.21(b). It also recommended that FMCSA follow FMC's lead.

A trade organization stated that while multiple bond principals may be covered under a single bond, there is no specific definition of what constitutes a group bond. It noted that a bond with multiple principals is far less common than one with a single principal. The commenter believed that such a bond program would require the formation of a group or association of principals that have agreed among themselves to accept liability for the total financial responsibility and bonded activities of the group. The surety could then underwrite the bond, prequalifying each principal.

Another trade organization opposed any attempt to define group surety bonds or group trust funds. It maintained that any attempt would waste FMCSA's resources and harm motor carriers and drivers. Two commenters agreed that group surety bonds or trust funds would create an administrative burden for FMCSA and present the possibility of increased risk. They recommended that FMCSA not allow group trust funds or group bonds.

A trust fund provider recommended the following guidelines for the group or association providing a surety instrument for its members and believed they would not encumber the agency. The recommended guidelines would include: (1) providing coverage using an internal letter of credit guaranteed by dedicated assets; (2) annually providing audited financial statements to confirm stated assets, accompanied by an opinion letter from the certified public accounting firm conducting the audit; (3) establishing financial responsibility in an internal letter of credit in an amount equal to the lesser of the total individual member's liability or the aggregate amount; and (4) having an aggregate of $3 million for the group bond (based on the model of the FMC group bond).

Regarding the freight broker industry, a surety provider believed there is no need for group surety bonds or group trust funds, ''nor an appetite to offer it in the surety industry.'' The commenter wrote that the group surety bond or trust fund proposal does not provide an adequate model for the agency to ensure the levels of financial security as described by the statute. If FMCSA does not have the resources or expertise to regulate claims, the commenter recommended it not consider adding another option to satisfy the financial guarantee requirement.

In the absence of any evidence that demand for broker/freight forwarder securities cannot be met if the agency does not accept group sureties or trust funds, one trade organization commented it would be difficult to justify the burden for FMCSA of monitoring the sufficiency of group instruments. This commenter believed carriers would be wary of the uncertainty if brokers and freight forwarders were permitted to meet their financial responsibility requirements through group securities, which would open the door to a lower aggregate amount of assets available to pay claims.

Comments on the FMC Model

A surety provider commented that providing a definition for a *group trust fund* would be difficult, ''as the FMCSA would be the first in the nation to accept such an instrument.'' It noted that the FMC group surety bond is not a group bond/trust but a group surety bond, backed by insurance carriers that are regulated by government agencies other than the FMC. The commenter wrote that such a group trust fund would need to have a dollar funded in the trust for each dollar of liability: if a group trust fund had 100 freight brokers in the group, it would require $7.5 million ($75,000 × 100) in funds available. Anything less ''provides no benefit over a singular BMC–85 trust fund, but many distinct disadvantages [that] would pose additional risk.'' Another commenter, a trade organization, recommended that the agency simply require individual surety bonds based upon the FMC requirements. It wrote that FMCSA should not accept group surety bonds and trust funds until the agency fulfills the basic requirements to ensure that BMC–85 trusts are fully funded.

Another trade organization believed the approach used by the ocean transportation industry may not be transferable to highway transportation because the two industries are drastically different, and the oversight exerted by FMC and FMCSA is also vastly different. Another surety provider provided background on FMC's rules, and reported that nearly 90 percent of foreign firms, and nearly 97 percent of all non-vessel operating common carriers, do not choose to make use of a group alternative. Noting this minimal use of FMC's group instrument, this commenter believed that individual bonding is sufficient to meet the needs of the marketplace and any group bond or trust is not necessary. This commenter also noted that, while the FMC regulations provide for a maximum liability limit of $3 million for a group bond, each member listed is required by regulation to maintain an individual level of financial responsibility of $75,000 (if in the U.S.)

or $150,000 (if foreign). This commenter stated that, if FMCSA adopts the use of a group bond or group trust, the instrument cannot be allowed to provide any amount of coverage less than that which each member would provide the public individually.

FMCSA response: FMCSA is not proposing new regulations concerning group surety bonds or trust funds. FMCSA considered proposing a definition, including those definitions submitted in the comments, but ultimately declines to do so. There was no consensus or commonly used definition of *group bond* or *group fund,* and several commenters supporting the use of group instruments also pointed out areas of concern. While some commenters advocated for the inclusion of a group surety bond or trust fund, the benefits were not well-explained or quantified by commenters. Moreover, the TIA, which appears to have supported inclusion of the group option in MAP–21 based upon the FMC model, later acknowledged that such an option was not transferrable to freight brokers or freight forwarders.

FMCSA agrees with the commenter who noted that there is no evidence that the demand for individual instruments is not being met and that it would be difficult to justify the burden on FMCSA to monitor group instruments. FMCSA also finds it highly compelling that the original proponent of the group model no longer supports its inclusion as an option. In addition, FMCSA agrees with commenters that if the agency were to propose this group option, FMCSA would need to increase oversight to combat fraud. Given that FMCSA is primarily responsible for safety regulation and does not have extensive expertise in or resources for financial regulation, the agency believes focusing on existing financial tools to be the best use of its resources.

Due to the complexity and lack of an existing regulatory definition, FMCSA declines to propose allowing group surety bonds or group trust funds to provide financial responsibility.

Other Comments Related to Group Surety Bonds or Group Trust Funds

By following FMC's lead and allowing group financial security for surface transportation intermediaries, one trade organization believed FMCSA could ''minimize the devastating effect of the anti-competitive $75,000 financial security imposed by Congress.''

A surety provider wrote that if FMCSA allows group surety bonds or trust funds, the surety industry will not offer them as an option, because the surety industry underwrites each freight broker on its own merits, not in groups. This commenter noted further that, because the FDIC provides insurance coverage of $250,000 per depositor per FDIC-insured bank, each trustee should establish a separate bank account for every trust filed, in order to minimize the risk of claims.

FMCSA response: FMCSA appreciates these comments. As noted above, FMCSA declines to propose allowing group surety bonds or group Trust Funds to provide financial responsibility.

B. Assets Readily Available

MAP–21 Section 32918 required that trust funds or other financial security be limited only to ''assets readily available to pay claims without resort to personal guarantees or collection of pledged accounts receivable.'' 49 U.S.C. 13906(b)(1)(C) and (c)(1)(D). The agency asked for suggestions from the trust fund industry and others about instruments the agency could accept that would meet the ''assets readily available'' standard without requiring significant FMCSA oversight or evaluation that would divert scarce safety oversight resources.

How should assets readily available be defined?

In the ANPRM, the agency wrote that it is committed to adopting a definition of *assets readily available* for BMC–85 trust fund assets that both implements the will of Congress and is reasonable for the agency to administer. FMCSA wrote it was considering proposing a definition of *assets readily available* that would include cash or letters of credit from FDIC-approved banks, but said it was open to other options. (83 FR 48783)

A number of commenters agreed that assets readily available should include only cash or letters of credit from FDIC-approved banks, with others indicating cash bonds should be allowable; some of these commenters noted that only cash or equally liquid assets would satisfy the statutory mandate. A surety provider noted that the May 2016 roundtable discussion on this subject provided a general consensus that cash and letters of credit drawn on FDIC-approved banks should be acceptable. A trade organization commented that FMCSA must require trusts to be funded with cash or an equally liquid equivalent asset, such as an irrevocable letter of credit drawn on a federally regulated bank or trust company. One trade organization believed the only sufficient trust fund or surety funding sources are cash and an unconditional FDIC insured letter of credit, with the funds placed in a segregated account to be used solely for carrier claims.

These commenters stated that finance bonds should not be allowed, and that BMC–85s exist only because FMCSA allows them; FMCSA therefore should regulate and provide oversight of them.

Some commenters were concerned that some BMC–85 trustees may be comingling the available financial securities of brokers with other brokers' securities and even with the trustee's general operating accounts. A commenter wrote that the use of ''unknown, hybrid, and possibly unenforceable internal debt instruments in lieu of cash or FDIC insured letters of credit violates the fiduciary responsibilities of BMC–85 trustees and undermines the objective of ensuring that brokers can personally meet the statutory financial requirements.'' Some commenters, including a trade organization, recommended FMCSA allow letters of credit in the interest of making broker licenses accessible to start-up businesses and preventing unreasonable obstacles to entry. An individual commented that it is crucial that FMCSA support ''the BMC–85 insurance products currently available to brokers in lieu of forcing brokers to have $75,000 available in cash at all times to pay claims.'' This commenter believed that larger third-party logistics and broker entities otherwise will force smaller companies out of business, which will enable those larger companies to drive up rates. A commenter questioned whether FMCSA can limit the interpretation of ''assets readily available'' beyond saying that they are not personal guarantees or a collection of pledged accounts receivable, as provided in MAP–21. However, this commenter proposed using its ''internal letter of credit plan,'' $75,000 in cash, and/or a combination of a letter of credit supplied by an FDIC-insured bank to the surety provider. If interpretations relating to financial responsibility proposed by BMC–84 suppliers are implemented, this commenter believed, several BMC–85 providers may be forced out of the marketplace and the choices available to freight brokers and forwarders could be severely limited.

Another commenter believed the definition of ''assets readily available'' should be expansive enough to include ''all kinds of investments.'' The commenter wrote that the term should include publicly traded securities that can be quickly bought and sold on a highly regulated open market exchange. The commenter noted that, in reality, claims are not paid before 30 days of the claim being filed.

A trade organization encouraged the agency to adopt a definition of assets readily available to include the assets set forth in Federal Acquisition Regulation 28.204–1–28.204–3, which applies to the type of securities that may be deposited by a contractor in lieu of a surety bond on public works. The types of assets are: (1) notes or bonds issued by the U.S. Government; (2) certified or cashier's check, bank draft, postal money order, or currency; or (3) an irrevocable letter of credit issued by a federally insured financial institution rated investment grade. The commenter maintained that a broader and riskier asset class would require more intensive monitoring and ongoing valuation by the agency to ensure that the BMC–85 trust fund remains capitalized over the $75,000 requirement.

FMCSA response: In an effort to provide flexibility, FMCSA proposes only a list of prohibited asset types. FMCSA further specifies that assets considered readily available be able to be made liquid in 7 days. FMCSA believes that its approach strikes the best balance between allowing multiple ways of complying with the assets readily available requirement for small businesses and still setting a high standard that will protect motor carriers and shippers.

Suggest a Process That Would Allow FMCSA To Accept Letters of Credit and Other Instruments Without Significant Oversight

BMC–84 bond providers are overseen by the Treasury, while BMC–85 trusts are overseen by FMCSA, in addition to other regulators. The agency solicited suggestions about how it could accept letters of credit and other instruments that could meet the assets readily available standard for broker/freight forwarder trust funds without requiring significant oversight or evaluation that would divert scarce agency safety resources. (83 FR 48783)

A trade organization wrote that the acceptance of any third-party collateral instrument, personal guarantees, or a pledge of business assets should not be considered eligible trust collateral unless the agency is satisfied with the financial structure of the issuer/obligor and that it possesses unimpeded access to assets in the event of payment demand. Because such information is not currently available to the FMCSA or to motor carriers, any attempt to define or administer such an option would be wasteful of FMCSA resources and harmful to the motor carriers and drivers.

A trade organization recommended the agency require the trust to conduct a regular, independent audit confirming that the trust is fully funded. It commented that a broader and riskier asset class might impair the value of the BMC–85 trust fund, trigger a suspension required under 49 U.S.C. 13906(b)(5) and (c)(6), and require more intensive monitoring and ongoing valuation by the agency. A surety provider wrote that FMCSA could verify annually that a letter of credit issued by an FDIC-insured bank is in force without hardship.

A surety provider suggested that the property broker or freight forwarder needs to deposit with the trust administrator cash or similar assets like Treasury debt instruments. It also believed that the trust could accept a qualified bank letter of credit (*e.g.,* irrevocable and issued by an FDIC-insured bank), or a qualified surety bond (*e.g.,* where the trust administrator is the bond obligee and the surety is listed on Treasury's Circular 570)—alternatives that provide fast liquidity and firm valuation. The commenter also provided examples of assets that are not readily available.

A surety provider rejected the argument that FMCSA accept self-issued or internal letters of credit. It stated that FMCSA would have no assurance or control over the quality or quantity of the security behind the letter of credit. This plan would place an administrative burden on the agency and increase the potential for losses to the intended beneficiaries.

A surety provider wrote that, to ensure that assets are readily available, they must be defined, insured, and verified. While it had previously recommended defining assets readily available as cash and an irrevocable letter of credit (ILOC) from an FDIC-insured bank, in consideration of FMCSA's desire to limit its oversight responsibilities, this commenter changed its asset recommendation to cash only. The commenter believed that allowing any other asset would add to the administrative burden of FMCSA's oversight. Because assets must be properly insured, the commenter said it is imperative that the assets be held in an FDIC-insured bank to provide FDIC insurance coverage of $250,000 per account and ensure that FMCSA does not have to underwrite or question the solvency of the bank holding the assets. The commenter maintained that an ILOC is not insured by the FDIC (even if issued by an FDIC-insured bank) unless there is a deposit of cash in an FDIC-insured bank backing the ILOC. Should FMCSA allow ILOCs, the commenter said FMCSA would have to verify whether each bank backing the ILOC was FDIC-insured, and that the balance was under the $250,000 insurance threshold. Further, the commenter reasoned that, if cash were the only accepted form of assets readily available, the trustee could use one bank to manage all assets, creating a separate account of $75,000 for each trustor.

This same surety provider also recommended that FMCSA require trust providers to submit audited financial statements prepared by a licensed third-party certified public accountant on a quarterly basis, to lighten FMCSA's administrative burden of verifying assets. If the acceptable assets were limited to cash, the commenter believed that FMCSA could easily confirm enough cash is being held by reviewing the financial statement. However, should FMCSA wish to allow ILOCs, FMCSA would need to ensure that each BMC–85 has an ILOC from an FDIC-insured bank along with a bank account with deposits to fund the ILOC in full, making audits far more complex.

FMCSA response: In this proposal, FMCSA has designed a process that allows it to accept a wide range of financial instruments without imposing a burden on the agency's limited resources.

What is the capacity of the surety bond industry to meet increased demand?

In the ANPRM, FMCSA specifically sought comment from the surety bond industry on that industry's capacity to meet market demand if FMCSA were to adopt a cash-only standard for BMC–85 trust funds. The agency asked whether such a policy could drive a significant segment of the broker/freight forwarder industry into surety bond coverage.

Commenters responded that they believed surety-bond providers could meet this demand.

FMCSA response: The agency thanks those commenters but proposes that certain non-cash instruments could be used to meet this proposed requirement.

What is the cost to brokers and freight forwarders of BMC–84 surety bonds?

FMCSA sought comments and data from the surety bond industry on the cost to brokers and freight forwarders of BMC–84 surety bonds. In response to this issue, one trust provider commented that the question should not be the cost to brokers of BMC–84 surety bonds, but what percentage of the market currently serviced by BMC–85 providers will be lost. This commenter noted that BMC–85 providers service roughly 25 percent of the total licensed freight brokers and freight forwarders in the country.

One trade organization and three surety providers provided a range of estimates of the cost of a bond. The trade organization reported that a BMC–84 bond will typically cost its principal 1 to 2 percent of the face value of the bond. A creditworthy broker or freight forwarder would expect to pay approximately $750 to $1,500 to obtain a $75,000 BMC–84 bond. The commenter did not expect that cost to increase, even with increased demand for the bonds. A surety provider wrote that pricing for this class of bond usually ranges from 2 to 5 percent of the amount of the bond, calculated and charged on an annual basis. The commenter noted that the pricing range is typically driven by the credit strength of the business and qualified indemnitors. Another surety provider commented that typical costs for license and permit bonds run from 1 to 4 percent of the face amount of the bond. A third surety provider reported that average surety premiums have dropped each year since 2013 with rates as low as $750 per year.[3] Due to the increased surety competition, while coverage has increased 750 percent (from $10,000 to $75,000), typical costs incurred by freight brokers/forwarders for their annual premiums have risen only 15 to 30 percent.

FMCSA response: FMCSA appreciates the comments provided and believes it has sufficient information on the cost of BMC–84 surety bonds to inform this proposed rule.

Other Comments Related to Assets Readily Available

Some commenters noted other issues related to assets readily available. Several commenters were concerned with what they believed are irregularities in the BMC–85 trust fund industry. A trade organization commented that a major concern is that certain trust fund operators are not following the laws and regulations, to the detriment of safety. If small motor carriers are not paid, necessary maintenance and repairs may be put off or ignored due to reduced cash flow.

One trade organization recommended that, in order for a BMC–85 trust fund to be equivalent to a surety bond, the BMC–85 trust fund should have a prequalification function, where a surety reviews the capabilities and financial strength of a bond applicant. It believed an adequate version of prequalification can be achieved if the broker or freight forwarder is required to fund the BMC–85 trust with its own assets. In this way, the agency and carriers would have the assurance that the brokers and freight forwarders have the operational capability to commit $75,000 of their own assets into the fund.

A surety bond provider expressed the belief, based on the comments at the roundtable and the definition of a trustee, that most BMC–85 providers are not trustees but are providing unregulated surety bond insurance without a license to do so. This commenter indicated that FMCSA must regularly examine trust providers to ensure that the defined assets meet the aggregate liability of the trust provider.

A surety provider commented that, if trusts are to be funded with a limited category of assets, without requiring significant FMCSA oversight or evaluation, trust fund administrators should be allowed to invest the assets only in highly-liquid, short duration, and very safe investments, and it provided examples. The commenter recommended that all investments should be easily provable to the FMCSA, *e.g.,* via investment account and bank account statements. Finally, assets under trust must never be comingled with the accounts of the trust administrator that are utilized for its day-to-day business needs.

Two commenters responded to the concern about the financial wherewithal of BMC–85 trust providers and the sufficiency of the assets in BMC–85 trusts to pay legitimate claims by motor carriers or shippers. A commenter noted FMCSA's statement in the ANPRM that representatives of the BMC–85 trust fund provider community asserted that, with one limited exception, no evidence had been provided showing that BMC–85 providers have failed to pay legitimate claims made on their trusts by motor carriers or shippers to any significant degree. The commenter also believed that no legitimate stakeholder who had suffered any financial losses had appeared. This commenter therefore did not believe that rulemaking in this regard is necessary.

A BMC–85 trust fund provider sought to refute the contention that such providers support financially unstable brokers to the detriment of motor carriers and the transportation industry in general. The commenter believes it has the largest claims database specific to this industry and said that its claims data do not support those assertions. The commenter stated that, on the contrary, many BMC–84 surety companies enter and leave the market every few years because their realized losses are much higher than initially anticipated. The commenter said many surety companies will not issue BMC–84s due to the inherent high-risk factors.

FMCSA response: FMCSA appreciates all of stakeholders' comments regarding assets readily available. Today's proposal is intended to balance protection of motor carriers and shippers with cost. FMCSA believes that its proposal will meet the congressional goal of ensuring that motor carrier claims are paid in a timely fashion without causing significant disruption to the broker and freight forwarder industry.

C. Immediate Suspension of Broker and Freight Forwarder Operating Authority

MAP–21 provides that FMCSA shall immediately suspend the registration of a broker or freight forwarder if their available financial security falls below $75,000 (49 U.S.C. 13906(b)(5), (c)(6)). In the ANPRM the agency discussed, and invited comment on, how it could immediately suspend broker/freight forwarder operating authority registration consistent with due process requirements, *e.g.,* by providing an appropriate opportunity for post-deprivation review.

How can the Agency determine that the available financial security of a broker or freight forwarder has fallen below $75,000?

In the ANPRM, FMCSA said that it first needed to determine when the available financial security of a broker/freight forwarder is below $75,000. The agency considered effecting immediate registration suspension in either or both of two situations. First, FMCSA would suspend when it receives notice from the surety or trust fund provider that a drawdown/payout on the bond/trust has occurred, such that the available financial security is less than $75,000. The second situation would be where: (a) a surety or trust fund provider gives reasonable notice of a claim to the broker/freight forwarder, (b) the broker/freight forwarder does not respond, and (c) the surety/trust fund provider determines that the claim is valid and provides notice of these events to FMCSA. . A trade organization supported the agency's proposed approach to triggering the agency's statutory obligation to immediately suspend registrations, saying it appeared to be a sensible proposal. A surety provider agreed that it must be ''explicitly detailed as to when the security falls below $75,000.''

[3] According to comments provided in 2020 in connection with the Small Business in Transportation Coalition's petition for exemption from the $75,000 financial responsibility requirement, the annual surety bond premium is less than $2,000 on average. 86 FR 71538, 71542 (Dec. 16, 2021).

A trade organization wrote that it supported a recommendation of Avalon Risk Management that three or more valid claims from different sources, aggregating more than $25,000, that have remained unresolved for at least 30-days is one reasonable standard. It wrote that the agency needs to clarify what constitutes financial failure or insolvency so that the surety or trust provider will not be at risk if it invokes the procedures under 49 U.S.C. 13906(b)(6) and (c)(7) to terminate the security and start the 60-day period for submission of claims. The commenter noted that this sometimes occurs over the objections of the broker or freight forwarder.

A surety provider suggested that failure of the broker/forwarder to respond in any manner to the surety or trust fund provider in 5 business days should be sufficient to permit the surety/trust to request immediate suspension, publish the notice, and start the 60-day clock for presentation of claims.

The same commenter added that, if written evidence is provided that the validity of the claim is reasonably disputed, parties should be afforded more time. In addition, the commenter believed that failure to resolve a specified number of undisputed claims representing a specified percentage of the security after 30 days should be construed as an impairment of that security and a financial failure, triggering immediate suspension. The commenter believed that financial failure outside of bankruptcy should be a trigger for immediate suspension, but noted that ''financial failure'' is undefined, and the operating authority holder's actual situation is difficult to determine. While the commenter recognized that larger operators would have more claims, it asserted that best practices would keep them within these parameters.

A surety provider believed that the only scenario where the financial security amount would drop below $75,000 in the case of a surety would be if the surety were to issue some sort of refund or if the surety were to pay a claim, which would reduce the value of the trust below $75,000; thus, this section should be read in conjunction with 49 U.S.C. 13906(b)(2)(A), ''Payment of Claims.'' However, the commenter anticipated problems with any of the scenarios in which the surety provider pays a claim against a broker as a justification for immediate suspension. The commenter believed that a broker's failure to respond to emails and phone calls from the surety is a good indication that the brokerage is experiencing or has already experienced financial failure warranting immediate cancellation. Another situation that might trigger immediate cancellation would be if a broker responds but fails to provide information to resolve the claim within a reasonable period. The surety provider wrote that a brokerage experiencing financial failure typically uses delaying tactics to buy more time. The commenter recommended that the surety provider be able to request the immediate suspension of a brokerage, given the totality of the circumstances involved (*i.e.* evasive responses, delaying tactics, payments bouncing, and prior claim history). The commenter also cautioned that ''any bright line rule that calls for cancellation based upon either the number or claims received or total dollar amount of claims would be difficult to apply as there is no 'one size fits all' number. Large, and even small brokerages, will get claims that may or may not be valid and that may or may not indicate 'financial failure or insolvency.' ''

A trade organization provided a draft of a new § 387.307 containing a process that the commenter believed would lead to FMCSA's suspension of a broker's operating authority when required under the statute. The commenter recommended that, if by the end of 10 days following notice of the claim, the broker ignores the notice, does not dispute the motor carrier's claim, does not pay the claim, or does not provide the information and documents described in the draft section, the surety consider the motor carrier's claim valid and payable under the bond or trust. The surety would then have to notify FMCSA that the amount of available security is less than required by law, triggering the 30-day period for cancellation under 49 U.S.C. 13906(b)(4)(A). Under the commenter's proposal, the presumption of insolvency and cancellation notice would be lifted if the broker were to file a completely new bond or trust within 30 days. The commenter believed that, if a broker owes a motor carrier money and does not pay the motor carrier, or ignores the surety's notice of the claim, FMCSA could reasonably consider the broker to be financially insolvent under 49 U.S.C. 13906(b)(6). The only time a 30-day cancellation period should run while the broker continues to do business is when there have been no valid claims filed on its bond. The commenter believed such a rule would prevent brokers from continuing to incur debt to motor carriers that is not protected by a compliant surety bond or trust.

FMCSA response: After consideration of the comments received on the ANPRM, FMCSA proposes that the most workable standard for determining that available financial security has fallen below $75,000 is when an actual drawdown has taken place. It would then be very clear to both brokers and freight forwarders that if they don't quickly replenish their trust funds or surety bonds that their operating authority registration will be suspended.

What is the appropriate allowable time period for brokers or freight forwarders to respond to claims?

In the ANPRM, FMCSA sought comment on the appropriate allowable time period or ''cushion time'' for brokers or freight forwarders to respond to claims made to guarantors, valid or otherwise. Such a grace period would give firms adequate time to adjudicate claims and settlements internally, as well as to factor in costs associated with contract noncompliance when setting their pricing.

Several individuals who commented on this process believed the broker should have 30 days to pay the driver or company. One individual added that the bond company should have 30 days after that to pay the carrier. Another commenter believed the broker needs at least 60 days from the time the notice of a violation/claim is issued to respond and up to 90 days after acknowledgement of receipt to show corrective action. A third commenter said that carriers must be paid within a day. Three individuals wrote that brokers should have their licenses revoked immediately.

A trust provider, responding to FMCSA's suggested 14-day grace period for brokerage response to a notice or claim, said a surety company's determination of cancellation is routinely made much sooner. The commenter said 5 business days is all that is necessary to determine if a brokerage is still in operation, can be contacted, and can respond appropriately to the notice of claim. The commenter emphasized that any bright line rule would not work, and instead the agency's determination should be based on the totality of circumstances and the surety's prior experience and knowledge. A trade organization, however, believed a period of at least 2 weeks is appropriate. While that commenter appreciated the need to move swiftly, it also recognized that intermediaries need time to internally investigate claims and that suspending an intermediary's registration may result

in significant supply chain disruptions. The commenter reported that the 2-week period would also correspond to the 14-day response period FMCSA is considering for a proposed definition of *financial failure* that would trigger the responsibility of a guarantor to take action against the intermediary's bond or trust fund.

A surety provider believed that, if after 3 to 5 days the principal has not made payment or explained its reason for non-payment, the surety can start to presume the principal may be experiencing financial failure or insolvency. The commenter wrote that a broker or freight forwarder should be able to determine, almost immediately, why it has not paid the carrier within the period to which both carrier and broker had contractually agreed. Because not every bond termination would be due to claims, it commented that FMCSA must allow for the surety or trust provider to be able to identify when a termination should involve immediate suspension of authority.

A surety provider believed that revocation of authority immediately or within 48 hours of cancellation of bond/trust would help prevent carriers from being left with little or nothing to show for their services. The commenter wrote that there are brokers who have entered the industry who post loads with no intent on paying the carrier. It explained that the surety or trust company will not receive a claim against these brokers for at least 30 days since, under the current regulations, brokers have an additional 30 days to broker loads before their authority is revoked by FMCSA (33 actual days). The commenter said this is one of the reasons why so many carriers receive only partial settlement of their original claim amount.

A surety provider commented that protection of motor carriers requires that a broker or freight forwarder who fails to pay should be immediately suspended or otherwise sanctioned to induce the payment. The commenter again suggested that the failure of the broker/forwarder to respond in any manner to the surety/trust within 5 business days should be sufficient to permit the surety/trust to request immediate suspension, publish the notice, and start the clock on the time to present claims. If written evidence is provided that the validity of the claim is reasonably disputed, the parties should be afforded time to resolve their issues, including reducing the claim to judgment if necessary. The commenter asserted, however, that in any case when a surety or trust provider submits a request for immediate termination, the termination should be effective within 2 business days from the request. A surety provider noted that it is difficult to establish a hard rule regarding a grace period, as each situation is unique.

FMCSA response: FMCSA is not proposing a specific time for brokers or freight forwarders to respond to claims made to surety providers or trustees in this NPRM. Parties will be able to freely negotiate appropriate time periods under their private contracts.

How can the Agency suspend broker or freight forwarder operating authority?

Suspending broker or freight forwarder operating authority whenever a claim is filed against a broker or freight forwarder or its bond or trust would raise due process concerns, as the agency would be prohibiting the broker or freight forwarder from lawfully operating, without affording the company a chance to respond. In the ANPRM, the agency wrote it would consider how it could immediately suspend broker or freight operating authority registration in a manner consistent with constitutional due process requirements, *e.g.,* by providing an appropriate opportunity for post-deprivation review.

A surety provider commented that due process requires that the broker or forwarder be given an opportunity to address the claim and present any defenses that may exist.

A trade organization raised a Fourteenth Amendment ''Equal Protection of the Law'' claim and asserted that the government cannot lawfully suspend the authority of brokers and forwarders upon mere notice of cancellation and not apply the same procedure to situations in which motor carriers' insurance companies have filed similar notices of cancellation. The commenter wrote that the procedure currently in place was enacted to ensure due process and a reasonable time to respond.

A trade organization commented that a licensed property broker or freight forwarder should not have its authority suspended immediately based on claims received, because invalid claims are often made. Ensuring fair due process is an essential part of this rulemaking for the commenter and its members. Furthermore, suspending authority without due process would cause a flood of authority reinstatements and re-processing for all involved, increasing the burden on the agency.

Specifically in response to this issue, a surety provider described the existing process when a surety receives claims against a bond: (1) the surety contacts the bond principal to advise it of the claim, determine whether any defenses exist, and/or whether the claim will be promptly handled by the bond principal; (2) the surety may become aware that the business is failing and may determine the bond should be terminated; (3) when this happens, the surety gives notice of termination to FMCSA, which takes effect 30 days later. As the reporting window for claims begins, the surety may receive more claims from other parties for transportation before and after the date on which notice of the bond termination was given to FMCSA.

A trade organization proposed detailed regulatory language that it believed would set up a clear process that would lead to FMCSA's suspension of a broker's operating authority when required under the statute. This draft language proposed by the trade organization sets out the information a motor carrier would be required to submit to a surety or trustee to make a claim and establishes that the motor carrier may not be required to provide any other information. The commenter's proposed text requires that, if the motor carrier does not submit a claim that meets the requirements, the surety may immediately provide notice of the claim's deficiencies and give the motor carrier an opportunity to refile the claim. If the motor carrier provides a copy of a judgment in its favor against the broker, the surety will consider the motor carrier's claim against the bond valid. The commenter also proposed detailed procedures the surety would use to give brokers notice of a claim against the bond, provide the broker the opportunity to pay the motor carrier and provide proof to the surety. It also proposed a procedure for a broker's response to a claim—which the broker would have to provide within 10 business days of receiving notice of a claim against its surety bond from a surety or trustee. However, the commenter noted that it did not intend for this proposed process to be a substitute for the resolution of legitimate disputed claims between brokers and motor carriers. Instead, the proposal was intended to apply when brokers ignore a surety's notice of motor carrier claims or when brokers do not bother to dispute such claims with the minimal, timely response required under the rules. This distinction was intended to ensure that sureties and FMCSA do not have the duty to resolve legitimate disputes between a broker and a motor carrier. Sureties only need to identify that there is a legitimate dispute, as described above. The same commenter also encouraged FMCSA to adopt a process that would allow

members of the public to petition the agency to revoke the registration of brokers that make a false statement at any point in the claims process.

A surety provider commented that, if it was forced to cancel a policy upon notice of a claim, freight brokers would be regularly shut down even for illegitimate claims. While forcing an immediate suspension of all freight brokers with claim activity would be better for its own bottom line, the commenter believed ''it simply is not fair to freight brokers.'' The commenter therefore recommended that surety bond and trust providers not be forced to cancel until a claim has been paid, which would be consistent with MAP–21 section 32918. Instead, cancellation prior to claims being paid out should be left to the discretion of the surety, and this approach is consistent with that taken by many other government agencies. The commenter added that the insurance carriers that back its bonds are highly motivated to ensure that they cancel bonds with legitimate claims as soon as possible, as each legitimate claim greatly impacts the profitability of the surety industry.

FMCSA response: Based on today's proposal, FMCSA would suspend the operating authority registration of a broker or freight forwarder only in the event of a drawdown on the bond or trust. Any other formulation is administratively unworkable. Moreover, as proposed later in this NPRM, FMCSA would give brokers or freight forwarders seven business days to contest any immediate suspension action before it takes effect, in order to meet constitutional due process concerns.

Comments on Actual Incidence of Non-Payment by Brokers or Freight Forwarders

In the ANPRM, FMCSA asked for documented incidents of actual nonpayment that occurred after a financially troubled broker or freight forwarder was not immediately suspended. A trade organization commented that FMCSA must immediately suspend the registration of a broker before the broker's nonpayment to motor carriers results in claims on its bond or trust in an aggregate amount of more than $75,000. Further, it commented that FMCSA must reject the fiction that considers a bond to be in effect until a claim is actually paid on the bond, which means the broker can continue to conduct business even if there is effectively no longer any financial security in place. The commenter wrote that, under this practice sureties now wait to confirm that they have collected all the claims triggered by the broker before making any payout. By then, the pro-rata payouts from the bond to motor carrier claimants amount to cents on the dollar. The trade organization appended to its comment an excerpt of a list of motor carrier claims against broker bonds that it had helped the motor carriers lodge with sureties and trustees. The commenter believed this list shows that the failure of the bond or trust security to cover all of a broker's debts to its motor carriers is a common problem. The commenter also provided as an example a September 2018 court case in which a BMC–84 surety provider (Merchants Bonding Co.) filed an amended complaint in interpleader asking a U.S. District Court to determine how to pay the $75,000 bond to a total of 646 claimants.

A representative of a motor carrier reported that it had not been paid for a few loads by freight brokers and could collect only about 10 percent of what was due because there were too many claims. Because the freight brokers are permitted to work for 45 days after such unpaid claims are reported, they can increase the amount they owe; however, the motor carrier believed that those brokers never intended to pay anything.

A surety provider submitted an example of a brokerage that continued to book 27 loads with a total value of more than $35,000 after cancellation had been requested. This provider commented that terminating the bond immediately does not stop claims from accumulating, but it does help mitigate damages. Further, it wrote that moving loads so close to effective cancellation decreases the motor carriers' chances of filing a claim within 60 days of effective cancellation (as they are normally contacting the surety 60 to 90 days after delivery and therefore the 60-day window for accepting applications will have passed) and increases the chances that the payout will be pro rata. A second surety provider submitted the example of a logistics company that had accumulated $945,739 in unpaid motor carrier claims after paying out the full corpus of a $75,000 BMC–85 Trust.

A surety provider wrote that many bond principals, terminated recently due to claims, also had claims for shipments that began after the termination notice was given, but still within the time when the bond principal's FMCSA operating authority was valid. For moves that occurred after the termination notice was given, it reported that nearly all occurred within the first 14 calendar days. This commenter believed that when a bond termination is due to claims, an immediate suspension of FMCSA operating authority would prevent post-notice shipments from becoming the subject of further claims, and would prevent carriers on those shipments from encountering delays in getting paid under the bond or getting only partial payment. The commenter added that the pre-notice claims would benefit from a higher pro-rata payment.

FMCSA response: FMCSA appreciates the empirical data regarding the non-payment of claims. FMCSA renews its call in this NPRM for data that shows the amount of nonpayment that could be avoided through FMCSA's implementation of the immediate suspension provision. FMCSA believes that most brokers do not have unpaid legitimate claims. A small but significant population of brokers do fail to pay legitimate claims, however, are non-responsive to motor carriers and BMC–84/85 providers and continue accumulating claims until their FMCSA operating authority registration is revoked. Ultimately, $75,000 can be insufficient to pay the multiple unpaid claims, and motor carriers are often paid a fraction of what they are owed through interpleader proceedings. FMCSA will attempt through this rulemaking, consistent with MAP–21, to suspend the operating authority registration of these delinquent brokers before the unpaid claims exceed the value of the brokers' financial responsibility instruments.

Other Comments Related to Immediate Suspension

A trade organization commented that an unintended consequence of a larger bond is that $75,000 actually gives truly fraudulent brokers more room to steal than the original $10,000 bond. While it believed the government should enforce the laws, it concluded that ''[t]he principles of laissez-faire should apply here.''

Another trade organization believed that many carriers know there is little hope to recover from a bond and do not even bother filing their claims against the bond. Those who do file a claim must have the ability to file a complaint in interpleader or hire a lawyer.

A surety provider commented that the surety/trustee is being placed in the role of arbiter with further restrictions on how to execute the role. If a broker or forwarder disputes a claim, this commenter wrote, the surety or trustee has its hands tied and the claimant must be told it needs to obtain a judgment to pursue the claim. Questionable operators can continue to stack up liabilities by asserting that the claim is being taken care of but then fail to resolve the claim or provide any evidence of its invalidity. The

commenter asserted that this part of the regulation needs to be changed.

FMCSA response: FMCSA appreciates these comments and believes that implementation of the proposed immediate suspension provision would reduce the time a broker is permitted to operate and accumulate claims and the number of interpleader actions that are filed.

D. Surety or Trust Responsibilities in Cases of Broker or Freight Forwarder Financial Failure or Insolvency

The ANPRM sought comments on the how *financial failure or insolvency* and *publicly advertise* should be defined in accordance with 49 U.S.C. 13906(b)(6) and (c)(7).

How should financial failure or insolvency be defined?

In the ANPRM, the agency suggested criteria for a definition of *financial failure* or *insolvency* (83 FR 48779, 48784). The agency wrote it is considering a definition of *financial failure or insolvency* that would apply at a pre-bankruptcy stage. FMCSA suggested criteria for *financial failure or insolvency* that included situations where the broker or freight forwarder has claims against its bond/trust, is not responding to notifications from the trust or surety provider within 14 calendar days, and is not in bankruptcy proceedings.

None of the commenters on this issue believed that establishing an absolute definition of *financial failure or insolvency* would be a good idea. A trade organization suggested that FMCSA should define financial failure/insolvency simply as receipt of notice by the broker or forwarder of its inability to pay its bond/trust fund premium. The commenter also wrote that FMCSA could require brokers and forwarders to provide notice of the filing of a bankruptcy petition to their surety or trust administrator. However, this trade organization believed that anything beyond this would require the surety provider to supervise the operations of the broker or freight forwarder, which transcends the normal role of a fiduciary. A second trade organization maintained that the filing of bankruptcy by the bonded principal is the clearest, most objective test for financial failure or insolvency. The commenter stated that financial failure or insolvency should not be premised on a certain number of claims made in a certain period or an aggregate value of claims unresolved within a certain timeframe. The commenter wrote that defining financial failure or insolvency in a pre-bankruptcy context may not be practical.

A surety provider defined *financial failure or insolvency* as the inability to pay debts as they become due and referenced 11 U.S.C. 101. However, this commenter maintained that the scenario should be interpreted very broadly, allowing the surety provider to use its discretion. It also opposed any ''bright line rule'' based on the number of claims received, the total dollar amount of claims, or a certain number of claims in a certain time period, as there is no ''one size fits all'' number. Another surety provider agreed that ''insolvency is routinely defined as an inability to pay one's debt, so a broker/freight forwarder that is not paying its bills when they come due meets this insolvency definition.'' However, the commenter believed it may not be possible to define *financial failure or insolvency,* and recommended FMCSA consider reasonable interpretations by the surety and trust industry of that standard.

FMCSA response: FMCSA agrees with the commenter who believes that defining *financial failure or insolvency* as a bankruptcy filing (or State insolvency filing) is the most appropriate and practical. FMCSA outlines its rationale for such a standard later in this preamble.

How should publicly advertise be defined?

In the event of financial failure or insolvency, surety providers must publicly advertise for claims for 60 days beginning on the date FMCSA publishes the surety's notice to cancel the surety bond/trust (49 U.S.C. 13906(b)(6)(B), (c)(7)(B)). In the ANPRM, FMCSA wrote that it is considering a definition of *publicly advertise* that would deem notice to FMCSA of the financial failure or insolvency of the broker or freight forwarder as publicly advertising for claims under MAP–21 (83 FR 48779, 48785). The agency also reported that it is investigating whether it can flag such cancellation notices with a special code, so that potential claimants reviewing a broker or freight forwarder's records on the FMCSA website would know that the 60-day period to make a claim has begun.

Most of those who commented on this issue believed that the requirement to publicly advertise should be satisfied by the surety provider giving notice to FMCSA, which FMCSA would then make publicly available. However, one trade organization recommended that FMCSA publish a notice in the **Federal Register**. A second trade organization commented that if insolvency is based on bond claims FMCSA could ask the surety to notify the agency of all claims made on the bond, which would allow the agency to determine if financial failure or insolvency triggered by outstanding claims has occurred. If financial failure or insolvency was based on the principal's bankruptcy, the agency could require notice of the bankruptcy filing. This commenter believed that FMCSA serving as a centralized, public location that brokers or freight forwarders could monitor for these notices would be far more efficient than each surety posting notice on its respective website.

A trade organization believed that if FMCSA provided public notice of cancellation under 49 U.S.C. 13906(b)(4)(B), motor carriers could look up a broker's registration status before taking a load from that broker. Such FMCSA notice would also provide the dates that the 60-day claims period commenced and the due date for claims to be filed with the surety on the bond. The commenter recommended that FMCSA change its Licensing and Insurance page to provide a link to the surety's web page indicating how many unresolved claims have been submitted against the bond, similar to FMCSA's publication of motor carrier inspection and accident data on the Motor Carrier Management Information System.

In addition to notice on the FMCSA website, several surety providers suggested posting on the surety provider's website or FMCSA providing a hyperlink to the provider's website. A surety provider believed that flagging the posting with a code identifying the reason for cancellation (claim activity vs. non-compliance) would benefit both motor carriers and other surety providers, as many of these ''bad'' brokerages jump from surety to surety, leaving claims behind. This commenter also believed that, as approved filers with login credentials, surety providers should be provided access to all information and documentation that has been filed with FMCSA (*e.g.,* Application for Motor Property Carrier and Broker Authority filing, Unified Registration System information) by the provider for which they have completed the BMC–84 or BMC–85 filing. A surety provider believed FMCSA should host the list of entities in financial failure or insolvency across all surety companies and trust providers in one location to make it easier for the public to become aware of these notices. A third surety provider wrote that the requirement to publicly advertise would be satisfied by maintaining the information on the surety/trust website, augmented by listing the payees upon closure of the

case. One surety provider noted that these public advertisements are only of value if they are easily found and recommended a consolidated location.

A surety provider wrote that upon cancellation of a BMC–84 surety bond or a BMC–85 trust, the issuer of the bond or trust should be required to post the cancellation and advertise for claim submission on its website for no less than 60 days. The commenter asked FMCSA to allow 30 days for the surety or trust provider to investigate the claim and an additional 30 days to make payment or denial (citing reason) to claimant: 60 days to advertise, plus an additional 60 days to investigate and settle claim.

FMCSA response: Consistent with the position of most commenters, FMCSA will consider the surety or trust's duty to publicly advertise claims to be met through the provision of notice of financial failure or insolvency to FMCSA. In this NPRM, FMCSA proposes to post such notices in the FMCSA Register section of its website to provide a centralized location for notice of claims periods.

Other Comments Related to Surety or Trust Responsibilities

Sureties or trust fund providers will have to commence action to cancel broker or freight forwarder surety bonds or trust funds in the event of broker/freight forwarder financial failure or insolvency (49 U.S.C. 13906(b)(6), (c)(7)). To effectively implement this provision, commenters provided other insights on surety or trust responsibilities in these cases.

A trade organization suggested that the requirements for the qualifications for trustees and trusts be sufficiently effective so that trustees are compelled to do better underwriting of brokers, eliminating those from the industry who may be likely to default on their payments to motor carriers.

A surety provider noted that the authority for pro-rata payments to claimants who have filed following publication of the need to file claims but before the cut-off date, should be explicitly set out in the regulations to protect the surety or trust and eliminate any delay in making payments to motor carriers.

FMCSA response: FMCSA believes that this NPRM would improve regulation of trustees and lead to fewer brokers or freight forwarders defaulting on their payments. Regarding the latter comment, FMCSA does not believe that a specific provision in the regulations is necessary because the statute regarding pro-rata payment of claims is self-implementing.

E. Enforcement Authority

Surety Suspension Procedures Under 49 U.S.C. 13906(b)(7) and (c)(8)

The agency sought input on the development of surety suspension procedures authorized pursuant to 49 U.S.C. 13906(b)(7) and (c)(8). FMCSA has authority under MAP–21 to suspend non-compliant surety providers from providing broker or freight forwarder financial responsibility for 3 years, seek civil penalties against surety providers, and sue non-compliant surety providers in Federal court. In the ANPRM, the agency noted that it expects to establish a procedure for suspensions where it will issue an order to show cause against a non-compliant surety provider, weigh any evidence submitted by the provider, and make a final decision. (83 FR 48785)

A trade organization commented that FMCSA's enforcement authority is likely to be exercised mainly against sureties providing BMC–85 trusts since Treasury has authority to regulate sureties providing BMC–84 bonds. It supported the use of the simplified show cause procedure proposed by FMCSA, adding that the show cause order should be published to allow interested members of the public to comment. This trade organization recommended that, in order to ensure funds are available to pay motor carrier claims without a large expenditure of agency resources, the agency should require trust providers to issue only fully funded trusts and allow the market to regulate this by requiring the trustor to publish a list of valid claims paid on a publicly accessible website. According to the commenter, this information is currently required to be submitted to FMCSA, and the commenter believed there is no reason it should not also be made publicly available, so that motor carriers and others can see for themselves whether a trust provider is paying valid claims. The commenter wrote that the agency must make the distinction between ''paid claims'' and ''filed claims.'' Only valid claims paid should be required to be filed with the agency. This same trade organization commented that, in order to show that a trustee is holding $75,000 in cash or a cash equivalent for each of the brokers for whom it has filed a BMC–85, FMCSA should require the trustees to file audited financial statements with the agency showing the number of brokers for whom it has filed BMC–85 forms with the FMCSA, and the value and type of assets it is holding in trust to support them. The commenter said that FMCSA should make these audited financials publicly available so that the beneficiaries of these trusts can determine whether the trusts are fully funded with liquid assets ''readily available to pay claims.'' If they are not, then the Government should take enforcement action by cancelling the trust's registration number and terminating its ability to file BMC–85s.

A second trade organization laid out the surety's duties and procedures in detail in a draft proposed rule. The commenter believed these rules would define the limits of the surety's liability and remove any concerns that it must wait to collect all potential claims before paying claims on the bond. This trade organization encouraged FMCSA to adopt a process that would allow a member of the public to petition the agency to revoke the right of a surety or trustee to file bonds and trusts with the agency, if that surety or trustee has failed to follow the procedures in its draft § 387.307, Property broker surety bond or trust fund.

A surety provider wrote that a BMC–84 surety provider or BMC–85 trust fund provider becomes insolvent when it is unable to pay claims or redemptions upon demand. The commenter believed that when FMCSA can verify this, the agency should issue a notice to show cause and demand the surety provide proof of financial stability. If the surety is unable to adequately respond, FMCSA should issue a notice to the holders of the respective BMC–84s or BMC–85s that their ''proof of minimum financial responsibility'' will be suspended in 30 days if they do not obtain alternative surety filing.

A surety provider believed that FMCSA should suspend or revoke a surety or trust provider's authority to file BMC–84s or BMC–85s only if a written complaint with supporting evidence was filed with FMCSA, investigated, and ruled on by FMCSA as to suspension or revocation. The commenter stated that FMCSA must clearly define compliance rules before suspension or revocation is adopted practice.

A surety provider wrote that FMCSA must be certain any regulations or procedures it adopts do not conflict with Treasury's regulations in 31 CFR 223.17(b), regarding an agency's decision to refuse to accept a bond from a surety listed on OMB Circular 570. The commenter noted that, while FMCSA may determine that the Treasury procedure is enough, U.S. Customs and Border Protection has regulations outlining how that agency determines when to refuse to accept a surety's bond (19 CFR 113.38), without creating a referral to Treasury for

removal from OMB Circular 570. This surety provider commented that the suspension of the eligibility to provide surety bonds or trust functions, on behalf of FMCSA financial responsibility instruments, must not be the result of any arbitrary or capricious decision making.

A surety provider believed if any trust provider is found not to be holding the funds required in support of the aggregated trusts they have underwritten or if a surety loses its authority granted by Treasury, that provider should immediately lose its authority to provide bonds or trusts. However, since suspension of the surety or trust will impact all of the principals for bonds issued by that surety or trust, the matter must be taken seriously and not be solely triggered by a complaint. The commenter believed the agency should provide the surety or trust with a notice to show cause why its authority should not be suspended, together with a list of particulars, and should provide the surety or trust with an opportunity for a hearing. The commenter said that if the agency has concerns, industry would expect it to initiate a dialogue so that the surety or trust might address those concerns before it reaches a show cause condition.

A surety provider recommended that FMCSA provide bond and trust providers the ability to post information related to surety suspension procedures on the FMCSA website, or to have the information sent to the FMCSA for posting.

FMCSA response: After consideration of the comments, FMCSA proposes a surety or trust suspension procedure as described later in this preamble and consistent with what it described in the ANPRM.

Other Comments Related to FMCSA's Enforcement Authority

Commenters provided other views related to FMCSA's enforcement authority. A trust fund provider noted that ''the lone imploding BMC–85 provider, Oasis Capital, Inc., which exited the marketplace owing claimants and redemptions, was a singular event.'' This commenter maintained that there is no other evidence of BMC–85 providers not paying claims or not providing redemptions to their customers. By contrast, another commenter asserted that there is evidence, revealed by a Google search, that BMC–85 providers have failed to pay legitimate claims. It also reported no claim issues can be found doing similar online searches for BMC–84 providers.

Another trade organization urged the agency to require all BMC–85 trust providers to submit timely notice of the financial failure of any of their clients and to make information regarding claims paid publicly available. The commenter wrote that underfunded or insolvent trust fund providers ''tarnish the brokerage industry and disadvantage those operating legally, enable irresponsible brokers to continue operating without adequate security, and cheat motor carriers, thereby lessening the safety of the transportation industry.'' The commenter reported that when owner-operators do not get paid, they may not be able to invest adequately in maintenance and safety improvements. The commenter wrote that FMCSA must enforce the law and give its highest priority to ensuring that trust providers are fully funded.

While it understood that the agency focus is on safety, a trade organization believed that the economic well-being of small business motor carriers has a huge impact on safety because the loss of one payment can cause a motor carrier to defer maintenance and run harder until it makes up the shortfall. The commenter provided suggested regulatory text that it believed would keep persons with little financial backing from entering the broker industry, reducing the need for FMCSA enforcement action.

FMCSA response: After consideration of the comments, FMCSA proposes a surety or trust suspension procedure as described later in this preamble and consistent with what it described in the ANPRM.

F. Entities Eligible To Provide BMC–85 Trust Fund Filings; should BMC–85 providers be licensed as trust providers?

Under MAP–21, FMCSA has broad authority to determine who is eligible to provide trust fund services on behalf of brokers or freight forwarders. A broker must file a surety bond or trust fund from a provider ''determined by the Secretary to be adequate to ensure financial responsibility'' (49 U.S.C. 13906(b)(1)(A)). Section 13906(c)(1)(A) contains similar language for freight forwarders. Under current regulations, a financial institution may file trust funds (§ 387.307). In addition to other types of entities, loan or finance companies are considered financial institutions pursuant to § 387.307(c)(7). In the ANPRM, the agency asked whether FMCSA should require BMC–85 trust fund providers to be licensed as trust providers. It also asked how § 387.307(c)(7) (loan or finance company) could be amended to ensure adequate monitoring of BMC–85 providers' ability to pay claims.

A number of commenters believed that providers of BMC–85 trust funds should be licensed as trust providers.

A surety provider believed that, while requiring BMC–85 trust providers to become licensed trust providers would add further regulatory oversight, the government agencies that provide the trustee licenses would not enforce or know the proper amount of assets that the trustees should have in trust. The commenter wrote that FMCSA needs to provide further oversight of the BMC–85 trusts. The commenter reported that when the BMC–85 trust providers were directly asked at the May 2016 roundtable if they were collecting $75,000 to be held in trust, none claimed they were. Instead, they collect a small percentage annual fee, akin to unlicensed surety bonds, with none of the regulatory oversight or safeguards. The commenter wrote that a trust license requirement would not change this, but oversight and regulation from the FMCSA could.

FMCSA response: After consideration of the comments, FMCSA is not proposing that BMC–85 trust providers be licensed as trust companies. Given both the proposed enhanced asset quality requirements and the requirement that BMC–85 trustees be more robustly monitored by financial regulators, FMCSA believes it is unnecessary to require that BMC–85 providers be licensed as trustees given the added cost such a requirement may impose.

Other Comments Related to Which Entities Should Be Eligible To Provide Trust Funds

A trade organization endorsed the previously filed comments of the Association of Independent Property Brokers & Agents and quoted from them extensively regarding what it believed is a conflict-of-interest issue regarding ''the current practice of non-profit entities engaging in the normally for-profit business of selling or the brokering of financial security.'' The commenter believed that instead of working to fulfill important MAP–21 mandates, industry had been asked to ''engage in furtherance of what we believe is nothing more than a trust fund supplier 'witch hunt' asked for by competing BMC–84 bond issuers and/or other entities that represent themselves as bona fide, non-profit trade groups, but are actually for-profit BMC–84 bond peddlers in disguise.'' The commenter recommended that FMCSA restrict industry trade groups from selling financial security instruments.

A surety provider suggested FMCSA consider promulgating regulations establishing financial criteria that FMCSA believes BMC–85 trust funds should meet. FMCSA could then require annual reports by independent accountants from every BMC–85 trust company that wants to obtain filer authority, verifying that these criteria had been met. If the company did not provide this annual report, its authority would be revoked. The BMC–85 trust company would need to have assets readily available that exceed the liability for trust funds on deposit. The commenter believed a process like this would be relatively easy for FMCSA to monitor.

A trade organization demanded a change to the licensing process because of the lack of a qualified, independent monitoring source and false reliance on a State's initial issuance/reissuance of its business license. The commenter believed that loan or finance companies should not be treated as financial institutions, because of concerns that States will not monitor BMC–85 providers' ability to pay claims from a trust or, further, monitor such companies for enforcement purposes. The commenter also believed that the National Insurance Producers Registry license is only an industry-sponsored listing service of insurance agents and brokers.

FMCSA response: FMCSA does not believe that there is a need to restrict industry trade groups from selling financial instruments. FMCSA's authority is limited to ensuring that BMC–85 trust fund providers are adequately regulated and suitable for administering trust funds. Whether such providers are industry associations is not relevant to that determination.

In regard to the comment suggesting that trustees be required to have annual reports from independent accountants to measure their compliance with FMCSA regulations, FMCSA believes that such a requirement would impose cost upon trustees that is unnecessary. FMCSA believes that the proposed regulatory structure, where trusts will need to contain high quality financial instruments that are available to meet $75,000 in claims, along with the enhancement of the regulatory requirements for being a BMC–85 trustee, will make such an annual reporting requirement unnecessary.

Finally, FMCSA agrees with commenter's suggestion that being a loan or finance company is not sufficient to serve as a BMC–85 trustee. Through its outreach to financial regulators and their representatives, FMCSA has received robust feedback that loan or finance companies are not adequately regulated and hence inappropriate for serving as stewards of money held in trust for motor carriers and shippers.

G. Revisions to Forms BMC–84 and BMC–85

The agency anticipated the need for revisions to the BMC–84 and BMC–85 forms if a rulemaking was proposed. In the ANPRM, FMCSA requested comments to identify suggested changes to the forms.

After review of the BMC–84, a trade organization found it to be well drafted. The commenter's only recommendation was that the form require the surety underwriting the bond to be a corporation appearing on Treasury's list of approved sureties and certified, pursuant to 31 U.S.C. 9304 through 9308, to provide bonds to the Federal Government.

A surety provider suggested that the best approach to revising the forms would be incorporating regulatory language by reference, rather than repeating language found in the FMCSA regulations.

Two surety providers believed there is no need to modify the forms except to conform to changes from rulemaking.

A trade organization encouraged the agency, if it does change these forms or adopt an electronic version for filing, to revise them to state that ''no provision on the form or in a contract or agreement between a broker and a surety or trustee, or a contract or agreement between a broker and motor carrier, can conflict with or exempt any party from their rights or duties under the new rules. Nor can any such contract bind a person to waive their rights or duties under the new rules.'' The commenter also believed the forms should state that the contract includes by reference all applicable provisions of 49 U.S.C. 13906 and the regulations themselves. The commenter also noted that electronic filing of some fields from the physical documents has caused confusion as to the contents of the form. There are provisions on the BMC–84 setting legal responsibilities and liabilities that are not provided by the current statute or regulations.

A surety provider believed that removing the 30-day cancellation clause, allowing a trust or bond company to cancel on demand, will reduce the number of claims and lower premiums.

FMCSA response: FMCSA appreciates the comments submitted by stakeholders. FMCSA may propose revisions to the BMC–84 and BMC–85 forms to align with any changes made to the regulations as a result of this rulemaking. While any revised forms will be made available for comment in a future notice, FMCSA also welcomes comments in response to the NPRM on items to consider for inclusion or revision.

H. Should HHG brokers and freight forwarders be regulated differently?

FMCSA asked whether HHG brokers and freight forwarders should be regulated differently than general property brokers and freight forwarders in a rulemaking on broker/freight forwarder financial responsibility. Two surety providers believed that HHG brokers should be regulated differently. One commenter noted that the movement of HHG deals directly with the public. The second commenter also noted that HHG shippers are consumers who know very little about the transportation industry. This commenter wrote that in its experience this segment of the industry often violates existing regulations regarding estimates and carriers holding loads hostage. It suggested that enforcement of the existing regulations would reduce those problems.

A surety provider wrote that, from an underwriting standpoint, it is unlikely that the surety industry will view HHG differently. The surety market underwriters already have the ability to segregate policies based on their operations and have chosen not to do so.

A trade organization representing the moving industry believed that any additional fraud protections imposed by FMCSA should apply only to online HHG brokers. A second trade organization representing the moving industry did not believe that additional fraud protections pertaining to HHG brokers were warranted.

FMCSA response: FMCSA has decided not to propose regulations dealing specifically with HHG brokerage or freight forwarding at this time. FMCSA believes that it is most useful to continue to address moving fraud through other means. Moreover, there is no requirement in 49 U.S.C. 13906 to issue HHG-specific rules.

I. Market's Ability To Address Broker/Freight Forwarder Noncompliance

FMCSA sought comment on whether the market is able to address broker/freight forwarder noncompliance. For example, if a broker or freight forwarder has a history of noncompliance with contracts, wouldn't surety or trust firms be less likely to back them, or to charge a higher premium or trust fund management fee? Is there a market

failure that is preventing these transactions from taking place efficiently?

Three surety providers agreed that sureties would decline to provide BMC–84s or BMC–85s to any broker or freight forwarder with a known history of noncompliance with a BMC–84 or BMC–85, except under special circumstances. These commenters reported that the problem is with reincarnated brokers and freight forwarders that slip through the process. One of these commenters wrote that sureties collect a variety of personal identification information as part of the underwriting process to ferret out reincarnated entities, but this does not always prevent these entities from finding another surety, because such information cannot be disclosed unless the surety is required to provide it to the agency. Another of these surety providers believed that a consolidated public posting of the MC number, company name, and name of the owner(s) of noncompliant brokers and freight forwarders would help combat reincarnated companies.

A surety provider noted that the whole industry should vet the broker or freight forwarder using FMCSA's Licensing and Insurance website, before entering any monetary relationship.

FMCSA response: FMCSA appreciates the information provided through the ANPRM and has considered it in forming our proposed rule. As explained elsewhere in this document, FMCSA has attempted to strike an appropriate balance in how additional regulations may positively or negatively impact those affected by the proposed changes. FMCSA encourages stakeholders to review the proposal and provide comments and particularly data, where possible, to support their positions.

J. Comments on Other Aspects of MAP–21 Section 32918

FMCSA requested comments on any other aspects of implementing MAP–21 section 32918 that may be necessary, including how these areas could be implemented in a way that would not divert scarce safety oversight resources.

One trade organization offered detailed proposed regulatory text. It suggested that FMCSA's primary role in an NPRM would be to promptly publish on its Licensing and Insurance website: (1) information provided by sureties about when a broker obtains a bond or trust that complies with the rules; (2) information regarding the status of the broker's registration; and (3) the website link provided by the surety with which the public can obtain information about the current bond. By making public timely information about pending bond claims and the status of a broker's registration, the commenter wrote that the motor carrier can choose whether to do business with a broker or not.

A surety provider indicated that a license as a premium financing company, available in all 50 States, with oversight by each State's department of insurance or banking department, would relieve FMCSA of the need for an annual review, leaving its limited resources available for safety oversight. The commenter included a table describing the licensing requirements for each State.

A surety provider believed that limiting the acceptable financial instruments to BMC–84 surety bonds is the best way to ensure that FMCSA does not divert its resources because the BMC–84 bond is the only product that relies strictly on other government agencies for solvency and claims handling. The commenter maintained that BMC–84 surety bonds are less expensive than BMC–85 trusts. The same commenter wrote that while there are thousands of bond requirements similar to the $75,000 freight broker bond at the local, State, and Federal level, the Government agencies issuing the requirements rely on other Government agencies to regulate the companies backing the risk, which allows them to focus on their regulatory duties. For surety bonds (BMC–84), third party trusts (BMC–85), ILOCs from FDIC-insured banks, and cash, the commenter provided two tables describing which Government agencies regulate each product and what percentage of obligees accept each product. The commenter noted that FMCSA is the only Government agency that allows third-party trust companies to hold the ILOCs or cash on behalf of the agency, greatly adding to FMCSA's oversight responsibilities.

FMCSA response: FMCSA appreciates the insight provided by the commenters and the details on varying requirements across the States. FMCSA reviewed and considered this information in the development of this NPRM.

Small Business Impacts

FMCSA requested comment on the small business impacts of its suggested courses of action in the ANPRM. An individual commenter believed this to be the single most crucial question the agency asked. He reported that small business truckers must be fully compensated in order to operate safely; if they are not justly compensated for their efforts, they have been failed by the system which is in place to protect them.

A trust fund provider noted that thousands of freight brokers are small business owners; any disruption to their bond placement or in their potential authority status may result in lost revenues. The commenter also wrote that many BMC–85 providers also qualify as small businesses that could be put out of business if FMCSA adopts a cash-only standard for BMC–85 trust funds.

A surety provider wrote that, if BMC–85s continue to be offered as an option, FMCSA must communicate where to report claim issues and must handle complaints in a timely fashion or small freight carriers will continue to be forced to close. The commenter added that only FMCSA can positively impact small freight carriers that have been harmed by the lack of BMC–85 trust regulation.

FMCSA response: FMCSA understands the differing implications of regulations, and the absence of regulations, on the affected entities and has considered the impacts both from broker nonpayment on small motor carriers and from more stringent requirements on small brokers and freight forwarders in the development of this NRPM. The impact to surety bond and trust fund providers was also considered in the development of this NPRM.

K. Miscellaneous Comments on the ANPRM

Some commenters raised issues or offered explanations that were related to broker/freight forwarder financial responsibility but outside the specific issues that FMCSA raised in the ANPRM. A trade organization proposed regulatory language to ensure that a broker operates and incurs debt to motor carriers only when it has the amount of security required by statute. This commenter asked for industry input on the reasons for a legitimate dispute between a broker and carrier over payment of a load so they could be incorporated into the regulations. Other than claiming that it did not contract with the broker, the commenter believed that the only legitimate dispute would be one where the shipper or receiver of the load in question had memorialized a claim in a document given to the broker stating with particularity that the motor carrier did not perform the transportation as agreed to. The commenter noted that, when brokers go out of business with claims exceeding the amount of the bond, those claims are rarely the subject of a dispute between the broker and the carrier.

This same commenter noted that these financial security rules are important for the smooth function and safety of the motor carrier industry. If the rulemaking produces effective steps for the resolution of motor carrier claims against a bond or trust, this trade organization believed that ''disputes between motor carriers and sureties will be reduced, there will be less need for litigation, less need for FMCSA intervention, and the economic health of the broker/motor carrier component of the transportation industry will be stronger.''

In response to the agency's assertion that FMCSA had heard little from the BMC-85 industry, a trust fund provider complained that FMCSA had failed to consider his comment properly. In his June 16, 2016 post-round table comments, this surety provider wrote that his company ''reiterates and incorporates the entirety of PFA's post-event 'comments regarding the FMCSA roundtable on May 20, 2016.' '' This same surety provider believed that FMCSA did not appropriately distinguish between the legitimate interests of motor carriers and shippers and the ''often questionable benefits'' of BMC–84 surety providers.

A factoring company noted that it endorsed the submissions of Transport Financial Services. The commenter wrote that attendees at a transportation factoring software users conference agreed that BMC–85 trust providers are preferable to BMC–84 surety providers with respect to economically regulated transportation claims processing and better informed regarding such specialized activity than the licensed insurance adjusters handling a much wider range of claims. A surety provider believed a rulemaking alone would not provide the adequate changes needed to solve the issues posed by BMC–85s.

Commenters believed that FMCSA should do more to screen brokers. An individual wrote that FMCSA should require more proof of financial stability from brokers, and the broker or forwarder should prove this to the shipper too. The commenter recommended creating a reporting portal that would provide a track record of issues with on time payments or other issues that FMCSA could investigate and act on.

One individual believed that FMCSA is not doing enough to vet brokers that fail to pay carriers and then close their doors, change their business name, and/or file for bankruptcy, leaving the surety to handle the debt. The commenter wrote that FMCSA needs to collect the social security number of the brokers, their spouses, and managing partners and then create a database to monitor and even reject ''fly by night'' operations. The commenter recommended that FMCSA make it a criminal act to lie on the property broker application and provided examples of questions intended to weed out chameleon brokers.

A number of commenters believed that the bond amount should be higher than $75,000. However, one trade organization commented that the $75,000 bond is too high and serves as an unreasonable barrier to entry. It recommended it be lowered by Congress to $25,000. Another surety provider wrote that raising the financial requirement for brokers and freight forwarders only increased the amount of money unscrupulous operators could steal.

FMCSA response: FMCSA appreciates these comments and may address them if they are renewed in response to this NPRM. The $75,000 minimum requirement is currently mandated by statute. 49 U.S.C. 13906(b)(3) and (c)(4).

VII. Discussion of Proposed Rulemaking [4]

Assets Readily Available

This NPRM proposes to allow brokers and freight forwarders to meet MAP–21's assets readily available requirement by maintaining trusts that have assets that can be liquidated within 7 business days of the event that triggers a payment from the trust, as certified on a BMC–85, and that do not contain the following assets:

(1) Interests in real property;

(2) Intercorporate agreements or guarantees;

(3) Internal Letters of Credit;

(4) Certain assets determined by States to be illiquid including second trust deeds, personal property and vehicles;

(5) Bonds that do not receive the highest rating from a credit rating agency (a nationally recognized statistical rating organization registered with the Securities and Exchange Commission); and

(6) Any other asset that the broker cannot certify (on a BMC–85) will be available in the amount of $75,000 within 7 business days.

After consideration of the 2016 roundtable discussion and associated comments and the comments in response to the 2018 ANPRM, FMCSA proposes the list of assets that are not suitable for a BMC–85 trust fund above.

First, the Agency believes that 7 business days is a reasonable period for an asset to be considered ''readily'' available for liquidation. That will give the broker or freight forwarder adequate time to convert the asset to cash (if not cash already) but it will be available for claimants within a reasonably short period, and indeed quicker than routine collection of commercial debt in other contexts.

Second, FMCSA carefully developed the list of assets that it will not consider to be ''assets readily available.'' It addresses each of these in turn.

FMCSA does not believe interests in real property should be in BMC–85 trust funds as such interest may be difficult to liquidate within 7 business days. Moreover, the value of real property fluctuates, and FMCSA is concerned that an interest in real property initially worth $75,000 will not retain its value at the time of a claim on a bond or trust.

Second, intercorporate guarantees or agreements are dependent on the financial health of the guarantor, which makes their availability in the case of a drawdown uncertain. In addition, FMCSA lacks the information and resources to monitor the financial health of guarantors.[5]

Third, FMCSA does not believe internal letters of credit are appropriate for BMC–85s. In order for FMCSA to accept letters of credit in BMC–85 trust funds, the Agency needs to be confident that the issuer of the letter of credit is able to pay a claim in the event of a drawdown. Internal letters of credit do not appear to provide such reassurance. FMCSA is aware that a leading trust fund provider uses internal letters of credit in its trust funds, and the agency welcomes comments on how it can be assured that such letters of credit will be available for the payment of claims.

Fourth, in preparing this proposed rule, FMCSA explored whether States have defined assets readily available. FMCSA learned that at least two States have considered second trust deeds, personal property, and vehicles to be

[4] Unless ''freight forwarder'' is specifically referenced in these proposed regulations, all changes to broker financial responsibility requirements are applicable to freight forwarder financial responsibility pursuant to 49 CFR 387.403T(c) and 49 CFR 387.403(c). The agency requests comment on whether the agency should adopt separate regulatory changes on freight forwarder financial responsibility that mirror the broker regulations or maintain the current adoption by reference.

[5] While the agency does accept corporate guarantees in its self-insurance program, pursuant to 49 U.S.C. 13906(d), such guarantors are part of a package of collateral that the agency requires. Moreover, the agency employs a financial contractor to assist it in that program. The agency's ability to monitor such instruments in the context of a program with fewer than 50 participants is very different from its ability to assess intercorporate agreements or guarantees of thousands of brokers and freight forwarders.

illiquid.[6] Accordingly, given the need for assets to be ''readily available,'' the agency cannot accept these illiquid assets, and it proposes to prohibit these assets from being maintained in trust funds.

Fifth, FMCSA has determined that given their higher default risk, bonds that are not considered the highest rated by a nationally recognized statistical rating organization (NRSRO),[7] are too risky to be considered readily available for the payment of claims. FMCSA welcomes comment on whether a less restrictive approach may protect motor carriers and shippers.

Finally, to provide maximum flexibility for BMC–85 trust providers and brokers and freight forwarders, FMCSA will allow all other assets in trusts, provided the broker or freight forwarder can certify under penalty of perjury that the asset will be convertible to cash within 7 business days of the event triggering its liquidation. This rule also proposes a 3-year compliance date to give time for brokers or freight forwarders to meet the new asset requirement. FMCSA believes this will allow brokers and freight forwarders to transition to the new standard.

FMCSA invites comments from the public regarding other types of assets that should not be considered assets readily available. FMCSA also requests comments from the public regarding whether a comprehensive list of appropriate assets is possible or desirable.

Entities Eligible To Provide Trust Funds for BMC–85 Filings

FMCSA proposes removing loan and finance companies from the list of entities authorized to serve as BMC–85 trustees. FMCSA reaches this conclusion for several reasons. First, FMCSA is not a financial regulator, and given its primary safety mission it must rely on other regulators to regulate the trustees that provide BMC–85 trust funds. In that regard, FMCSA is concerned that loan and finance companies are not adequately regulated at the State level for the purpose of issuing BMC–85s. Because these entities are unregulated, they may engage in practices that create risk to the public. Specifically, many of these loan and finance companies offer access to a $75,000 trust via a monthly membership fee. This business model is not within the intent of MAP–21 and may not provide the readily available assets to pay claims. Its meetings with both State and Federal regulators were informative on this point. CSBS indicated that loan companies are not looked at for safety and soundness or financial condition. They are generally examined for consumer protection compliance. Moreover, there are too many companies for the amount of state examination capacity. The FDIC indicated that state finance companies are not regulated as robustly as FDIC insured banks. And, the Florida Office of Financial Regulation, which regulates Florida ''consumer finance companies,'' one of which is a significant provider of BMC–85 trusts, indicated that there is no regulation of these companies in the business that FMCSA allows them to be engaged in. FMCSA welcomes comments from BMC–85 providers and others as to why loan and finance companies are adequately regulated for the purpose of issuing BMC–85s, as opposed to being regulated by states for either purpose.

FMCSA also proposes a 3-year compliance date for trustees to meet these new requirements to allow BMC–85 providers to transition.

Group Surety Bonds/Trust Funds

FMCSA does not currently allow the use of group surety bonds or group trust funds (78 FR 54720, 54721, Sept. 5, 2013), and this NPRM does not propose any changes to the agency's position. After considering the comments on the ANPRM and additional agency discussion, FMCSA determined that the use of these bonds and funds would not be likely to provide a cost savings for brokers and freight forwarders, as brokers and freight forwarders would still need to hold $75,000 in financial responsibility. In addition, group surety bonds/trust funds are difficult and costly to administer. As noted in the comment discussion, the main proponent of their inclusion in implementation of 49 U.S.C. 13906(b) and (c) has since acknowledged that they are inappropriate for FMCSA financial responsibility requirements, a factor which FMCSA finds highly persuasive.

Immediate Suspension of Broker/Freight Forwarder Operating Authority

FMCSA proposes a new process for an immediate suspension of broker or freight forwarder operating authority. If there is an actual drawdown on a broker/freight forwarder surety bond or trust fund, FMCSA will provide notice to the broker or freight forwarder that it has 7 business days to provide evidence to FMCSA that the surety or trust has been replenished. If it does not provide such notice, FMCSA will suspend that broker or freight forwarder's operating authority registration.

A drawdown would be defined as a situation where one of the following occurs: (1) a broker or freight forwarder consents to the drawdown and the instrument value drops below $75,000; (2) a broker or freight forwarder does not respond to adequate notice of a claim by a surety or trust fund provider, the surety or trust provider pays the claim, and the instrument value drops below $75,000; or (3) a claim is reduced to a judgment, the surety or trust fund provider pays the judgment and the instrument value drops below $75,000.

This proposal also requires that FMCSA provide the broker or freight forwarder notice of the pending suspension and give it 7 business days to replenish the funds. If it does not replenish the funds, the broker's or freight forwarder's registration will be suspended via second notice. FMCSA believes that 7 business days gives the broker or freight forwarder reasonable time to replenish the surety bond or trust account, while also implementing Congress's mandate that broker or freight forwarder operating authority registration be immediately suspended in the event the broker/forwarder's financial security falls below $75,000.

Surety or Trust Responsibilities in Cases of Broker/Freight Forwarder Financial Failure or Insolvency

FMCSA proposes to define *financial failure or insolvency* as a bankruptcy filing or State insolvency filing. If there is a financial failure or an insolvency of the broker or freight forwarder and the surety or trustee is notified of the bankruptcy or insolvency filing, then the surety or trustee must notify FMCSA of the filing and initiate cancellation of financial responsibility. After considering responses to the ANPRM, FMCSA more fully appreciates the value of an objective test of financial failure or insolvency such as a bankruptcy or insolvency filing.[8] This approach will minimize disputes and allow for efficient implementation of this statutory provision. The agency also notes that Congress defined a similar term ''insolvent'' in the bankruptcy code at 11 U.S.C. 101(32). Given that similar

[6] 10 CCR section 1780 (second trust deeds); Haw. Admin. Rules section 17–675–2 (personal property and vehicles).

[7] NRSROs are those organizations registered with the Securities and Exchange Commission (SEC) pursuant to authority in the Exchange Act, 15 U.S.C. 78c(b), 78o–7, 78q, 78w, and 78mm, and SEC regulations in 17 CFR 240.17g–1. A list of the ten currently registered NRSROs is available on the SEC's website. See *https://www.sec.gov/ocr/ocr-current-nrsros.html* (retrieved Oct. 18, 2022).

[8] See comments of the Surety & Fidelity Association of America, available in the docket at *https://www.regulations.gov/document/FMCSA-2016-0102-0022.*

term's placement in the Bankruptcy Code, it is appropriate to use bankruptcy law to define ''financial failure or insolvency'' in the implementation of the MAP–21 provisions.

Consistent with FMCSA's primary safety mandate, the agency seeks to implement this statute in a way that involves clear guidelines for surety and trust providers with minimal agency involvement is. FMCSA believes this proposal accomplishes that goal. To the extent that brokers, sureties, or trustees are concerned about the bankruptcy implications of this approach, FMCSA recognizes that those entities may need to seek relief from the bankruptcy court to take action on the BMC–84 or BMC–85 instruments in the event of a bankruptcy. Given that a formal bankruptcy or insolvency filing is required, FMCSA expects few instances where this portion of the NPRM will be triggered.

Further, MAP–21 requires that sureties or trustees ''publicly advertise'' for claims in the event of a broker or freight forwarder financial failure or insolvency. FMCSA proposes that once the surety or trustee has notified FMCSA of the financial failure or insolvency, it will have met its statutory mandate to ''publicly advertise.'' FMCSA will help ensure that claimants are aware of the claims filing period by posting notice of the claims period on the FMCSA Register on its website. All claims will need to be filed directly with the surety or trustee.

Enforcement Authority

FMCSA proposes to implement MAP–21's surety provider suspension authority provision by providing notice of suspension to the surety or trust fund provider, allowing 30 calendar days (extended to the next business day if the final day of the period falls on a weekend or Federal holiday) for the surety or trust provider to respond, before the agency makes a final decision.

FMCSA proposes to add language to 49 CFR part 386 to address civil penalties authorized by 49 U.S.C. 13906(b) and (c) as well.

VIII. Section-by-Section Analysis

This section includes a summary of the proposed changes to 49 CFR parts 386 and 387. The regulatory changes proposed are discussed in numerical order.

Appendix B to Part 386—Penalty Schedule: Violations and Monetary Penalties

In Appendix B to part 386, a new paragraph (g)(24) would be added to highlight the monetary penalty for which a surety company or financial institution found in violation of 49 U.S.C. 13906 or § 387.307 would be liable.

Section 387.307 Property Broker Surety Bond or Trust Fund

In § 387.307(b), a new standard for trust funds allowed under the section would be added. Existing paragraph (c)(7) would be removed and existing paragraph (c)(8) would be renumbered as paragraph (c)(7). New paragraphs (e), (f), and (g) would be added.

Paragraph (e) would set out the triggers and procedures for immediate suspension of a broker. The paragraph would establish the role of the surety provider or financial institution, FMCSA, and the broker.

Paragraph (f) would set out procedures and responsibilities for a surety company or a financial institution and FMCSA following financial failure or insolvency of a broker. A financial failure or insolvency of a broker would be defined as a filing related to the broker pursuant to Title 11 of the United States Code or a filing related to the broker under an insolvency or similar proceeding under State law.

Paragraph (g) would set out procedures concerning suspension of a surety company or financial institution's ability to file evidence of financial responsibility with FMCSA and FMCSA's role in that action. Penalties for violation of the requirements of this section or subsection (b) of Title 49, section 13906 U.S.C. would be established.

IX. Regulatory Analyses

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

The Office of Information and Regulatory Affairs (OIRA) determined that this rulemaking is not a significant regulatory action under section 3(f) of E.O. 12866 (58 FR 51735, Oct. 4, 1993), Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, Jan. 21, 2011), Improving Regulation and Regulatory Review and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. This rule is also not significant within the meaning of DOT regulations (49 CFR 5.13(a)). Accordingly, the Office of Management and Budget has not reviewed it under these Orders. A draft regulatory impact analysis is available in the docket. That document:

- Identifies the problem targeted by this rulemaking, including a statement of the need for the action.
- Defines the scope and parameters of the analysis.
- Defines the baseline.
- Defines and evaluates the costs and benefits of the action.

Copies of the full analysis are available in the docket or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Summary of Estimated Costs

Brokers and freight forwarders, surety bond and trust fund providers, and the Federal Government would incur costs for compliance and implementation. The quantified costs of the proposed rule include notification costs related to a drawdown on a surety bond or trust fund, and immediate suspension proceedings, FMCSA costs to hire new personnel, and costs associated with the development and maintenance of the BMC–84/85 Filing and Management IT System. FMCSA estimates that the 10-year cost of the proposed rule would total $5.4 million on an undiscounted basis, $3.8 million discounted at 7 percent, and $4.6 million discounted at 3 percent (all in 2020 dollars). The annualized cost of the rule would be $545,505 discounted at 7 percent and $542,343 at 3 percent. Ninety-eight percent of the costs would be incurred by the Federal Government.

Summary of Estimated Benefits

This proposed rule would result in benefits to motor carriers amounting to a decrease in the claims that go unpaid. FMCSA expects this result for a number of reasons. First, FMCSA proposes to immediately suspend brokers that do not respond following a drawdown on their financial security. This step should alleviate broker non-payment issues as financially insecure brokers would have less time to run up claims they may never pay, while operating lawfully. Building the BMC–84/85 Filing Management System would efficiently exchange information between motor carriers, brokers, financial responsibility providers, and FMCSA, thereby reducing the information asymmetry concerns associated with broker and carrier transactions. Given a lack of data, FMCSA is unable to quantify benefits resulting from this rule, but qualitatively discusses benefits directly

related to three provisions in the regulatory impact analysis.

FMCSA cannot directly estimate an impact on safety resulting from the proposal. OOIDA [9] contends that broker non-payment of claims causes smaller carriers to defer maintenance on their vehicles or ''run harder until they make up the shortfall,'' both resulting in unsafe driving practices.[10] TIA contends that ''small carriers and owner-operators often operate on thin financial margins and need the revenue from every load to maintain their equipment so that it meets roadworthiness and safety requirements. If they are not paid, necessary maintenance and repairs may be put off or ignored because of the reduced cash flow.'' If the proposal is finalized, carriers would have more information to avoid contracting with unscrupulous brokers and would also receive payment for work completed in a timelier manner, without use of interpleader proceedings. Both of these outcomes could lead to an increase in safety if motor carriers choose to use these resources to further their safety focus.

B. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801–808), the Office of Information and Regulatory Affairs (OIRA) designated this rule as not a ''major rule.'' [11]

C. Advance Notice of Proposed Rulemaking

Under 49 U.S.C. 31136(g), FMCSA is required to publish an ANPRM or proceed with a negotiated rulemaking, if a proposed rule is likely to lead to the promulgation of a major rule. However, this requirement does not extend to rulemakings promulgated under the agency's jurisdiction pursuant to 49 U.S.C. 13501 or 13531, which are the basis of this rulemaking. Nonetheless, on September 27, 2018, FMCSA voluntarily published an ANPRM (83 FR 48779).

[9] This comment is available in the docket at *https://www.regulations.gov/document/FMCSA-2016-0102-0076*.

[10] TIA also references potential safety benefits of this rulemaking, available in the docket at *https://www.regulations.gov/document/FMCSA-2016-0102-0032*.

[11] A ''major rule'' means any rule that the OMB finds has resulted in or is likely to result in (a) an annual effect on the economy of $100 million or more; (b) a major increase in costs or prices for consumers, individual industries, geographic regions, Federal, State, or local government agencies; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets (49 CFR 389.3).

D. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, Public Law 96–354, 94 Stat. 1164 (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857, Mar. 29, 1996) and the Small Business Jobs Act of 2010 (Pub. L. 111–240, 124 Stat. 2504, Sept. 27, 2010), requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term ''small entities'' comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these businesses. FMCSA has not determined whether this proposed rule would have a significant economic impact on a substantial number of small entities. Therefore, FMCSA is publishing this initial regulatory flexibility analysis (IRFA) to aid the public in commenting on the potential small business impacts of the proposals in this NPRM. We invite all interested parties to submit data and information regarding the potential economic impact that would result from adoption of the proposals in this NPRM. We will consider all comments received in the public comment process when making a determination in the Final Regulatory Flexibility Assessment.

An IRFA must contain the following:

1. A description of the reasons why the action by the agency is being considered;

2. A succinct statement of the objective of, and legal basis for, the proposed rule;

3. A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

4. A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

5. An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule; and

6. A description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.

Why the Action by the Agency Is Being Considered

In 2012, Congress enacted MAP–21, specifically, section 32918, which contained requirements for the financial security of brokers and freight forwarders that amended 49 U.S.C. 13906. FMCSA proposes modifications to broker and freight forwarder financial responsibility requirements in accordance with the MAP–21 mandate. On September 27, 2018, FMCSA published an ANPRM (83 FR 48779) saying that the agency was considering changes or additions to eight separate areas: Group surety bonds/trust funds, assets readily available, immediate suspension of broker/freight forwarder operating authority, surety or trust responsibilities in cases of broker/freight forwarder financial failure or insolvency, enforcement authority, entities eligible to provide trust funds for form BMC–85 trust fund filings, Form BMC–84 and BMC–85 trust fund revisions, and HHG.

The Objectives of and Legal Basis for the Proposed Rule

In 2012, Congress enacted section 32918 of MAP–21, which contained requirements for the financial security of brokers and freight forwarders, amending 49 U.S.C. 13906. Congress mandated that the agency issue a rulemaking to implement the new statutory requirements MAP–21 section 32918(b). Congress mandated that FMCSA conduct rulemaking to implement the statutory changes. The objective of this rulemaking is to complete the implementation of Congress's directive and to help ensure that motor carriers are paid for the services they provide for brokers and freight forwarders.

A Description of, and Where Feasible an Estimate of, the Number of Small Entities to Which the Proposed Rule Will Apply

Small entity is defined in 5 U.S.C. 601. Section 601(3) as having the same meaning as *small business concern* under Section 3 of the Small Business Act. This includes any small business concern that is independently owned and operated and is not dominant in its field of operation. Section 601(4) includes within the definition of *small entities* not-for-profit enterprises that are independently owned and operated and are not dominant in their fields of operation. In addition, Section 601(5)

defines *small entities* as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000.

This proposed rule would affect financial responsibility providers, brokers, and freight forwarders.

The financial responsibility providers that would be affected by this proposed rule operate under many different North American Industry Classification System [12] (NAICS) codes with differing size standards. Additionally, the financial responsibility providers that would be affected by the rule are a subset of the entities within these codes. Many of the entities operating under these NAICS codes have various functions that do not include providing financial responsibility to brokers or freight forwarders. In providing a wide range of NAICS codes in the finance and insurance sectors, FMCSA believes it captures financial responsibility providers who perform various other functions. Table 2, below, shows the Small Business Administration (SBA) size standards for finance and insurance, which ranges from $8 million in revenue per year for insurance agencies and brokerages, to $600 million in revenue per year for commercial banking.

Brokers and freight forwarders operate in the transportation sector under the NAICS code 48851. As shown in Table 2, the SBA size standard for freight transportation arrangement is $16.5 million in revenue.

TABLE 2—SBA SIZE STANDARDS FOR SELECTED INDUSTRIES

[In millions of 2019$]

NAICS code	NAICS industry description	SBA size standard
	Subsector 522—Credit Intermediation and Related Activities	
52211	Commercial Banking	$600
52229	All Other Nondepository Credit Intermediation	41.5
	Subsector 523—Securities, Commodity Contracts, and Other Financial Investments and Related Activities	
52312	Securities Brokerage	41.5
52313	Commodity Contracts Dealing	41.5
52314	Commodity Contracts Brokerage	41.5
52321	Securities and Commodity Exchanges	41.5
52391	Miscellaneous Intermediation	41.5
	Subsector 524—Insurance Carriers and Related Activities	
524126	Direct Property and Casualty Insurance Carriers	41.5
524127	Direct Title Insurance Carriers	41.5
524128	Other Direct Insurance (except life, health, and medical) Carriers	41.5
52413	Reinsurance Carriers	41.5
52421	Insurance Agencies and Brokerages	8
524292	Third Party Administration of Insurance and Pension Funds	35
	Subsector 488—Support Activities for Transportation	
48851	Freight Transportation Arrangement	16.5

FMCSA examined data from the 2017 Economic Census, the most recent Census for which data were available, to determine the percentage of firms that have revenue at or below SBA's thresholds within each of the NAICS industries.[13] Boundaries for the revenue categories used in the Economic Census do not exactly coincide with the SBA thresholds. Instead, the SBA threshold generally falls between two different revenue categories. However, FMCSA was able to make reasonable estimates as to the percent of small entities within each NAICS industry group.

The commercial banking industry group has a revenue size standard of $600 million. The largest Economic Census revenue category is $100 million or more. As such, FMCSA could not determine the percent of entities within this NAICS industry group that would be considered small, and conservatively estimates that all commercial banking entities are small entities as defined by the SBA.

For Other Nondepository Credit Intermediation, the $41.5 million SBA threshold falls between two Economic Census revenue categories, $25 million and $100 million. The percentages of Other Nondepository Credit Intermediates with revenue less than these amounts were 50 percent and 54 percent, respectively. Because the SBA threshold is closer to the lower of these two boundaries, FMCSA has assumed that the percent of these entities that are small will be closer to 50 percent and is using that figure.

The Securities Brokerage industry group focuses on underwriting securities issues and/or making markets for securities and commodities. The SBA size standard for this industry group is $41.5 million. The $41.5 million SBA threshold falls between two Economic Census revenue categories, $25 million and $100 million. The percentages of Securities Brokerages with revenue less than these amounts were 97 percent and 98 percent, respectively. Because the SBA threshold is closer to the lower of these two boundaries, FMCSA has assumed that the percent of securities brokerages that are small will be closer to 97 percent and is using that figure.

The Commodity Contracts Dealing industry group focuses on acting as

[12] More information about NAICS is available at: (accessed June 29, 2022).

[13] U.S. Census Bureau. *2017 Economic Census.* Available at: *https://data.census.gov/cedsci/table?q=EC1700&n=48-49&tid=ECNSIZE2017.EC1700SIZEREVEST&hidePreview=true* (accessed Apr. 20, 2022).

agents between buyers and sellers of securities and commodities (52313). The SBA size standard for this industry group is $41.5 million. The $41.5 million SBA threshold falls between two Economic Census revenue categories, $25 million and $100 million. The percentages of commodity contracts dealers with revenue less than these amounts were 75 percent and 81 percent. Because the SBA threshold is closer to the lower of these two boundaries, FMCSA has assumed that the percent of commodity contracts dealers that are small will be closer to 75 percent and is using that figure.

The Commodity Contracts Brokerage industry group focuses on providing securities and commodity exchange services (52314). The SBA size standard for this industry group is $41.5 million. The $41.5 million SBA threshold falls between two Economic Census revenue categories, $25 million and $100 million. The percentages of commodity contracts brokers with revenue less than these amounts were 84 percent and 86 percent. Because the SBA threshold is closer to the lower of these two boundaries, FMCSA has assumed that the percent of commodity contracts brokers that are small will be closer to 84 percent and is using that figure.

The Securities and Commodity Exchanges industry group provides marketplaces and mechanisms for the purpose of facilitating the buying and selling of stocks, stock options, bonds or commodity contracts (52321). The SBA size standard for this industry group is $41.5 million. The $41.5 million SBA threshold falls between two Economic Census revenue categories, $25 million and $100 million. There are 13 total firms that operated for the entire year under the securities and commodity exchanges industry group, but the Census has redacted the number of firms with revenue less than $100 million. The Census reports that there are four firms with revenue of $100 million or greater, which leads FMCSA to estimate that there are nine firms with revenue below $100 million. FMCSA conservatively estimates that all nine firms with revenue below $100 million (69 percent of the industry group) are considered small.

The Miscellaneous Intermediation industry group primarily engages in acting as principals in buying or selling of financial contracts (52391). The SBA size standard for this industry group is $41.5 million. The $41.5 million SBA threshold falls between two Economic Census revenue categories, $25 million and $100 million. The percentages of miscellaneous intermediation firms with revenue less than these amounts were 97 percent and 99.6 percent, respectively. Because the SBA threshold is closer to the lower of these two boundaries, FMCSA has assumed that the percent of miscellaneous intermediates that are small will be closer to 97 percent and is using that figure.

The Direct Property and Casualty Insurance Carriers industry group primarily engages in initially underwriting insurance policies (524126). The SBA size standard for this industry group is $41.5 million. The $41.5 million SBA threshold falls between two Economic Census revenue categories, $25 million and $100 million. The percentages of direct property and casualty insurance carrier firms with revenue less than these amounts were 81 percent and 88 percent. Because the SBA threshold is closer to the lower of these two boundaries, FMCSA has assumed that the percent of direct property and casualty insurers that are small will be closer to 81 percent and is using that figure.

The Direct Title Insurance Carriers industry group primarily engages in initially underwriting title insurance policies (524127). The SBA size standard for this industry group is $41.5 million. The $41.5 million SBA threshold falls between two Economic Census revenue categories, $25 million and $100 million. The percentages of direct title insurers with revenue less than these amounts were 66 percent and 67 percent, respectively. Because the SBA threshold is closer to the lower of these two boundaries, FMCSA has assumed that the percent of direct title insurers that are small will be closer to 66 percent and is using that figure.

The Other Direct Insurance Carriers industry group primarily engages in initially underwriting insurance policies (524128). The SBA size standard for this industry group is $41.5 million. The $41.5 million SBA threshold falls between two Economic Census revenue categories, $25 million and $100 million. The percentages of other direct insurance carriers with revenue less than these amounts were 58 percent and 63 percent, respectively. Because the SBA threshold is closer to the lower of these two boundaries, FMCSA has assumed that the percent of other direct insurance carriers that are small will be closer to 58 percent and is using that figure.

The Reinsurance Carriers industry group primarily engages in assuming all or part of the risk associated with insurance policies originally underwritten by a different provider (52413). The SBA size standard for this industry group is $41.5 million. The $41.5 million SBA threshold falls between two Economic Census revenue categories, $10 million and $100 million. The percentages of reinsurance carriers with revenue less than these amounts were 49 percent and 60 percent, respectively. The SBA threshold is not near either of these revenue categories, FMCSA conservatively estimates that the percent of reinsurance carrier firms that are small will be closer to 60 percent and is using that figure.

The Insurance Agencies and Brokerages industry group primarily engages in selling insurance (52421). The SBA size standard for this industry group is $8 million. The $8 million SBA threshold falls between two Economic Census revenue categories, $5 million and $10 million. The percentages of insurance agencies and brokerages with revenue less than these amounts were 98 percent and 99 percent, respectively. Because the SBA threshold is closer to the higher of these two boundaries, FMCSA has assumed that the percent of insurance agencies and brokerages that are small will be closer to 99 percent and is using that figure.

The Third Party Administration of Insurance and Pension Funds industry group primarily engages in providing third-party administrative services of insurance (524292). The SBA size standard for this industry group is $35 million. The $35 million SBA threshold falls between two Economic Census revenue categories, $25 million and $100 million. The percentages of firms with revenue less than these amounts were 92 percent and 97 percent, respectively. Because the SBA threshold is closer to the lower of these two boundaries, FMCSA has assumed that the percent of firms that are small will be closer to 92 percent and is using that figure.

The Freight Transportation Arrangement industry group primarily engages in arranging the transportation of freight between shippers and carriers (48851). The SBA size standard for this industry group is $16.5 million. The $16.5 million SBA threshold falls between two Economic Census revenue categories, $10 million and $25 million. The percentages of firms with revenue less than these amounts were 93 percent and 97 percent, respectively. Because the SBA threshold is closer to the lower of these two boundaries, FMCSA has assumed that the percent of firms that are small will be closer to 93 percent and is using that figure.

Table 3 below shows the complete estimates of the number of small entities within the NAICS industry groups that

may be affected by this rule. FMCSA notes that there are approximately 375 entities providing financial responsibility services (*i.e.,* entities that have filed BMC–84s or BMC–85s with FMCSA on behalf of brokers), which is a small subset of the firms identified in the commercial industry groups below.

TABLE 3—ESTIMATES OF NUMBERS OF SMALL ENTITIES

NAICS code	Description	Total number of firms	Number of small entities	Percent of all firms
52211	Commercial Banking	4,804	4,804	100
52229	All Other Nondepository Credit Intermediation	10,411	5,255	50
52312	Securities Brokerage	6,009	5,832	97
52313	Commodity Contracts Dealing	493	368	75
52314	Commodity Contracts Brokerage	728	608	84
52321	Securities and Commodity Exchanges	13	9	69
52391	Miscellaneous Intermediation	6,912	6,715	97
524126	Direct Property and Casualty Insurance Carriers	2,079	1,675	81
524127	Direct Title Insurance Carriers	662	438	66
524128	Other Direct Insurance (except life, health, and medical) Carriers	285	166	58
52413	Reinsurance Carriers	129	77	60
52421	Insurance Agencies and Brokerages	106,260	105,056	99
524292	Third Party Administration of Insurance and Pension Funds	2,498	2,306	92
48851	Freight Transportation Arrangement	13,252	12,332	93

A Description of the Proposed Reporting, Recordkeeping and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

This NPRM would include recordkeeping requirements pertaining to small financial responsibility providers and brokers. These entities would be required to provide notification to FMCSA of specific activity on a broker bond or trust fund. FMCSA anticipates that these notifications can be completed by office clerks.

A Description of Any Significant Alternatives to the Proposed Rule Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities

FMCSA attempted to draft a proposed rule that would minimize any significant economic impact on small entities. FMCSA is proposing a 3-year compliance date in an effort to allow ample time for small entities to meet the requirements of the rule. This compliance date takes into account the resources available to small entities. FMCSA is not aware of any significant alternatives that would meet the intent of our statutory requirements but nevertheless requests comment on any alternatives that would meet the intent of the statute and prove cost beneficial for small entities.

Description of Steps Taken by a Covered Agency To Minimize Costs of Credit for Small Entities

FMCSA is not a covered agency as defined in section 609(d)(2) of the Regulatory Flexibility Act and has taken no steps to minimize the additional cost of credit for small entities.

Requests for Comment To Assist Regulatory Flexibility Analysis

FMCSA requests comments on all aspects of this initial regulatory flexibility analysis.

E. Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996,[14] FMCSA wants to assist small entities in understanding this proposed rule so they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement Ombudsman (Office of the National Ombudsman, see *https://www.sba.gov/about-sba/oversight-advocacy/office-national-ombudsman*) and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1–888–REG–FAIR (1–888–734–3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

F. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) requires Federal agencies to assess the effects of their discretionary regulatory actions. 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 $178 million (which is the value equivalent of $100 million in 1995, adjusted for inflation to 2021 levels) or more in any 1 year. Though this NPRM would not result in such an expenditure, and the analytical requirements of UMRA do not apply as a result, the agency discusses the effects of this proposed rule elsewhere in this preamble and in the regulatory impact analysis available in the docket.

G. Paperwork Reduction Act

This proposed rule does not propose new information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The agency is not proposing any changes to Forms BMC–84 and BMC–85 at this time but will consider whether it needs to modify Forms BMC–84 and BMC–85 after reviewing the comments on this NPRM. Should revisions to the

[14] Public Law 104–121, 110 Stat. 857, (Mar. 29, 1996).

forms be deemed necessary, the agency will seek approval of revised forms from OIRA during the 3-year compliance period we propose for portions of this rule.

H. E.O. 13132 (Federalism)

A rule has implications for federalism under section 1(a) of E.O. 13132 if it has ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

FMCSA has determined that this rule would not have substantial direct costs on or for States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

I. Privacy

The Consolidated Appropriations Act, 2005,[15] requires the agency to assess the privacy impact of a regulation that will affect the privacy of individuals. This NPRM would not require the collection of personally identifiable information (PII). The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency that receives records contained in a system of records from a Federal agency for use in a matching program.

The E-Government Act of 2002,[16] requires Federal agencies to conduct a Privacy Impact Assessment (PIA) for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form.

No new or substantially changed technology would collect, maintain, or disseminate information as a result of this rule. Accordingly, FMCSA has not conducted a PIA.

In addition, the agency submitted a Privacy Threshold Assessment to evaluate the risks and effects the proposed rulemaking might have on collecting, storing, and sharing personally identifiable information. The DOT Privacy Office has determined that this rulemaking does not create privacy risk.

J. E.O. 13175 (Indian Tribal Governments)

This rule does not have Tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

K. National Environmental Policy Act of 1969

FMCSA analyzed this proposed rule pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680), Appendix 2, paragraphs 6.k and 6.q. The categorical exclusions (CEs) in paragraph 6.k and 6.q cover broker activities and implementation of record preservation. The proposed requirements in this rule are covered by these CEs and do not have any effect on the quality of the environment.

List of Subjects

49 CFR Part 386

Administrative practice and procedure, Brokers, Freight forwarders, Hazardous materials transportation, Highway safety, Motor carriers, Motor vehicle safety, Penalties.

49 CFR Part 387

Buses, Freight, Freight forwarders, Hazardous materials transportation, Highway safety, Insurance, Intergovernmental relations, Motor carriers, Motor vehicle safety, Moving of household goods, Penalties, Reporting and recordkeeping requirements, Surety bonds.

For the reasons set forth in the preamble, FMCSA proposes to amend 49 CFR parts 386 and 387 as follows:

PART 386—RULES OF PRACTICE FOR FMCSA PROCEEDINGS

■ 1. The authority citation for part 386 continues to read as follows:

Authority: 28 U.S.C. 2461 note; 49 U.S.C. 113, 1301 note, 31306a; 49 U.S.C. chapters 5, 51, 131–141, 145–149, 311, 313, and 315; and 49 CFR 1.81, 1.87.

■ 2. Amend Appendix B by adding paragraph (g)(24) to read as follows:

Appendix B to Part 386—Penalty Schedule: Violations and Monetary Penalties

* * * * *

(g) * * *

(24) A surety company or financial institution for a broker or freight forwarder pursuant to §§ 387.307 or 387.403T and violates subsection (b) or (c) of Title 49 of the United States Code, Section 13906 or § 387.307, is liable to the United States for a penalty of $10,000 for each violation.

* * * * *

PART 387—MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS

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

Authority: 49 U.S.C. 13101, 13301, 13906, 13908, 14701, 31138, 31139; sec. 204(a), Pub. L. 104–88, 109 Stat. 803, 941; and 49 CFR 1.87.

■ 4. Amend § 387.307 by:
■ a. Revising paragraph (b) to read as set forth below;
■ b. In paragraph (c)(6), adding the phrase ''or'' after the semicolon;
■ c. Removing paragraph (c)(8);
■ d. Redesignating paragraph (c)(8) as paragraph (c)(7); and
■ e. Adding paragraphs (e), (f), and (g) to read as set forth below.

The revision and additions read as follows:

§ 387.307 Property broker surety bond or trust fund.

* * * * *

(b) *Evidence of Security.* Trust funds under this section must contain assets aggregating to $75,000 that can be liquidated to cash within 7 business days. Assets included in any trust fund filed under this section shall not include interests in real property, intercorporate agreements or guarantees, internal letters of credit, illiquid assets (such as second trust deeds, personal property and vehicles), bonds that have not received the highest rating from a nationally recognized statistical rating organization registered with the Securities and Exchange Commission, or any other asset the broker cannot certify on Form BMC–85 is convertible to cash within 7 business days.

* * * * *

(e) *Immediate suspension.* (1) If a surety company issuing a Form BMC–84 or a financial institution issuing a Form BMC–85 makes a payment from the surety bond or trust fund for a claim from a shipper or motor carrier as described in paragraph (b) of this section: (1) with the consent of the broker; (2) when the broker fails to respond to notice of a claim within 14 calendar days of notice by the surety company or financial institution; or (3) when there is a judgment against the broker, the surety company or financial institution shall notify FMCSA of the

[15] Public Law. 108–447, 118 Stat. 2809, 3268, note following 5 U.S.C. 552a (Dec. 4, 2014).

[16] Public Law 107–347, sec. 208, 116 Stat. 2899, 2921 (Dec. 17, 2002).

payment and its amount. The surety company or financial institution shall provide written notice of such payment to FMCSA via electronic means.

(2) Upon notification by the surety company or financial institution in accordance with paragraph (e)(1) of this section, FMCSA shall provide written notice to the broker that its operating authority issued pursuant to part 365 will be suspended within 7 business days of the date of the notice unless the broker provides written evidence to FMCSA that the surety bond or trust fund has been restored to the $75,000 amount required by this section. FMCSA will provide a second written notice to the broker of any suspension.

(f) *Financial failure or insolvency of the broker.* (1) If a surety company or financial institution is notified of the financial failure or insolvency of a broker, such surety company or financial institution shall initiate cancellation of the Form BMC–84 or Form BMC–85 pursuant to paragraph (d)(2)(i) of this section. A financial failure or insolvency of a broker is defined as a filing related to the broker pursuant to Title 11 of the United States Code or a filing related to the broker under an insolvency or similar proceeding under State law.

(2) Upon notification by the surety or financial institution, FMCSA shall immediately provide written notice of the cancellation in the FMCSA Register on its public website. The surety or financial institution shall accept claims against the BMC–84 surety bond or BMC–85 trust fund for 60 calendar days (extended to the next business day if the final day of the period falls on a weekend or Federal holiday) following FMCSA's public notification of the financial failure or insolvency in the FMCSA Register.

(g) *Suspension of surety company or financial institution.* (1) If a surety company or financial institution violates the requirements of this section or subsection (b) of Title 49, section 13906 of the United States Code, FMCSA may suspend the authorization of such surety company or financial institution to have its instruments filed as evidence of financial responsibility pursuant to § 387.307 for 3 years.

(2) If FMCSA initiates a suspension action pursuant to paragraph (g)(1) of this section it shall provide written notice to the surety company or financial institution, provide 30 calendar days (extended to the next business day if the final day of the period falls on a weekend or Federal holiday) for the surety company or financial institution to provide evidence contesting such proposed suspension, and then render a final decision in writing.

Issued under authority delegated in 49 CFR 1.87.

Robin Hutcheson,

Administrator.

[FR Doc. 2022–28259 Filed 1–4–23; 8:45 am]

BILLING CODE 4910–EX–P

Notices

Federal Register
Vol. 88, No. 3
Thursday, January 5, 2023

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

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–808]

Stainless Steel Wire Rods From India: Continuation of the Antidumping 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) order on stainless steel wire rods (SSWR) from India would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, Commerce is publishing a notice of continuation of this AD order.

DATES: Applicable January 5, 2023.

FOR FURTHER INFORMATION CONTACT: Christopher Williams or Minoo Hatten, 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) 482–5166 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 1, 1993, Commerce published in the **Federal Register** the AD order on SSWR from India.[1] On May 2, 2022, Commerce initiated,[2] and the ITC instituted,[3] a sunset review of the *Order,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).

As a result of its review, Commerce determined, pursuant to sections 751(c)(1) and 752(c) of the Act, that revocation of the *Order* would likely lead to continuation or recurrence of dumping. Commerce, therefore, notified the ITC of the magnitude of the margins of dumping rates likely to prevail should this *Order* be revoked.[4] On December 27, 2022, the ITC published its determination that revocation of the *Order* would likely lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time, pursuant to section 751(c) of the Act.[5]

Scope of the Order

The products covered by the *Order* are SSWR from India. SSWR are products which are hot-rolled or hot-rolled annealed and/or pickled rounds, squares, octagons, hexagons or other shapes, in coils. SSWR are made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are only manufactured by hot-rolling and are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States are round in cross-section shape, annealed and pickled. The most common size is 5.5 millimeters in diameter.

This merchandise is currently classifiable under subheadings 7221.00.0005, 7221.00.0017, 7221.00.0018, 7221.00.0020, 7221.00.0030, 7221.00.0040, 7221.00.0045, 7221.00.0060, 7221.00.0075, and 7221.00.0080 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and customs purposes. The written description remains dispositive.

Continuation of the Order

As a result of the determinations by Commerce and the ITC that revocation of the *Order* would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), Commerce hereby orders the continuation of the *Order.* U.S. Customs and Border Protection will continue to collect AD 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 *Order* will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next five-year (sunset) review of the *Order* not later than 30 days prior to the fifth anniversary of the effective date of continuation.

Administrative Protective Order

This notice also serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return, destruction, or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO which may be subject to sanctions.

Notification to Interested Parties

This five-year sunset review and this notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: December 29, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–28614 Filed 1–4–23; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Notice of Antidumping Duty Order: Certain Stainless Steel Wire Rods from India,* 58 FR 63335 (December 1, 1993) (*Order*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 87 FR 25617 (May 2, 2022).

[3] *See Stainless Steel Wire Rod from India; Institution of a Five-Year Review,* 87 FR 25671 (May 2, 2022).

[4] *See Certain Stainless Steel Wire Rods from India: Final Results of the Expedited Sunset Review of the Antidumping Duty Order,* 87 FR 45083 (July 27, 2022), and accompanying Issues and Decision Memorandum.

[5] *See Stainless Steel Wire Rod from India,* 87 FR 79352 (December 27, 2022); *see also Stainless-Steel Wire Rod from India: Investigation No. 731–TA–638 (Fifth Review),* USITC Publication 5396 (December 2022).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–979]

Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Notice of Court Decision Not in Harmony With the Results of Antidumping Administrative Review; Notice of Amended Final Results

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

SUMMARY: On December 20, 2022, the U.S. Court of International Trade (CIT) issued its final judgment in *Risen Energy Co., Ltd. et al.* v. *United States,* Consol. Court No. 20–03743, sustaining the U.S. Department of Commerce (Commerce)'s first remand results pertaining to the administrative review of the antidumping duty (AD) order on crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells), from the People's Republic of China (China) covering the period December 1, 2017, through November 30, 2018. Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's final results of the administrative review, and that Commerce is amending the final results with respect to the dumping margin assigned to: (1) the mandatory respondents Risen Energy Co., Ltd., Risen (Wuhai) New Energy Co., Ltd., Zhejiang Twinsel Electronic Technology Co., Ltd., Risen (Luoyang) New Energy Co., Ltd., Jiujiang Shengchao Xinye Technology Co., Ltd., Jiujiang Shengzhao Xinye Trade Co., Ltd., Ruichang Branch, Risen Energy (Hong Kong) Co., Ltd., and Risen Energy (Changzhou) Co., Ltd. (collectively, Risen) (2) Trina Solar Co., Ltd., Trina Solar (Changzhou) Science and Technology Co., Ltd., Yancheng Trina Guoneng Photovoltaic Technology Co., Ltd (formerly, Yancheng Trina Solar Energy Technology Co., Ltd.), Changzhou Trina Solar Yabang Energy Co., Ltd., Turpan Trina Solar Energy Co., Ltd., Hubei Trina Solar Energy Co., Ltd., Trina Solar (Hefei) Science and Technology Co., Ltd. (THFT), and Changzhou Trina Hezhong Photoelectric Co., Ltd. (collectively, Trina), and (3) certain separate rate respondents.

DATES: Applicable December 30, 2022.

FOR FURTHER INFORMATION CONTACT: Paola Aleman Ordaz, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4031.

SUPPLEMENTARY INFORMATION:

Background

On October 2, 2020, Commerce published its *Final Results* in the 2017–2018 AD administrative review of solar cells and modules from China.[1] Risen,[2] Trina,[3] JA Solar Technology Yangzhou Co., Ltd. (JA Solar), JingAo Solar Co., Ltd., Shanghai JA Solar Technology Co., Ltd., Wuxi Tianran Photovoltaic Co., Ltd. (Wuxi), Anji DaSol Solar Energy Science & Technology Co., Ltd. (Anji DaSol), Shenzhen Sungold Solar Co., Ltd. (Shenzhen), Canadian Solar International Ltd. (Canadian Solar), Yingli Energy (China) Co., Ltd. (Yingli), and Shanghai BYD Co., Ltd. (Shanghai) challenged Commerce's final results (CIT case numbers 20–03743, 20–03757, 20–03761, 20–03797, 20–03802, 20–03804). On April 4, 2020, the court sustained Commerce's *Final Results* with respect to Commerce's primary surrogate country selection and calculation of the surrogate financial ratios.[4] However, the CIT remanded the *Final Results* to Commerce to reconsider, or further explain: (1) Commerce's decision to rely on the Malaysian import value for silver paste; (2) Commerce's application of partial facts otherwise available with an adverse inference to value missing factor of production information; (3) Commerce's surrogate value selections for backsheet and ethyl vinyl acetate (EVA); and (4) Commerce's calculation of the separate rate for separate rate respondents.[5]

In its final remand redetermination, issued in July 2022, Commerce: (1) valued silver paste using Malaysian import data for HS 7106.92.00 rather than HS 7115.90.1000; (2) under respectful protest, applied partial neutral facts available to value missing factor of production information instead of an adverse inference when selecting facts otherwise available when calculating Risen and Trina's dumping margins; (3) continued to value backsheet using import data from Malaysia HS 3920.62.1000 and EVA using import data from Malaysia HS 3920.10.1900; and (4) revised the weighted-average dumping margins assigned to the separate rate respondents that participated in the litigation.[6] On December 20, 2022, the CIT sustained Commerce's final redetermination.[7]

Timken Notice

In its decision in *Timken,*[8] as clarified by *Diamond Sawblades,*[9] the U.S. Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not ''in harmony'' with a Commerce determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's December 20, 2022, judgment constitutes a final decision of the CIT that is not in harmony with Commerce's *Final Results.* Thus, this notice is published in fulfillment of the publication requirements of *Timken.*

Amended Final Results

Because there is now a final court judgment, Commerce is amending its *Final Results* and *Amended Final Results* as follows:

---

[1] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017–2018,* 85 FR 62275 (October 2, 2020) (*Final Results*), and accompanying Issues and Decision Memorandum, as amended in *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Notice of Correction to the Final Results of the 2017–2018 Antidumping Duty Administrative Review,* 85 FR 79165 (December 9, 2020) (*Amended Final Results*).

[2] In the *Final Results,* Commerce determined that Risen (Wuhai) New Energy Co., Ltd.; Zhejiang Twinsel Electronic Technology Co., Ltd.; Risen (Luoyang) New Energy Co., Ltd.; Jiujiang Shengchao Xinye Technology Co., Ltd.; Jiujiang Shengzhao Xinye Trade Co., Ltd., Ruichang Branch; Risen Energy (Hong Kong) Co., Ltd.; and Risen Energy (Changzhou) Co., Ltd. are affiliated and treated them as a single entity for the purpose of the dumping margin calculation.

[3] *Id.* In the *Final Results,* Commerce determined that Trina Solar Co., Ltd. (TCZ); Trina Solar (Changzhou) Science and Technology Co., Ltd. (TST); Yancheng Trina Guoneng Photovoltaic Technology Co., Ltd (formerly, Yancheng Trina Solar Energy Technology Co., Ltd.) (TYC); Changzhou Trina Solar Yabang Energy Co., Ltd. (TYB); Turpan Trina Solar Energy Co., Ltd. (TLF); Hubei Trina Solar Energy Co., Ltd. (THB); Trina Solar (Hefei) Science and Technology Co., Ltd. (THFT); and Changzhou Trina Hezhong Photoelectric Co., Ltd. (THZ) are affiliated and treated them as a single entity for the purpose of the dumping margin calculation.

[4] *See Risen Energy Co.* v. *United States,* 569 F. Supp. 3d 1315 (CIT 2022).

[5] *Id.*

[6] *See Final Results of Redetermination Pursuant to Court Remand, Risen Energy Co., Ltd. et al.,* Consol. Court No. 20–03743, Slip Op. 22–33 (CIT 2022), dated July 5, 2022.

[7] *See Risen Energy Co., Ltd. et al.* v. *United States,* Consol. Court No. 20–03743, Slip Op. 22–148 (CIT 2022).

[8] *See Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

[9] *See Diamond Sawblades Manufacturers Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

Exporter	Weighted-average dumping margin (percent)
Trina Solar Co., Ltd./Trina Solar (Changzhou) Science and Technology Co., Ltd./Yancheng Trina Guoneng Photovoltaic Technology Co., Ltd./Changzhou Trina Solar Yabang Energy Co., Ltd./Turpan Trina Solar Energy Co., Ltd./Hubei Trina Solar Energy Co., Ltd./Trina Solar (Hefei) Science and Technology Co., Ltd./Changzhou Trina Hezhong Photoelectric Co., Ltd	19.20
Risen Energy Co. Ltd./Risen (Wuhai) New Energy Co., Ltd./Zhejiang Twinsel Electronic Technology Co., Ltd./Risen (Luoyang) New Energy Co., Ltd./Jiujiang Shengchao Xinye Technology Co., Ltd./Jiujiang Shengzhao Xinye Trade Co., Ltd./Ruichang Branch, Risen Energy (HongKong) Co., Ltd./Risen Energy (Changzhou) Co., Ltd	25.18
Anji DaSol Solar Energy Science & Technology Co., Ltd	23.02
Canadian Solar International Limited/Canadian Solar Manufacturing (Changshu), Inc./Canadian Solar Manufacturing (Luoyang) Inc./CSI Cells Co., Ltd./CSI–GCL Solar Manufacturing (YanCheng) Co., Ltd./CSI Solar Power (China) Inc	23.02
JA Solar Technology Yangzhou Co., Ltd	23.02
JingAo Solar Co., Ltd	23.02
Shanghai BYD Co., Ltd	23.02
Shanghai JA Solar Technology Co., Ltd	23.02
Shenzhen Sungold Solar Co., Ltd	23.02
Wuxi Tianran Photovoltaic Co., Ltd	23.02
Yingli Energy (China) Company Limited/Baoding Tianwei Yingli New Energy Resources Co., Ltd./Tianjin Yingli New Energy Resources Co., Ltd./Hengshui Yingli New Energy Resources Co., Ltd./Lixian Yingli New Energy Resources Co., Ltd./Baoding Jiasheng Photovoltaic Technology Co., Ltd./Beijing Tianneng Yingli New Energy Resources Co., Ltd./Hainan Yingli New Energy Resources Co., Ltd./Shenzhen Yingli New Energy Resources Co., Ltd	23.02

Cash Deposit Requirements

Because Risen, Trina, Anji DaSol Solar Energy Science & Technology Co., Ltd.; Canadian Solar International Limited, Canadian Solar Manufacturing (Changshu), Inc., Canadian Solar Manufacturing (Luoyang) Inc., CSI Cells Co., Ltd., CSI–GCL Solar Manufacturing (YanCheng) Co., Ltd., and CSI Solar Power (China) Inc.; JA Solar Technology Yangzhou Co., Ltd.; Shanghai JA Solar Technology Co., Ltd.; Shenzhen Sungold Solar Co., Ltd.; Wuxi Tianran Photovoltaic Co. Ltd.; Yingli Energy (China) Company Limited, Baoding Tianwei Yingli New Energy Resources Co., Ltd., Tianjin Yingli New Energy Resources Co., Ltd., Hengshui Yingli New Energy Resources Co., Ltd., Lixian Yingli New Energy Resources Co., Ltd., Baoding Jiasheng Photovoltaic Technology Co., Ltd., Beijing Tianneng Yingli New Energy Resources Co., Ltd., Hainan Yingli New Energy Resources Co., Ltd., and Shenzhen Yingli New Energy Resources Co., Ltd. have a superseding cash deposit rate, *i.e.,* there have been final results published in a subsequent administrative review, we will not issue revised cash deposit instructions to U.S. Customs and Border Protection (CBP). Thus, this notice will not affect the current cash deposit rate for these exporters. For JingAo Solar Co., Ltd., Shanghai BYD Co., Ltd., and exporters that do not have a superseding cash deposit rate, Commerce will issue revised cash deposit instructions to CBP.

Liquidation of Suspended Entries

At this time, Commerce remains enjoined, by orders of the CIT, from liquidating entries that: (1) were exported by Risen Energy Co. Ltd., Risen (Wuhai) New Energy Co., Ltd., Zhejiang Twinsel Electronic Technology Co., Ltd., Risen (Luoyang) New Energy Co., Ltd., Jiujiang Shengzhao Xinye Technology Co., Ltd., Jiujiang Shengzhao Xinye Trade Co., Ltd., Ruichang Branch, Risen Energy (HongKong) Co., Ltd., or Risen Energy (Changzhou) Co., Ltd.; Trina Solar Co., Ltd., Trina Solar (Changzhou) Science and Technology Co., Ltd., Yancheng Trina Guoneng Photovoltaic Technology Co., Ltd., Changzhou Trina Solar Yabang Energy Co., Ltd., Turpan Trina Solar Energy Co., Ltd., Hubei Trina Solar Energy Co., Ltd., Trina Solar (Hefei) Science and Technology Co., Ltd., and Changzhou Trina Hezhong Photoelectric Co., Ltd; Anji DaSol Solar Energy Science & Technology Co., Ltd.; Canadian Solar International Limited, Canadian Solar Manufacturing (Changshu), Inc., Canadian Solar Manufacturing (Luoyang) Inc., and CSI Cells Co., Ltd. and imported by Canadian Solar (USA) Inc.; [10] JA Solar Technology Yangzhou Co., Ltd., Shanghai JA Solar Technology Co., Ltd., or JingAo Solar Co., Ltd.; Shenzhen Sungold Solar Co., Ltd.; Wuxi Tianran Photovoltaic Co. Ltd.; Shanghai BYD Co., Ltd.; Yingli Energy (China) Company Limited, Baoding Tianwei Yingli New Energy Resources Co., Ltd., Tianjin Yingli New Energy Resources Co., Ltd., Hengshui Yingli New Energy Resources Co., Ltd., Lixian Yingli New Energy Resources Co., Ltd., Baoding Jiasheng Photovoltaic Technology Co., Ltd., Beijing Tianneng Yingli New Energy Resources Co., Ltd., Hainan Yingli New Energy Resources Co., Ltd., or Shenzhen Yingli New Energy Resources Co., Ltd. (2) that were subject of the United States Department of Commerce's final determination in Final Results of Antidumping Duty Administrative Review; 2017–2018, 85 FR 62275 (Oct. 2, 2020); (3) that were entered, or withdrawn from warehouse, for consumption during the period December 1, 2017, through November 30, 2018. These entries will remain enjoined pursuant to the terms of the injunctions during the pendency of any appeals process.

In the event the CIT's ruling is not appealed, or, if appealed, upheld by a final and conclusive court decision, Commerce intends to instruct CBP to assess antidumping duties on any unliquidated entries described in the preceding paragraph, in accordance with 19 CFR 351.212(b). We will instruct CBP to assess antidumping duties on all appropriate entries covered by the review when the importer-specific *ad valorem* assessment rate is not zero or *de minimis.* Where an import-specific *ad valorem* assessment rate is zero or *de minimis,*[11] we will instruct CBP to liquidate the appropriate

[10] In the *Final Results,* Commerce treated Canadian Solar International Limited, Canadian Solar Manufacturing (Changshu), Inc., Canadian Solar Manufacturing (Luoyang) Inc., CSI Cells Co., Ltd., CSI–GCL Solar Manufacturing (YanCheng) Co., Ltd., and CSI Solar Power (China) Inc. as a collapsed entity. In the event the CIT's ruling is not appealed, or, if appealed, upheld by a final and conclusive court decision, we intend to liquidate all the entries in the collapsed entity by the rate specified in this notice.

[11] *See* 19 CFR 351.106(c)(2).

entries without regard to antidumping duties.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e), 751(a)(1), and 777(i)(1) of the Act.

Dated: December 29, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–28639 Filed 1–4–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review

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

SUMMARY: The U.S. Department of Commerce (Commerce) has determined that a request for a new shipper review (NSR) of the antidumping duty order on fresh garlic from the People's Republic of China (China) meets the statutory and regulatory requirements for initiation. The period of review (POR) for the NSR is November 1, 2021, through October 31, 2022.

DATES: Applicable January 5, 2023.

FOR FURTHER INFORMATION CONTACT: Charles DeFilippo, AD/CVD Operations Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3797.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the antidumping duty order on fresh garlic on November 16, 1994.[1] On November 30, 2022, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.214(c), Commerce received a timely NSR request from Jining Huahui International Co., Ltd. (Huahui).[2]

In its submission, Huahui certified that it is the exporter, but not the producer of the subject merchandise subject to this NSR request.[3] Pursuant to section 751(a)(2)(B)(i)(I) of the Act and 19 CFR 351.214(b)(2)(ii)(A), Huahui and its producer certified that it did not export fresh garlic to the United States during the period of investigation (POI).[4] Additionally, pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), Huahui and its producer certified that, since the initiation of the investigation, it has not been affiliated with any producer or exporter that exported fresh garlic to the United States during the POI, including those not individually examined during the investigation.[5] As required by 19 CFR 351.214(b)(2)(iii)(B), Huahui and its producer also certified that its export activities are not controlled by the central government of China.[6]

In addition to the certifications described above, pursuant to 19 CFR 351.214(b)(2)(iv), Huahui submitted documentation establishing the following: (1) the date on which it first shipped subject merchandise for export to the United States; (2) the volume of its first shipment; and (3) the date of its first sale to an unaffiliated customer in the United States.[7]

Commerce conducted a query of U.S. Customs and Border Protection (CBP) data and confirmed that Huahui's subject merchandise entered the United States for consumption and that liquidation of such entries had been properly suspended for antidumping duties. The CBP data that Commerce examined are consistent with information provided by Huahui in its NSR request. In particular, the CBP data confirms the price and quantity reported by Huahui for the sales that forms the basis of its NSR request.[8]

Period of Review

In accordance with 19 CFR 351.214(g)(1)(i)(A), the POR for an NSR initiated in the month immediately following the anniversary month will be the twelve-month period immediately preceding the anniversary month. Therefore, the POR for this NSR is November 1, 2021, through October 30, 2022.

Initiation of NSR

Pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(b), and based on the information on the record, we find that Huahui's NSR request meets the threshold requirements for initiation of an NSR of its shipment(s) of fresh garlic to the United States.[9] However, if the information supplied by Huahui is later found to be incorrect or insufficient during the course of this NSR, Commerce may rescind the review or apply adverse facts available, pursuant to section 776 of the Act, as appropriate. Pursuant to 19 CFR 351.221(c)(1)(i), Commerce will publish the notice of initiation of an NSR no later than the last day of the month following the anniversary or semiannual anniversary month of the order. Commerce intends to issue the preliminary results of this review no later than 180 days from the date of initiation, and the final results of this review no later than 90 days after the date the preliminary results are issued.[10]

It is Commerce's practice in cases involving non-market economies to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate (*i.e.,* separate rate) provide evidence of *de jure* and *de facto* absence of government control over the company's export activities.[11] Accordingly, Commerce will issue questionnaires to Huahui requesting, *inter alia,* information regarding its export activities for the purpose of determining whether it is eligible for a separate rate. The review of the exporter will proceed if the response provides sufficient indication that the exporter is not subject to either *de jure* or *de facto* government control with respect to its exports of fresh garlic.

We intend to conduct this NSR in accordance with section 751(a)(2)(B) of the Act.[12] Because Hauhui certified that it exported subject merchandise, the sale of which is the basis for its NSR request, Commerce will instruct CBP to continue to suspend liquidation of all

[1] *See Antidumping Duty Order: Fresh Garlic from the People's Republic of China,* 59 FR 59209 (November 16, 1994).

[2] *See* Huahui's Letter, ''Fresh Garlic from the People's Republic of China: Request for New Shipper Review,'' dated November 30, 2022 (NSR Request).

[3] *Id* at Exhibits 1–2.

[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] *Id.* at Exhibit 4.

[8] *Id; see also* Memorandum, ''Fresh Garlic from the People's Republic of China: Initiation Checklist for Antidumping Duty New Shipper Review of Jining Huahui International Co., Ltd.,'' dated concurrently with this notice.

[9] *See generally* NSR Request.

[10] *See* section 751(a)(2)(B)(iii) of the Act.

[11] *See* Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries,'' dated April 15, 2005, available at *https://access.trade.gov/Resources/policy/bull05-1.pdf.*

[12] The Act was amended by the Trade Facilitation and Trade Enforcement Act of 2015 which removed from section 751(a)(2)(B) of the Act the provision directing Commerce to instruct CBP to allow an importer the option of posting a bond or security in lieu of a cash deposit during the pendency of an NSR.

entries of subject merchandise exported by Huahui. To assist in its analysis of the *bona fide* nature of Huahui's sale(s), upon initiation of this NSR, Commerce will require Huahui to submit, on an ongoing basis, complete transaction information concerning any sales of subject merchandise to the United States that were made subsequent to the POR.

Interested parties requiring access to proprietary information in this NSR should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306. This initiation notice is published in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: December 28, 2022.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2022–28663 Filed 1–4–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC639]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic and New England Fishery Management Councils (Councils) will hold a public meeting of their joint Northeast Trawl Advisory Panel.

DATES: The meeting will be held on Thursday, January 19, 2023, from 9:30 a.m. to 5 p.m. EDT. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: This meeting will be conducted in a hybrid format, with options for both in person and webinar participation. Webinar registration details will be a posted to the calendar at *www.mafmc.org* prior to the meeting.

Meeting address: The meeting will be held at the Northeast Fishery Science Center Lab, 28 Tarzwell Dr., Narragansett, RI 02882; telephone: (401) 782–3200.

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The Councils' Northeast Trawl Advisory Panel will meet to review recent developments related to relevant fishery surveys as well as discuss future priorities, research projects, and the draft Operations Manual.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shelley Spedden, (302) 526–5251 at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 30, 2022.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–28660 Filed 1–4–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC654]

Endangered Species; File No. 27106; Correction

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

ACTION: Notice; correction.

SUMMARY: NMFS is correcting a notice that appeared in the **Federal Register** on December 22, 2022 announcing that the North Carolina Department of Environment and Natural Resources, Division of Marine Fisheries (NCDMF) applied in due form for a permit pursuant to the Endangered Species Act of 1973, as amended (ESA). There is an error in the description of NCDMF's monitoring program (Observer Program).

DATES: This correction is applicable January 5, 2023.

FOR FURTHER INFORMATION CONTACT: Celeste Stout, NMFS, Office of Protected Resources at *celeste.stout@noaa.gov,* 301–427–8403; Wendy Piniak, NMFS, Office of Protected Resources at *wendy.piniak@noaa.gov,* 301–427–8402.

SUPPLEMENTARY INFORMATION: NMFS published a notice in the **Federal Register** on December 22, 2022 (87 FR 78659) announcing that the NCDMF applied in due form for a permit pursuant to the ESA. NCDMF's application includes a conservation plan designed to minimize and mitigate take of endangered or threatened species. The permit application is for the incidental take of ESA-listed sea turtles and sturgeon associated with the otherwise lawful gill net fisheries operating in the inshore waters of North Carolina. NMFS provided the notice in order to allow other agencies and the public an opportunity to review and comment on the application materials.

The notice incorrectly stated: ''NCDMF's monitoring program is largely funded through state appropriations and is supplemented through other sources such as the Atlantic Coastal Cooperative Statistics Program and the National Fish and Wildlife Foundation.'' (87 FR 78659, December 22, 2022; 87 FR 78661, December 22, 2022).

While NCDMF's sampling programs are largely funded through state appropriations and are supplemented through other sources such as the Atlantic Coastal Cooperative Statistics Program and the National Fish and Wildlife Foundation, the NCDMF Observer Program is funded completely by the North Carolina Commercial Fishing Resource Fund, where the funds come from an increase in NCDMF's commercial fishing license fees (G.S. 113–173.1). This information is correctly presented in the NCDMF's application, which is available for download and review at *https://www.fisheries.noaa.gov/national/endangered-species-conservation/incidental-take-permits* and at *http://www.regulations.gov.* The application is also available upon request (see **FOR FURTHER INFORMATION CONTACT**).

Dated: December 28, 2022.

Angela Somma,

Chief, Endangered Species Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–28553 Filed 1–4–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC638]

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 Groundfish Committee 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 webinar will be held on Thursday, January 19, 2023, at 9 a.m. Webinar registration URL information: *https://attendee.gotowebinar.com/register/8901294722540434783.*

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 Committee will receive recommendations from the Recreational Advisory Panel and discuss and develop recommendations to the Council on fishing year 2023 recreational measures for Georges Bank cod, Gulf of Maine cod and Gulf of Maine haddock. They will also possibly revise acceptable biological catch (ABC), along with state and other fisheries sub-components, recommendations for Atlantic halibut for fishing years 2023 through 2025 (this is the only FW65 item to be discussed). The Committee will discuss progress on development of Amendment 23 metrics as well as receive an overview of the Council's groundfish priorities for 2023. Other business will be discussed, as necessary.

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: December 30, 2022.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–28659 Filed 1–4–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2022–SCC–0160]

Agency Information Collection Activities; Comment Request; U.S. Department of Education Supplemental Information for the SF–424 Form

AGENCY: Office of the Secretary (OS), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before March 6, 2023.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2022–SCC–0160. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, the Department will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Cleveland Knight, (202) 987–0064.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: U.S. Department of Education Supplemental Information for the SF–424 Form.

OMB Control Number: 1894–0007.

Type of Review: Revision of a currently approved ICR.

Respondents/Affected Public: State, local, and Tribal governments. *Total Estimated Number of Annual Responses:* 5,976.

Total Estimated Number of Annual Burden Hours: 2,271.

Abstract: The U.S. Department of Education Supplemental Information form for the SF–424 is used together with the SF–424, Application for Federal Assistance. Several years ago ED made a decision to switch from the Application for Federal Education Assistance or ED 424 (1890–0017) collection (now 1894–0007) to the SF–424, in order to adhere with Federal-wide forms standardization and streamlining efforts, especially with widespread agency use of *Grants.gov*.

There were several data elements/questions on the ED 424 that were required for applicants and were not included on the SF–424. Therefore, ED put these questions that were already cleared as part of the 1894–0007

collection on a form entitled the, U.S. Department of Education Supplemental Information for the SF–424.

The questions on this form deal with the following areas: Project Director identifying and contact information; New Potential Grantee or Novice Applicants; Human Subjects Research, and Infrastructure Programs and Build America, Buy America Act Applicability (BABAA). The ED supplemental information form can be used with any of the SF–424 forms in the SF–424 forms family, as applicable.

Dated: December 30, 2022.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2022–28620 Filed 1–4–23; 8:45 am]

BILLING CODE 4000–01–P

FARM CREDIT ADMINISTRATION

Sunshine Act Meetings

TIME AND DATE: 9:00 a.m., Thursday, January 12, 2023.

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 December 8, 2022, Minutes
- Advance Notice of Proposed Rulemaking—Farmer Mac Capital Framework

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. 2023–00074 Filed 1–3–23; 4:15 pm]

BILLING CODE 6705–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

RIN 3064–ZA35

Notice of Inflation Adjustments for Civil Money Penalties

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of monetary penalties 2023.

SUMMARY: The Federal Deposit Insurance Corporation is providing notice of its maximum civil money penalties as adjusted for inflation.

DATES: The adjusted maximum amounts of civil money penalties in this notice are applicable to penalties assessed after January 15, 2023, for conduct occurring on or after November 2, 2015.

FOR FURTHER INFORMATION CONTACT: Graham N. Rehrig, Counsel, Legal Division, 703–314–3401, *grehrig@fdic.gov;* Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: This notice announces changes to the maximum amount of each civil money penalty (CMP) within the Federal Deposit Insurance Corporation's (FDIC) jurisdiction to administer to account for inflation under the Federal Civil Penalties Inflation Adjustment Act of 1990 (1990 Adjustment Act),[1] as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Adjustment Act).[2] Under the 1990 Adjustment Act, as amended, Federal agencies must make annual adjustments to the maximum amount of each CMP the agency administers. The Office of Management and Budget (OMB) is required to issue guidance to Federal agencies no later than December 15 of each year providing an inflation-adjustment multiplier (*i.e.,* the inflation-adjustment factor agencies must use) applicable to CMPs assessed in the following year.

Agencies are required to publish their CMPs, adjusted under the multiplier provided by the OMB, by January 15 of the applicable year. Agencies like the FDIC that have codified the statutory formula for making the CMP adjustments may make annual inflation adjustments by providing notice in the **Federal Register**.[3]

On December 15, 2022, the OMB issued guidance to affected agencies on implementing the required annual adjustment, which guidance included the relevant inflation multiplier.[4] The FDIC has applied that multiplier to the maximum CMPs allowable in 2022 for FDIC-supervised institutions to calculate the maximum amount of CMPs that may be assessed by the FDIC in 2023.[5] There were no new statutory CMPs administered by the FDIC during 2022.

The following charts provide the inflation-adjusted maximum CMP amounts for use after January 15, 2023—the effective date of the 2023 annual adjustments—under 12 CFR part 308, for conduct occurring on or after November 2, 2015:

MAXIMUM CIVIL MONEY PENALTY AMOUNTS

U.S. code citation	Current maximum CMP (through January 14, 2023)	Adjusted maximum CMP[6] (beginning January 15, 2023)
12 U.S.C. 1464(v):		
Tier One CMP[7]	$4,404	$4,745
Tier Two CMP	44,043	47,454
Tier Three CMP[8]	2,202,123	2,372,677
12 U.S.C. 1467(d)	11,011	11,864

[1] Public Law 101–410, 104 Stat. 890, codified at 28 U.S.C. 2461 note.

[2] Public Law 114–74, 701(b), 129 Stat. 599, codified at 28 U.S.C. 2461 note.

[3] *See* Office of Mgmt. & Budget, Exec. Office of the President, OMB Memorandum No. M–23–05, *Implementation of Penalty Inflation Adjustments for 2023, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* 4 (Dec. 15, 2022), *https://www.whitehouse.gov/wp-content/uploads/2022/12/M-23-05-CMP-CMP-Guidance.pdf* (OMB Guidance); *see also* 12 CFR 308.132(d) (FDIC regulation that guides readers to the **Federal Register** to see the annual notice of CMP inflation adjustments).

[4] *See* OMB Guidance at 1 (providing an inflation multiplier of 1.07745).

[5] Penalties assessed for violations occurring prior to November 2, 2015, will be subject to the maximum amounts set forth in the FDIC's regulations in effect prior to the enactment of the 2015 Adjustment Act.

MAXIMUM CIVIL MONEY PENALTY AMOUNTS—Continued

U.S. code citation	Current maximum CMP (through January 14, 2023)	Adjusted maximum CMP [6] (beginning January 15, 2023)
12 U.S.C. 1817(a):		
Tier One CMP [9]	4,404	4,745
Tier Two CMP	44,043	47,454
Tier Three CMP [10]	2,202,123	2,372,677
12 U.S.C. 1817(c):		
Tier One CMP	4,027	4,339
Tier Two CMP	40,259	43,377
Tier Three CMP [11]	2,013,008	2,168,915
12 U.S.C. 1817(j)(16):		
Tier One CMP	11,011	11,864
Tier Two CMP	55,052	59,316
Tier Three CMP [12]	2,202,123	2,372,677
12 U.S.C. 1818(i)(2) [13]:		
Tier One CMP	11,011	11,864
Tier Two CMP	55,052	59,316
Tier Three CMP [14]	2,202,123	2,372,677
12 U.S.C. 1820(e)(4)	10,066	10,846
12 U.S.C. 1820(k)(6)	362,217	390,271
12 U.S.C. 1828(a)(3)	137	148
12 U.S.C. 1828(h) [15]:		
For assessments <$10,000	137	148
12 U.S.C. 1829b(j)	23,011	24,793
12 U.S.C. 1832(c)	3,198	3,446
12 U.S.C. 1884	320	345
12 U.S.C. 1972(2)(F):		
Tier One CMP	11,011	11,864
Tier Two CMP	55,052	59,316
Tier Three CMP [16]	2,202,123	2,372,677
12 U.S.C. 3909(d)	2,739	2,951
15 U.S.C. 78u–2:		
Tier One CMP (individuals)	10,360	11,162
Tier One CMP (others)	103,591	111,614
Tier Two CMP (individuals)	103,591	111,614
Tier Two CMP (others)	517,955	558,071
Tier Three CMP (individuals)	207,183	223,229
Tier Three CMP (others)	1,035,909	1,116,140
15 U.S.C. 1639e(k):		
First violation	12,647	13,627
Subsequent violations	25,293	27,252
31 U.S.C. 3802	12,537	13,508
42 U.S.C. 4012a(f)	2,392	2,577

CFR citation	Current presumptive CMP (through January 14, 2023)	Adjusted presumptive CMP (beginning January 15, 2023)
12 CFR 308.132(e)(1)(i):		
Institutions with $25 million or more in assets:		
1 to 15 days late	$604	$651.
16 or more days late	$1,208	$1,302.
Institutions with less than $25 million in assets:		
1 to 15 days late [17]	$202	$218.
16 or more days late [18]	$402	$433.
12 CFR 308.132(e)(1)(ii):		
Institutions with $25 million or more in assets:		
1 to 15 days late	$1,006	$1,084.
16 or more days late	$2,012	$2,168.
Institutions with less than $25 million in assets:		
1 to 15 days late	1/50,000th of the institution's total assets	1/50,000th of the institution's total assets.
16 or more days late	1/25,000th of the institution's total assets	1/25,000th of the institution's total assets.
12 CFR 308.132(e)(2)	$44,043	$47,454.
12 CFR 308.132(e)(3):		
Tier One CMP	$4,404	$4,745.
Tier Two CMP	$44,043	$47,454.
Tier Three CMP [19]	$2,202,123	$2,372,677.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on December 30, 2022.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2022–28655 Filed 1–4–23; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

TIME AND DATE: Tuesday, January 10, 2023 at 10:00 a.m. and its continuation at the conclusion of the open meeting on January 12, 2023.

PLACE: 1050 First Street NE, Washington, DC and virtual. (This meeting will be a hybrid meeting.)

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Compliance matters pursuant to 52 U.S.C. 30109.

Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action.

Matters concerning participation in civil actions or proceedings or arbitration.

* * * * *

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

(Authority: Government in the Sunshine Act, 5 U.S.C. 552b)

Laura E. Sinram,

Secretary and Clerk of the Commission.

[FR Doc. 2023–00090 Filed 1–3–23; 4:15 pm]

BILLING CODE 6715–01–P

GENERAL SERVICES ADMINISTRATION

[Notice–MY–2022–01; Docket No. 2022–0002; Sequence No. 33]

Office of Shared Solutions and Performance Improvement (OSSPI); Chief Acquisition Officers Council (CAOC); Senior Policy Operating Group's Procurement and Supply Chains Committee Outreach Session; Notification of Upcoming Public Meeting

AGENCY: Office of Government-wide Policy, General Services Administration (GSA).

ACTION: Meeting notice.

SUMMARY: The General Services Administration is providing notice of a public meeting on behalf of the Chief Acquisition Officers Council (CAOC) and the Senior Policy Operating Group's (SPOG) Procurement and Supply Chains Committee to build understanding and awareness about the anti-human trafficking requirements of the Federal Acquisition Regulation (FAR), share information about U.S. government tools and reporting to assist with compliance, and to discuss actions the Federal Government can take to achieve more effective implementation.

DATES: The SPOG Procurement and Supply Chains Committee will hold a web-based open public meeting on Tuesday, January 17th, from 1 p.m. to 3 p.m., Eastern Standard Time (EST).

ADDRESSES: The meeting will be accessible via webcast. Registrants will receive the webcast information before the meeting.

FOR FURTHER INFORMATION CONTACT: Shenaye Holmes, Senior Advisor-CAO Council, Office of Shared Solutions and Performance Improvement, GSA, phone: 202–213–2922 email: *shenaye.holmes@gsa.gov*

SUPPLEMENTARY INFORMATION:

Background

The National Action Plan to Combat Human Trafficking (available at: *https://www.whitehouse.gov/wp-content/uploads/2021/12/National-Action-Plan-to-Combat-Human-Trafficking.pdf*) Priority Action 1.3.1 calls on the Chief Acquisition Officers to support a public outreach session hosted by the SPOG Procurement and Supply Chains Committee for contracting companies, non-governmental organizations, international partners, associates of state, local, tribal, and territorial officials, and any interested parties to build understanding and awareness about the anti-trafficking requirements of the FAR. Policy officials from the SPOG will review recent efforts to combat human trafficking in the Federal supply chain and invite members of the public to provide input on ways to strengthen implementation of anti-trafficking requirements in Federal acquisition. Topics will include, but not be limited to the following: (1) experience with OMB Memorandum M–20–01, Anti-Trafficking Risk Management Best Practices & Mitigation Considerations, (2) trainings and educational opportunities for government and contractors, (3) using internal government findings, such as the Department of Labor's List of Products Produced by Forced or Indentured Child Labor, to analyze supply chains, and (4) developments in combating trafficking in supply chains that would be helpful to apply to federal procurement. Meeting Registration

The meeting is open to the public. The meeting will be accessible by webcast. Registration is required for web viewing. To register, go to: *https://www.eventbrite.com/e/spog-procurement-and-supply-chains-committee-meeting-tickets-489698500397.* Attendees must register by 5:00 p.m. EST, on Friday, January 13, 2023. All registrants will be asked to provide their name, affiliation, phone number, and email address. After registration, individuals will receive webcast access information via email. Additionally, using the registration page registrants will be able to submit

[6] The maximum penalty amount is per day, unless otherwise indicated.

[7] 12 U.S.C. 1464(v) provides the maximum CMP amounts for the late filing of certain Call Reports. In 2012, however, the FDIC issued regulations that further subdivided these amounts based upon the size of the institution and the lateness of the filing. *See* 77 FR 74573, 74576–78 (Dec. 17, 2012), codified at 12 CFR 308.132(e)(1). These adjusted subdivided amounts are found at the end of this chart.

[8] The maximum penalty amount for an institution is the lesser of this amount or 1 percent of total assets.

[9] 12 U.S.C. 1817(a) provides the maximum CMP amounts for the late filing of certain Call Reports. In 1991, however, the FDIC issued regulations that further subdivided these amounts based upon the size of the institution and the lateness of the filing. *See* 56 FR 37968, 37992–93 (Aug. 9, 1991), codified at 12 CFR 308.132(e)(1). These adjusted subdivided amounts are found at the end of this chart.

[10] The maximum penalty amount for an institution is the lesser of this amount or 1 percent of total assets.

[11] The maximum penalty amount for an institution is the lesser of this amount or 1 percent of total assets.

[12] The maximum penalty amount for an institution is the lesser of this amount or 1 percent of total assets.

[13] These amounts also apply to CMPs in statutes that cross-reference 12 U.S.C. 1818, such as 12 U.S.C. 2601, 2804(b), 3108(b), 3349(b), 4009(a), 4309(a), 4717(b); 15 U.S.C. 1607(a), 1681s(b), 1691(b), 1691c(a), 1693*o*(a); and 42 U.S.C. 3601.

[14] The maximum penalty amount for an institution is the lesser of this amount or 1 percent of total assets.

[15] The $148-per-day maximum CMP under 12 U.S.C. 1828(h) for failure or refusal to pay any assessment applies only when the assessment is less than $10,000. When the amount of the assessment is $10,000 or more, the maximum CMP under section 1828(h) is 1 percent of the amount of the assessment for each day that the failure or refusal continues.

[16] The maximum penalty amount for an institution is the lesser of this amount or 1 percent of total assets.

[17] The maximum penalty amount for an institution is the greater of this amount or 1/100,000th of the institution's total assets.

[18] The maximum penalty amount for an institution is the greater of this amount or 1/50,000th of the institution's total assets.

[19] The maximum penalty amount for an institution is the lesser of this amount or 1 percent of total assets.

questions for the Committee or whether they wish to present during the meeting.

Additionally, using the registration page, registrants will be able to submit questions for the Committee or whether they wish to present during the meeting.

Special Accommodations

For information on services for individuals with disabilities, or to request accommodation of a disability, please contact Shenaye Holmes at *shenaye.holmes@gsa.gov* at least 10 business days prior to the meeting to give GSA as much time as possible to process the request. Closed captioning and live ASL interpreter services will be available.

Shenaye Holmes,

Senior Advisor, Office of Shared Solutions and Performance Improvement, General Services Administration.

[FR Doc. 2022–28596 Filed 1–4–23; 8:45 am]

BILLING CODE 6820–14–P

GENERAL SERVICES ADMINISTRATION

[Notice–MA–2022–11; Docket No. 2021–0002, Sequence No. 31]

Calendar Year (CY) 2023 Privately Owned Vehicle (POV) Mileage Reimbursement Rates; CY 2023 Standard Mileage Rate for Moving Purposes

AGENCY: Office of Government-wide Policy (OGP), General Services Administration (GSA).

ACTION: Notice.

SUMMARY: GSA is updating the mileage reimbursement rate for privately owned automobiles (POA), airplanes, and motorcycles as required by statute. This information will be available in FTR Bulletin 23–05, which can be found on GSA's website at *https://gsa.gov/ftrbulletins.*

DATES: *Applicability date:* This notice applies to travel and relocation performed on or after January 1, 2023 through December 31, 2023.

FOR FURTHER INFORMATION CONTACT: For clarification of content, please contact Ms. Cheryl D. McClain-Barnes, Policy Analyst, Office of Government-wide Policy, Office of Asset and Transportation Management, at 202–208–4334, or by email at *travelpolicy@gsa.gov.* Please cite Notice of FTR Bulletin 23–05.

SUPPLEMENTARY INFORMATION: GSA is required by statute to set the mileage reimbursement rate for privately owned automobiles (POA) as the single standard mileage rate established by the Internal Revenue Service (IRS). The IRS mileage rate for medical or moving purposes is used to determine the POA rate when a Government-furnished automobile is authorized and also represents the privately owned vehicle (POV) standard mileage reimbursement rate for official relocation. Finally, GSA conducts independent reviews of the cost of travel and the operation of privately owned airplanes and motorcycles on an annual basis to determine their corresponding mileage reimbursement rates. These reviews evaluate various factors, such as the cost of fuel, depreciation of the original vehicle cost, maintenance and insurance, state and Federal taxes, and consumer price index data. FTR Bulletin 23–05 establishes and announces the new CY 2023 POV mileage reimbursement rates for official temporary duty and relocation travel. This notice is the only notification to agencies of revisions to the POV mileage rates for official travel and relocation, in addition to the changes posted on GSA's website at *https://gsa.gov/mileage.*

Saul Japson,

Acting Associate Administrator, Office of Government-wide Policy.

[FR Doc. 2022–28592 Filed 1–4–23; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Requirements for Negative Pre-Departure COVID–19 Test Results or Documentation of Recovery From COVID–19 for Aircraft Passengers Traveling to the United States From the People's Republic of China

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 an Order requiring negative pre-departure COVID–19 test results or documentation of recovery from COVID–19 for aircraft passengers traveling to the United States from the People's Republic of China or departing from a *Designated Airport* if the passenger has been in the People's Republic of China within the ten (10) days prior to their departure for the United States.

DATES: This Order will enter into effect for flights departing at or after 12:01 a.m. EST on January 5, 2023.

FOR FURTHER INFORMATION CONTACT: Candice Swartwood, Division of Global Migration and Quarantine, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H16–4, Atlanta, GA 30329. Telephone: 404–639–8897; Email: *dgmqpolicyoffice@cdc.gov.*

SUPPLEMENTARY INFORMATION: This Order requires negative pre-departure COVID–19 test results or documentation of recovery from COVID–19 for aircraft passengers traveling to the United States from the People's Republic of China.

Pursuant to 42 CFR 71.20 and 71.31(b), the Order prohibits the boarding of passengers 2 years of age or older on an itinerary that includes the United States [1] [2] on:

- any aircraft departing from the People's Republic of China, or
- any aircraft departing from a *Designated Airport* if the passenger has been in the People's Republic of China within the ten (10) days prior to their departure for the United States,

unless the passenger presents paper or digital documentation of one of the following requirements:

(a) A negative viral test result for SARS–CoV–2 [3] conducted on a specimen collected no more than 2 calendar days before the flight's departure from the People's Republic of China or 2 calendar days before the flight's departure from a *Designated Airport* if the passenger has been in the People's Republic of China within the ten (10) days prior to their departure for the United States (*Qualifying Test*)

OR

(b) Documentation of having recovered from COVID–19 in the past 90 days in the form of one of the following (*i.e., Documentation of Recovery*):

i. A positive viral test result for SARS–CoV–2 conducted on a specimen collected more than 10 calendar days but fewer than 91 calendar days before the flight's departure; OR

ii. A positive viral test result for SARS–CoV–2 conducted on a specimen collected 10 or fewer calendar days before the flight's departure AND a

[1] This also includes any flight regardless of whether the United States is the final destination or an intermediate stop.

[2] A parent or other authorized individual may present the required documentation on behalf of a passenger 2–17 years of age. Children under the age of 2 years of age are not subject to the requirements of this Order. An authorized individual may act on behalf of any passenger who is unable to act on their own behalf (*e.g.,* by reason of age, or physical or mental impairment).

[3] SARS–CoV–2 is the virus that causes COVID–19.

signed letter from a licensed healthcare provider or public health official stating that the passenger's COVID–19 symptoms began more than 10 calendar days before the flight's departure.

Each passenger must retain paper or digital documentation presented to the airline or other aircraft operator reflecting one of the following:

(a) A negative result for the *Qualifying Test;* or

(b) *Documentation of Recovery* from COVID–19.

Upon request, a passenger, or the passenger's authorized representative, must also produce such documentation to any U.S. Government official or a cooperating state or local public health authority.

This Order constitutes a controlled free pratique to any airline or other aircraft operator with an aircraft boarding passengers subject to the requirements of this Order at an airport in the People's Republic of China or a *Designated Airport.* Pursuant to this controlled free pratique, the airline or other aircraft operator must comply with the conditions outlined in the Order.

A copy of the Order is provided below. A copy of the signed Order and Passenger Attestation can be found at *https://www.cdc.gov/quarantine/china-proof-negative-test.html.*

Centers for Disease Control and Prevention (CDC)

Department of Health and Human Services (HHS)

Notice and Order Under Section 361 of the Public Health Service Act (42 U.S.C. 264) and 42 Code of Federal Regulations 71.20 & 71.31(b)

Requirements for Negative Pre–Departure COVID–19 Test Result or Documentation of Recovery From COVID–19 for Aircraft Passengers Traveling to the United States From the People's Republic of China

Summary

Pursuant to 42 CFR 71.20 and 71.31(b) and as set forth in greater detail below, this Notice and Order prohibits the boarding of passengers 2 years of age or older on an itinerary that includes the United States[4] [5] on:

- any aircraft departing from the People's Republic of China, or
- any aircraft departing from a *Designated Airport* if the passenger has been in the People's Republic of China within the ten (10) days prior to their departure for the United States,

unless the passenger presents paper or digital documentation of one of the following requirements:

(c) A negative viral test result for SARS–CoV–2[6] conducted on a specimen collected no more than 2 calendar days before the flight's departure from the People's Republic of China or 2 calendar days before the flight's departure from a *Designated Airport* if the passenger has been in the People's Republic of China within the ten (10) days prior to their departure for the United States (*Qualifying Test*)

OR

(d) Documentation of having recovered from COVID–19 in the past 90 days in the form of one of the following (*i.e., Documentation of Recovery*):

iii. A positive viral test result for SARS–CoV–2 conducted on a specimen collected more than 10 calendar days but fewer than 91 calendar days before the flight's departure; OR

iv. A positive viral test result for SARS–CoV–2 conducted on a specimen collected 10 or fewer calendar days before the flight's departure AND a signed letter from a licensed healthcare provider or public health official stating that the passenger's COVID–19 symptoms began more than 10 calendar days before the flight's departure.

Each passenger must retain paper or digital documentation presented to the airline or other aircraft operator reflecting one of the following:

(c) A negative result for the *Qualifying Test;* or

(d) *Documentation of Recovery* from COVID–19.

Upon request, a passenger, or the passenger's authorized representative, must also produce such documentation to any U.S. Government official or a cooperating state or local public health authority.

This Order applies regardless of citizenship or vaccination status. This Order excludes passengers transiting the People's Republic of China (for a period of 24 hours or less) en route to the United States. This Order also excludes passengers who have been in the People's Republic of China for less than 24 hours.

Pursuant to 42 CFR 71.31(b), and as set forth in greater detail below, this Notice and Order constitutes a controlled free pratique to any airline or other aircraft operator with an aircraft boarding passengers subject to the requirements of this Order at an airport in the People's Republic of China or a *Designated Airport.* Pursuant to this controlled free pratique, the airline or other aircraft operator must comply with the following conditions to receive permission for the aircraft to enter and disembark passengers within the United States:[7]

- Airline or other aircraft operator must confirm that every passenger subject to the requirements of this Order onboard the aircraft has presented a negative result for a *Qualifying Test* or *Documentation of Recovery.*
- Airline or other aircraft operator must verify that every passenger subject to the requirements of this Order onboard the aircraft has attested to one of the following:
  - Having received a negative result for the *Qualifying Test,* or
  - Having met the criteria for *Documentation of Recovery* by:
    - testing positive for SARS–CoV–2 on a specimen collected more than 10 calendar days but fewer than 91 calendar days before the flight's departure, or
    - developing COVID–19 symptoms more than 10 full calendar days before the flight's departure if their positive test is dated 10 or fewer calendar days before the flight.

This Notice and Order does not alter the obligation of persons to comply with the applicable requirements of other CDC Orders, including:

- Amended Order Implementing Presidential Proclamation on Advancing the Safe Resumption of Global Travel During the COVID–19 Pandemic (published at 86 FR 61224, April 4, 2022); and
- Other CDC Orders or CDC Directives that may be published relating to preventing the introduction, transmission, and spread of COVID–19 into and throughout the United States.

This Order shall enter into effect for flights departing at or after 12:01 a.m. EST (5:01 a.m. GMT) on January 5, 2023.

[4] This also includes any flight regardless of whether the United States is the final destination or an intermediate stop.

[5] A parent or other authorized individual may present the required documentation on behalf of a passenger 2–17 years of age. Children under the age of 2 years of age are not subject to the requirements of this Order. An authorized individual may act on behalf of any passenger who is unable to act on their own behalf (*e.g.,* by reason of age, or physical or mental impairment).

[6] SARS–CoV–2 is the virus that causes COVID–19.

[7] Under 42 CFR 71.31(b), CDC may condition a carrier's arrival into the United States by issuing a controlled free pratique without requiring the detention of an arriving carrier. This controlled free pratique applies to any airlines and aircraft operators operating aircraft boarding passengers subject to the requirements of this Order. This controlled free pratique operates in aid of CDC's authority under 42 CFR 71.20 to conduct public health prevention measures to detect the potential presence of communicable disease.

Statement of Intent

This Order shall be interpreted and implemented to achieve the following paramount objectives:

- Preservation of human life;
- Preventing or delaying the introduction, transmission, and spread of any new variants of the virus that causes COVID–19 that may be circulating or emerge in the People's Republic of China;
- Preserving the health and safety of crew members, passengers, airport personnel, and communities; and
- Preserving hospital, healthcare, and emergency response resources and capacity within the United States.

Definitions

Aircraft shall have the same definition as under 49 U.S.C. 40102(a)(6). ''Aircraft'' includes, but is not limited to, commercial, general aviation, and private aircraft.

Aircraft Operator means an individual or organization causing or authorizing the operation of an aircraft.

Airline shall have the same definition as under 42 CFR 71.1(b).

Attest/Attestation means having completed the attestation in Attachment A. Such attestation may be completed in paper or digital form. The attestation is a statement, writing, entry, or other representation under 18 U.S.C. 1001.[8]

Designated Airports mean those airports outside of the People's Republic of China where the requirements of this Order apply. *Designated Airports* include Incheon International Airport (ICN) in Seoul, Republic of Korea; Toronto Pearson International Airport (YYZ) in Canada; Vancouver International Airport (YVR) in Canada; and other airports that CDC may list in guidance associated with this Order.[9]

Documentation of Recovery means paper or digital documentation of having recovered from COVID–19 in the form of a positive SARS–CoV–2 viral test result. The viral test must have been conducted on a specimen collected more than 10 calendar days but fewer than 91 calendar days before the departure of the flight, or at such other intervals as specified in CDC guidance. Alternatively, *Documentation of Recovery* may consist of a positive SARS–CoV–2 viral test result from a specimen collected 10 or fewer calendar days before the flight's departure AND a signed letter from a licensed healthcare provider or public health official stating that the passenger's symptoms began more than 10 full calendar days before the flight's departure.

People's Republic of China for the purpose of this Notice and Order means the People's Republic of China, including the Special Administrative Regions of Hong Kong and Macau.

Qualifying Test means a SARS–CoV–2 viral test that was conducted on a specimen collected no more than two (2) calendar days before the passenger's departure from the People's Republic of China, or a *Designated Airport* if the passenger has been in the People's Republic of China within the ten (10) days prior to departure for the United States.

United States has the same definition as ''United States'' in 42 CFR 71.1(b), meaning ''the 50 States, District of Columbia, and the territories (also known as possessions) of the United States, including American Samoa, Guam, the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.''

Viral Test means a viral detection test for current infection with SARS–CoV–2, *i.e.,* a nucleic acid amplification test (NAAT) or a viral antigen test. The test must be cleared, approved, or issued an emergency use authorization by the U.S. Food and Drug Administration, or granted marketing authorization by the relevant national authority, for the detection of SARS–CoV–2.

Exceptions

The following categories of individuals and organizations are excepted from the requirements of this Order:

- Crew members of airlines or other aircraft operators if they are on official duty assigned by the airline or aircraft operator that involves operation of the aircraft or positioning of crew not operating the aircraft, provided their assignment is under an air carrier's or operator's occupational health and safety program that follows applicable industry standard protocols for the prevention of COVID–19 consistent with relevant CDC guidance.
- Airlines or other aircraft operators transporting passengers with COVID–19 on flights other than scheduled passenger airline flights pursuant to CDC authorization [10] and with infection control measures in place to prevent onboard transmission consistent with relevant CDC guidance.
- U.S. Federal law enforcement personnel on official orders who are traveling for the purpose of carrying out a law enforcement function, provided they are covered under an occupational health and safety program that takes measures to ensure personnel are not symptomatic or otherwise at increased risk of spreading COVID–19 during travel. Those traveling for training or other business purposes remain subject to the requirements of this Order.
- U.S. military personnel, including civilian employees, dependents, contractors, and other U.S. Government employees when traveling on U.S. military assets (including whole aircraft charter operators) or non-U.S. military flights, if such individuals are under competent military or U.S. Government travel orders and observing applicable U.S. Department of Defense force health protection guidance to prevent the transmission of COVID–19.
- Individuals for whom the issuance of a humanitarian exception is necessary based on both: (1) exigent circumstances where emergency travel is required to preserve health and safety (*e.g.,* emergency medical evacuations); and (2) where pre-departure testing cannot be accessed or completed before travel because of exigent circumstances.

Background

A. COVID–19 in the People's Republic of China and Emergence of Virus Variants of Concern

COVID–19 is surging in the People's Republic of China.[11] Mitigation

[8] CDC encourages airlines and aircraft operators to incorporate the attestation into paperless check-in processes. An airline or aircraft operator may use a third party (including a third-party application) to collect attestations, including to provide translations. However, an airline or aircraft operator has sole legal responsibility to provide and collect attestations, to ensure the accuracy of any translation, and to comply with all other obligations under this Order. An airline or aircraft operator is responsible for any failure of a third party to comply with this Order. An airline or aircraft operator may not shift any legal responsibility to a third party.

[9] In adding new airports, CDC will consider data regarding travel patterns of passengers departing the People's Republic of China on itineraries to the United States, as well as additional information concerning the emergence of virus variants.

[10] Federal regulations at 42 CFR 71.21(b) requires the commander of an aircraft destined for a U.S. airport to report immediately to the quarantine station at or nearest the airport at which the aircraft will arrive, the occurrence, on board, of any death or ill person among passengers or crew.

[11] On June 10, 2022, CDC rescinded the Order titled ''Requirement for Negative Pre-Departure COVID–19 Test Result or Documentation of Recovery from COVID–19 for All Airline or Other Aircraft Passengers Arriving in the United States from any Foreign Country.'' As part of its rescission, CDC stated that it would periodically reassess the need for a testing requirement based on the latest science, virus variants, and evolving state of the pandemic, and could reinstitute testing if necessary to protect the public's health. The current Order is a more targeted application of the testing requirement to address specifically the lack of available information in global databases about virus variants potentially circulating in the People's Republic of China. Although many of the factors cited in the June 10 rescission that strengthen community and individual protection against serious illness from COVID–19, including efficacious and accessible treatments continue to

measures are largely not in use, and there are significant gaps in data and information on cases, hospitalizations, deaths, and genomic sequences. The population in the People's Republic of China lacks extensive exposure to the virus that causes COVID–19 and therefore lacks substantial immune protection through prior infection. The recent surge in COVID–19 transmission, particularly in a large population such as the People's Republic of China, increases the potential for new SARS–CoV–2 variants to emerge that could be introduced to the United States.

Although virus variants continue to emerge in countries around the world, the lack of viral genomic sequence data from the People's Republic of China in global databases could delay the identification of new virus variants of concern if they arise. These data are critical to monitor the surge effectively and to allow U.S. public health officials to identify any potential virus variants of concern.

New virus variants have the potential to evade the immune protection acquired in the U.S. population through vaccination and prior illness. The emergence of virus variants that substantially decrease the effectiveness of available vaccines against severe or deadly COVID–19, and decrease the effectiveness of therapeutics and diagnostics, is a primary public health concern for the United States. Additionally, new virus variants could be associated with increases in transmissibility (higher infection rates) or severity (higher rates of hospitalization or death) that have the potential to overwhelm U.S. healthcare systems, especially at a time when influenza and other respiratory viruses are circulating.[12]

Considering the danger to public health posed by potential emerging new virus variants in the People's Republic of China, CDC has determined that additional proactive, preventative measures must be implemented now to protect the U.S. population from potential importation, transmission and spread of new virus variants into the United States. Pre-departure testing and the requirement to show a negative test result decrease the number of infected passengers boarding airplanes and constitute a proactive, risk-based approach. This will help to slow the spread of COVID–19 as we work to identify and understand any potential new virus variants that may emerge. This risk-based testing approach has been addressed in CDC guidance.[13]

CDC acknowledges that pre-departure testing does not eliminate all risk and some positive COVID–19 cases may evade this detection measure. Some tests, including antigen tests, may have lower sensitivity for the virus that causes COVID–19. Some people who test negative within 2 days before their flight may also be exposed to or develop COVID–19 after being tested. Therefore, CDC will implement this testing requirement simultaneously with other mitigation measures, including enhanced education and surveillance strategies.

CDC is expanding the Traveler-based Genomic Surveillance program (TGS), a voluntary program that collects anonymous nasal swabs from arriving international travelers at major U.S. international airports as an early warning system to detect and characterize new and rare variants of the virus that causes COVID–19. The program tests for presence of the virus, and if it is detected, the program sequences the virus's genome to identify any new variants. The program is expanding in order to support increased information about potential virus variants imported from the People's Republic of China.

As part of the Traveler-based Genomic Surveillance program, arriving international travelers on selected flights can volunteer to provide anonymous nasal swabs for testing. The nasal swabs get batched into pools and all positive batches undergo genomic sequencing for the virus, allowing for the quick detection of virus variants from international travelers. This program has proven to overcome gaps in global SARS–CoV–2 variant surveillance that occur as many countries decrease or discontinue testing and sequencing. During the initial weeks of the Omicron surge, TGS detected two Omicron subvariants, BA.2 and BA.3, and reported them to the global database weeks before they were reported elsewhere, demonstrating that the program is able to detect new virus variants early.

Pre-departure testing and the requirement to show a negative test reduces the introduction, transmission, and spread into the United States of virus variants. These measures provide a safer environment for travelers and protect the health of people in the United States, particularly when layered with existing CDC recommendations such as masking during travel, self-monitoring for symptoms, and testing three to five days after arrival from international travel.

B. Statement of Good Cause Under the Administrative Procedure Act (''APA'')

The recent surge in COVID–19 cases in the People's Republic of China may result in the emergence of new virus variants that can increase transmissibility or severity or compromise the effectiveness of current medical countermeasures. Because of policies of the People's Republic of China relating to COVID–19, the population has not developed immune protection and is more susceptible to infection when compared with other countries. Travelers are an important population to consider when tracking new and emerging infectious diseases because they move from place to place quickly and can contract and spread infectious diseases. Pre-departure testing and the requirement to show a negative test helps prevent infected travelers from boarding flights to the United States and slows the introduction, transmission, and spread of virus variants into the United States. The introduction of infected travelers and potential emergence of virus variants of concern are of particular concern at this time, when the United States' healthcare system is already facing surges in other respiratory viruses.

Based on the lack of viral genomic sequence data from the People's Republic of China, this action is necessary imminently to allow U.S. public health officials the critical time needed to monitor the unprecedented surge of COVID–19 in the People's Republic of China effectively and to identify any potential variants of concern. CDC will continue to monitor the situation and be prepared to quickly adjust its approach as necessary to protect the public's health.

Due to the current volume of passengers from the People's Republic of China transiting through Incheon International Airport, Toronto Pearson International Airport, and Vancouver International Airport on their way to the United States, I have determined that prompt action is needed with respect to travelers departing from these airports if they have been in the People's Republic of China in the last 10 days. CDC, in coordination with other Federal agencies, will continue to monitor travel patterns between the People's Republic of China and the United States and adjust its approach as needed.

exist, CDC has concluded that the current Order is needed to protect the public's health.

[12] Influenza Hospitalization Surveillance Network (FluSurv-NET): *https://www.cdc.gov/flu/weekly/influenza-hospitalization-surveillance.htm.*

[13] COVID–19 Testing: What You Need to Know *https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/testing.html#when-to-get-tested.*

This Order is not a rule within the meaning of the Administrative Procedure Act (''APA'') but rather is an emergency action taken under the existing authority of 42 U.S.C. 264(a) and 42 CFR 71.20 and 71.31(b), which were promulgated in accordance with the APA after full notice-and-comment rulemaking and a delay in effective date. In the event that this Order qualifies as a new rule under the APA, notice and comment and a delay in effective date are not required because there is good cause to dispense with prior public notice and comment and a delay in effective date. *See* 5 U.S.C. 553(b)(B), (d)(3).

Considering the rapid surge in cases in the People's Republic of China, it would be impracticable and contrary to the public's health, and by extension the public's interest, to delay the issuance and effective date of this Order. Further delay could increase risk of transmission and importation of undetected emerging virus variants through passengers. New virus variants could be associated with increases in transmissibility (higher case rates), severity (higher rates of hospitalization or death), and have the potential to overwhelm U.S. healthcare systems, especially at a time when influenza and other respiratory viruses are circulating.

Similarly, the Office of Information and Regulatory Affairs has determined that if this Order were a rule, it would be a major rule under Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (the Congressional Review Act), 5 U.S.C. 804(2), but there would not be a delay in its effective date as the agency has determined that there would be good cause to make the requirements herein effective immediately under the APA, 5 U.S.C. 808(2).

This Order is also an economically significant regulatory action under Executive Order 12866 and has therefore been reviewed by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

Pursuant to 5 U.S.C. 553(b)(B), and for the reasons stated above, I hereby conclude that good cause exists to dispense with notice-and-comment rulemaking because engaging in such rulemaking is impractical, would endanger the public health, and thus, be contrary to the public interest. For the same reasons, I have determined, consistent with 5 U.S.C. 553(d)(3), that there is good cause to make this Order effective for flights departing at or after 12:01 a.m. EST (5:01 a.m. GMT) on January 5, 2023.

C. Severability

If any provision of this Order, or the application of any provision to any carriers, persons, or circumstances, shall be held invalid, I intend that the remainder of the provisions, or the application of such provisions to any carriers, persons, or circumstances other than those to which it is held invalid, shall remain valid and in effect. Although the application of all of this Order's provisions uniformly across all carriers, persons, and circumstances will maximize the Order's protection of health and safety, the various provisions and applications of this Order operate independently and independently further the purposes of this Order. Thus, in the event of a stay or invalidation of any provision of the Order, or of the Order as it applies to any carrier, person, or circumstances, my intent is that the remainder of the Order remain in effect.

Action

For the reasons outlined above, I hereby determine that passengers subject to the requirements of this Order are at risk of transmitting new SARS–CoV–2 variants that may be circulating or emerge in the People's Republic of China. Accordingly, requiring these passengers to present either a negative COVID–19 test result or recovery from COVID–19 in the past 90 days is necessary to reduce the risk of introduction, transmission and spread of new SARS–CoV–2 variants, and to protect the health of fellow passengers, aircraft crew, and U.S. communities. This Order shall remain effective until I determine that based on specific public health or other considerations that continuation of this Order is no longer necessary to prevent the introduction, transmission, and spread of new SARS–CoV–2 variants into the United States. Upon determining that continuation of this Order is no longer necessary to prevent the introduction, transmission, and spread of new SARS–CoV–2 variants into the United States, I will publish a notice in the **Federal Register** terminating this Order. I retain the authority to modify or terminate the Order, or its implementation, at any time as needed to protect public health.

1. Requirements for Airlines & Other Aircraft Operators

Any airline or other aircraft operator boarding passengers subject to the requirements of this Order shall:

A. Identify which passengers are subject to the requirements of this Order and confirm that each such passenger, prior to boarding the aircraft, has presented paper or digital documentation reflecting a *Qualifying Test* or *Documentation of Recovery* or meets one of the specified exceptions.

(1) Requirements for a *Qualifying Test* include:

a. Documentation of a negative SARS–CoV–2 viral test result from a specimen collected no more than 2 calendar days before the flight's departure. The negative SARS–CoV–2 viral test result must include:

i. personal identifiers (*e.g.,* name and date of birth) on the negative test result that match the personal identifiers on the passenger's passport or other travel documents;

ii. a specimen collection date indicating that the specimen was collected no more than 2 calendar days before the flight's departure;

iii. the type of viral test indicating it is a NAAT or antigen test;

iv. a test result that states ''NEGATIVE,'' ''SARS–CoV–2 RNA NOT DETECTED,'' ''SARS–CoV–2 ANTIGEN NOT DETECTED,'' or ''COVID–19 NOT DETECTED,'' or other indication that SARS–CoV–2 was not detected in the individual's specimen. A test marked ''invalid'' is not acceptable; and

v. information about the entity issuing the result (*e.g.,* laboratory, healthcare entity, or telehealth service), such as the name and contact information.

(2) Requirements for *Documentation of Recovery* include one of the following:

a. Documentation of a positive SARS–CoV–2 viral test result from a specimen collected more than 10 calendar days but fewer than 91 calendar days preceding the flight's departure.[14] The positive SARS–CoV–2 viral test result must include:

i. personal identifiers (*e.g.,* name and date of birth) on the positive test result that match the personal identifiers on the passenger's passport or other travel documents;

ii. a specimen collection date indicating that the specimen was collected more than 10 calendar days but fewer than 91 calendar days before the flight's departure;

iii. information that the test performed was a viral test indicating it is a NAAT or antigen test;

iv. a test result that states ''POSITIVE,'' ''SARS–CoV–2 RNA DETECTED,'' ''SARS–CoV–2 ANTIGEN DETECTED,'' or ''COVID–19 DETECTED,'' or other indication that

[14] Interim Guidance on Ending Isolation and Precautions for Adults with COVID–19 *https://www.cdc.gov/coronavirus/2019-ncov/hcp/duration-isolation.html.*

SARS–CoV–2 was detected in the individual's specimen. A test marked ''invalid'' is not acceptable; and

v. information about the entity issuing the result (*e.g.,* laboratory, healthcare entity, or telehealth service), such as the name and contact information.

b. Documentation of a positive SARS–CoV–2 viral test result from a specimen collected 10 or fewer calendar days before the flight's departure AND a signed letter from a licensed healthcare provider or a public health official stating that the passenger's COVID–19 symptoms began more than 10 calendar days before the flight's departure. The letter must list the date the person's symptoms started; have personal identifiers (*e.g.,* name and date of birth) that match the personal identifiers on the passenger's passport or other travel documents; and be signed and dated on official letterhead that contains the name, address, and phone number of the healthcare provider or public health official who signed the letter. The positive SARS–CoV–2 viral test result must include:

i. personal identifiers (*e.g.,* name and date of birth) on the positive test result that match the personal identifiers on the passenger's passport or other travel documents;

ii. information that the test performed was a viral test indicating it is a NAAT or antigen test;

iii. a test result that states ''POSITIVE,'' ''SARS–CoV–2 RNA DETECTED,'' ''SARS–CoV–2 ANTIGEN DETECTED,'' or ''COVID–19 DETECTED,'' or other indication that SARS–CoV–2 was detected in the individual's specimen. A test marked ''invalid'' is not acceptable; and

iv. information about the entity issuing the result (*e.g.,* laboratory, healthcare entity, or telehealth service), such as the name and contact information.

B. Confirm that each passenger has attested to having received a negative result for a *Qualifying Test* or having met the requirements for *Documentation of Recovery.* Airlines or other aircraft operators must retain a copy of each passenger attestation for 2 years. The attestation is attached to this order as Attachment A.

C. Not board any passenger without confirming the documentation as set forth in this Order.

Any airline or other aircraft operator that fails to comply with section 1, ''Requirements for Airlines & Other Aircraft Operators,'' may be subject to criminal penalties under, *inter alia,* 42 U.S.C. 271 and 42 CFR 71.2, in conjunction with 18 U.S.C. 3559 and 3571.

2. Requirements for Aircraft Passengers

Any aircraft passenger subject to the requirements of this Order shall—

A. Present paper or digital documentation reflecting one of the following:

(1) A negative *Qualifying Test* that has a specimen collection date indicating that the specimen was collected no more than 2 calendar days before the flight's departure; or

(2) *Documentation of Recovery* from COVID–19 that includes:

a. a positive SARS–CoV–2 viral test result conducted on a specimen collected more than 10 calendar days but fewer than 91 calendar days preceding the passenger's scheduled flight to the United States; OR

b. documentation of a positive SARS–CoV–2 viral test result from a specimen collected 10 or fewer calendar days before the flight's departure AND a signed letter from a licensed healthcare provider or a public health official stating that the passenger's COVID–19 symptoms began more than 10 days before the flight's departure.

B. Provide the attestation to the airline or other aircraft operator, of:

(1) having received a negative result for the *Qualifying Test;* or

(2) having met the requirements for *Documentation of Recovery.*

The attestation is attached to this order as Attachment A. A parent or other authorized individual may present the required documentation on behalf of a passenger 2–17 years of age. An authorized individual may act on behalf of any passenger who is unable to act on their own behalf (*e.g.,* by reason of age, or physical or mental impairment).

C. Retain a copy of the applicable documentation listed in part A of this section and produce such documentation upon request to any U.S. Government official or a cooperating state or local public health authority after arrival into the United States.

Any passenger who fails to comply with the requirements of section 2, ''Requirements for Aircraft Passengers,'' may be subject to criminal penalties under, *inter alia,* 42 U.S.C. 271 and 42 CFR 71.2, in conjunction with 18 U.S.C. 3559 and 3571. Willfully giving false or misleading information to the Government may result in criminal penalties under, *inter alia,* 18 U.S.C. 1001.

This Order shall be enforceable through the provisions of 18 U.S.C. 3559, 3571; 42 U.S.C. 243, 268, 271; and 42 CFR 71.2. As the COVID–19 pandemic continues to rapidly evolve and more scientific data becomes available regarding potential emerging virus variants in the People's Republic of China, CDC may exercise its enforcement discretion to adjust the scope of accepted pre-departure testing requirements to allow passengers and airline and aircraft operators greater flexibility regarding the requirements of this Order or to align with current CDC guidance. Such exercises of enforcement discretion will be announced on CDC's website and the Order will be amended as soon as practicable through an updated publication in the **Federal Register**.

Effective Date

This Order shall enter into effect for flights departing at or after 12:01 a.m. EST (5:01 a.m. GMT) on January 5, 2023, and will remain in effect unless modified or rescinded based on specific public health or other considerations.

Authority

The authority for this Order is Section 361 of the Public Health Service Act (42 U.S.C. 264) and 42 CFR 71.20 & 71.31(b).

Dated: January 3, 2023.

Sherri Berger,

Chief of Staff, Centers for Disease Control and Prevention.

Attachment A

Proof of Negative Covid–19 Test Result or Documentation of Recovery for Air Passengers From the People's Republic of China

Notice to Airlines and Aircraft Operators

This passenger disclosure and attestation fulfills the requirements of U.S. Centers for Disease Control and Prevention (CDC) Order: *Requirements for Negative Pre-Departure COVID–19 Test Result or Documentation of Recovery from Covid–19 for All Airline or Other Aircraft Passengers Traveling to the United States from the People's Republic of China.*[15] [16]

Airline and Aircraft Operator Disclosure Requirements

As required by United States Federal law, all airlines or other aircraft

[15] This requirement (*i.e.,* proof of negative COVID–19 test or recovery) does not apply to crewmembers of airlines or other aircraft operators on official duty assigned by the airline or aircraft operator that involves operation of the aircraft or repositioning of crew (*i.e.,* on ''deadhead'' status), provided their assignment is under an air carrier's or operator's occupational health and safety program that follows applicable industry standard protocols for the prevention of COVID–19 consistent with relevant CDC guidance. See the Order and CDC's website for more information about applicability and exceptions.

[16] People's Republic of China includes the Special Administrative Regions of Hong Kong and Macau.

operators must collect the passenger attestation on behalf of the U.S. Government.[17]

As required by the Order, all airlines and other aircraft operators must provide this disclosure to all air passengers who are ages 2 years and older [18] who have an itinerary that includes the United States and are boarding:

(1) an aircraft in the People's Republic of China, or

(2) an aircraft at a *Designated Airport* if the passenger has been in the People's Republic of China in the past 10 calendar days. *Designated Airports* include Incheon International Airport (ICN) in Seoul, Republic of Korea; Toronto Pearson International Airport (YYZ) in Canada; and Vancouver International Airport (YVR) in Canada.

This requirement does not apply to passengers transiting through an airport in the People's Republic of China en route from another country to the United States. It also does not apply to passengers who have been in the People's Republic of China for less than 24 hours.

The airline must identify which passengers are subject to the requirements of this Order and confirm that each such passenger, prior to boarding the aircraft, has presented paper or digital documentation reflecting:

A. A negative result for a COVID–19 viral test taken no more than 2 days before the departure of the flight from an airport in the People's Republic of China or a Designated Airport; or

B. *Documentation of Recovery* from COVID–19 in the form of:

- A positive viral test result for COVID–19 conducted on a sample collected more than 10 calendar days but fewer than 91 calendar days before the departure of the flight from an airport in the People's Republic of China or a *Designated Airport;* or
- A positive viral test result for COVID–19 conducted on a sample taken 10 or fewer calendar days before the flight AND a signed letter from a licensed healthcare provider or public health official stating that the passenger's symptoms began more than 10 calendar days before the departure of the flight from an airport in the People's Republic of China or a *Designated Airport;* or

C. A *Humanitarian Exception* in the form of a letter from the U.S. Government

OMB Control No.: 0920–XXXX

Proof of Negative Covid–19 Test Result or Documentation of Recovery for Air Passengers From the People's Republic of China [19]

Passenger Disclosure and Attestation

The information provided below must be accurate and complete to the best of the person's knowledge. Under United States Federal law, the attestation must be completed for each air passenger 2 years of age or older who has an itinerary that includes the United States and is boarding an aircraft in the People's Republic of China; or is boarding an aircraft at a *Designated Airport* and has been in the People's Republic of China in the last 10 calendar days. Failure to complete and present the applicable portion of the attestation, or submitting false or misleading information, could result in delay of travel, denial of boarding, or denial of boarding on future travel, or put the passenger or other people at risk of harm, including serious bodily injury or death. Any passenger who fails to comply with these requirements may be subject to criminal penalties. Willfully providing false or misleading information may lead to criminal fines and imprisonment under, among other provisions, 18 U.S.C. 1001. Providing this information can help protect you, your friends and family, your communities, and the United States. The U.S. Centers for Disease Control and Prevention (CDC) appreciates your cooperation.

One attestation form must be filled out for each air passenger 2 years of age or older with an itinerary that includes the United States prior to boarding

(1) an aircraft in the People's Republic of China; or

(2) an aircraft at a *Designated Airport* if the passenger has been in the People's Republic of China in the last 10 days. *Designated Airports* include Incheon International Airport (ICN) in Seoul, the Republic of Korea; Toronto Pearson International Airport (YYZ) in Canada; and Vancouver International Airport (YVR) in Canada.[20]

The air passenger or the person acting on behalf of the air passenger as a legal representative, such as a parent or guardian, must check A, B, or C and sign the attestation.

I, _____ am attesting on

(Select one):

PRINT FIRST AND LAST NAME

☐ My own behalf

☐ Behalf of:

PRINT FIRST AND LAST NAME

A. Negative Pre-Departure Test Result

☐ I attest that I have (or the person I am attesting on behalf of has) received a negative test result for COVID–19. The test was a viral test that was done on a sample taken from me (or the person) no more than 2 calendar days before my (or the person's) flight's departure.

B. Documentation of Recovery From COVID–19

☐ I attest that I have (or the person I am attesting on behalf of has) met the criteria for documentation of recovery by:

- testing positive for COVID–19 that was done on a sample taken from me (or the person) more than 10 calendar days but fewer than 91 calendar days before my (or the person's) flight's departure;

or

- developing COVID–19 symptoms more than 10 full calendar days before my (or the person's) flight's departure if my (or the person's) positive viral test was done on a sample taken from me (or the person) 10 or fewer calendar days before my (or the person's) flight.

C. Humanitarian Exception

☐ I attest that I have (or the person I am attesting on behalf of has) received a humanitarian exception to the requirement to show a negative COVID–19 test result or documentation of recovery, documented by a letter provided by the U.S. Government.

Print Name

[17] This attestation does not need to be completed by or on behalf of children under 2 years of age. The airline or other aircraft operator may permit them to board an aircraft without an attestation.

[18] This Order applies to any passenger 2 years of age or older, regardless of citizenship or vaccination status.

[19] People's Republic of China includes the Special Administrative Regions of Hong Kong and Macau.

[20] This requirement excludes persons transiting through an airport in the People's Republic of China en route to the United States from another country. This Order also excludes persons who have been in the People's Republic of China for less than 24 hours.

Public reporting burden of this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. 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. Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, may be submitted to CDC/ATSDR Reports Clearance Officer, 1600 Clifton Road NE, MS D–74, Atlanta, Georgia 30333; ATTN: PRA 0920–XXXX.

Signature

Dated

Privacy Act Statement for Air Passengers From People's Republic of China Relating to the Requirement To Provide Proof of a Negative COVID–19 Test Result or Documentation of Recovery

The U.S. Centers for Disease Control and Prevention (CDC) requires airlines and other aircraft operators to collect this information pursuant to 42 CFR 71.20 and 71.31(b), as authorized by 42 U.S.C. 264. Providing this information is mandatory for all passengers 2 years and older boarding an aircraft into the United States from the People's Republic of China, or from *Designated Airports* if they have been in the People's Republic of China in the last 10 days.

Failure to provide this information may prevent you from boarding the plane. Additionally, passengers will be required to attest to providing complete and accurate information, and failure to do so may lead to other consequences, including criminal penalties. CDC will use this information to help prevent the introduction, transmission, and spread of communicable diseases.

The Privacy Act of 1974, 5 U.S.C. 552a, governs the collection and use of this information about citizens of the United States and aliens lawfully admitted for permanent residence. The information maintained by CDC will be covered by CDC's System of Records No. 09–20–0171, Quarantine- and Traveler-Related Activities, Including Records for Contact Tracing Investigation and Notification under 42 CFR parts 70 and 71. See 72 FR 70867 (Dec. 13, 2007), as amended by 76 FR 4485 (Jan. 25, 2011) and 83 FR 6591 (Feb. 14, 2018). CDC will only disclose information from the system outside the CDC and the U.S. Department of Health and Human Services as the Privacy Act permits, including in accordance with the routine uses published for this system in the **Federal Register**, and as authorized by law. Such lawful purposes may include, but are not limited to, sharing identifiable information with state and local public health departments, and other cooperating authorities. CDC and cooperating authorities will retain, use, delete, or otherwise destroy the designated information in accordance with Federal law and the System of Records Notice (SORN) set forth above. You may contact the system manager at *dgmqpolicyoffice@cdc.gov* or by mailing Policy Office, Division of Global Migration and Quarantine, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H16–4, Atlanta, GA 30329, if you have questions about CDC's use of your data.

[FR Doc. 2023–00080 Filed 1–3–23; 4:15 pm]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0461]

Format and Content of a Risk Evaluation and Mitigation Strategy Document; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled ''Format and Content of a REMS Document.'' This final guidance describes the format for a proposed risk evaluation and mitigation strategy (REMS) document. This format was created based on extensive stakeholder feedback. This guidance finalizes the revised draft guidance of the same title issued on October 12, 2017, and announces the availability of the technical specifications document entitled ''REMS Document Technical Conformance Guide.''

DATES: The announcement of the guidance is published in the **Federal Register** on January 5, 2023.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2009–D–0461 for ''Format and Content of a REMS Document.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting

of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002 or to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Suzanne Robottom, Center for Drug Evaluation and Research, Food and Drug Administration,10903 New Hampshire Ave, Bldg. 22, Rm. 4475, Silver Spring, MD 20993–0002, 301–796–3554, or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Format and Content of a REMS Document.'' Section 505–1 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355–1) authorizes FDA to require a REMS for certain drugs if FDA determines that a REMS is necessary to ensure that the benefits of the drug outweigh its risks (see section 505–1(a) of the FD&C Act). A REMS is a required risk management strategy that can include one or more elements to ensure that the benefits of a drug outweigh its risks (see section 505–1(e) of the FD&C Act). The REMS document should include concise information that describes the goals and requirements of a REMS as they relate to the elements described under the FD&C Act.

In the **Federal Register** of October 12, 2017 (82 FR 47529), FDA announced the availability of a revised draft guidance for industry entitled ''Format and Content of a REMS Document.'' This draft guidance communicated changes to the format of the REMS document based on stakeholder feedback that REMS requirements are not communicated to stakeholders in a clear and consistent manner. (For more general information on REMS as well as a more comprehensive discussion of the issues summarized in this paragraph, please refer to the Background Materials *http://www.fda.gov/downloads/ForIndustry/UserFees/PrescriptionDrugUserFee/UCM362078.pdf* for the July 2013 REMS Standardization and Evaluation Public Meeting.)

This guidance finalizes the revised draft guidance entitled ''Format and Content of a REMS Document'' issued on October 12, 2017. FDA considered comments received on the revised draft guidance as the guidance was finalized. Changes from the revised draft guidance to the final guidance include: revising the REMS document to add and clarify requirements participants, including the applicants, must complete to comply with the REMS, adding a reference to a new authority to require certain packaging and safe disposal technologies for drugs that pose a serious risk of abuse or overdose, adding a new section to list the statutory elements of the REMS, adding a prompt to identify the risk addressed by the REMS, and relocating the information contained in the appendix of the guidance (*i.e.,* REMS document template) to a technical specifications document entitled ''REMS Document Technical Conformance Guide'' available on FDA's website (*https://www.fda.gov/drugs/risk-evaluation-and-mitigation-strategies-rems/roles-different-participants-rems*). In addition, editorial changes were made to improve clarity and consistency between the guidance and the standardized text in the REMS document template.

The guidance, along with the new technical specifications document, can be used for drafting a REMS document for a single product and shared system REMS and includes recommendations for drafting a Bifurcated REMS document.[1]

The recommendations in this guidance and the associated technical specifications document are intended to help ensure that REMS documents are clear; understandable to stakeholders; and to the extent possible, consistent in content and format, as well as support submission of a REMS document in Structured Product Labeling format, which is required starting December 28, 2022.[2]

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on the format and content of a REMS document. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 314 pertaining to the submission of new drug applications (NDAs), abbreviated new drug applications (ANDAs), and supplements to NDAs and ANDAs have been approved under 0910–0001. The collections of information in 21 CFR part 601 pertaining to biologics license applications (BLAs) and supplements to BLAs have been approved under OMB control number 0910–0338. The collections of information pertaining to Medication Guides for prescription drug products have been approved under OMB control number 0910–0393.

III. Electronic Access

Persons with access to the internet may obtain the guidance at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents, https://www.fda.gov/drugs/guidance-compliance-regulatory-information/*

[1] A Bifurcated REMS Document is used when the approval of a shared system REMS may coincide with tentative approval of an abbreviated new drug application or section 505(b)(2) application (described in section 505(b)(2) of the FD&C Act (21 U.S.C. 355(b)(2)). For more information, refer to the guidance for industry, ''Development of a Shared System REMS'' (June 2018), available at *https://www.fda.gov/media/113869/download.*

[2] See guidance for industry entitled ''Providing Regulatory Submissions in Electronic Format—Content of the Risk Evaluation and Mitigation Strategies Document Using Structured Product Labeling Format'' (December 2020).

guidances-drugs, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances, or *https://www.regulations.gov.*

Dated: December 29, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–28602 Filed 1–4–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Update to the Bright Futures Periodicity Schedule as Part of the HRSA-Supported Preventive Services Guidelines for Infants, Children, and Adolescents

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: A **Federal Register** notice published on November 2, 2022, detailed and sought public comment on recommendations under development by the Bright Futures Pediatric Implementation Program (Bright Futures Program), regarding updates to the HRSA-supported preventive services guidelines for infants, children, and adolescents in the Bright Futures Periodicity Schedule. The proposed updates are specifically related to increasing the upper age limit for Human Immunodeficiency Virus (HIV) screening. The Bright Futures Program convenes health professionals to develop draft recommendations for HRSA's consideration. Ten comments were received and considered as detailed below. On December 30, 2022, HRSA accepted as final the Bright Future Program's recommended update to the HIV screening guideline. Under applicable law, non-grandfathered group health plans and health insurance issuers offering non-grandfathered group and individual health insurance coverage must include coverage, without cost sharing, for certain preventive services, including those provided for in the HRSA-supported preventive services guidelines for infants, children, and adolescents. The Departments of Labor, Health and Human Services, and the Treasury have previously issued regulations, which describe how group health plans and health insurance issuers apply the coverage requirements. Please see *https://mchb.hrsa.gov/programs-impact/bright-futures* for additional information.

FOR FURTHER INFORMATION CONTACT: Bethany Miller, HRSA, Maternal and Child Health Bureau, telephone: (301) 945–5156, email: *BMiller@hrsa.gov.*

SUPPLEMENTARY INFORMATION: Under the Patient Protection and Affordable Care Act, Public Law 111–148, the preventive care and screenings set forth in HRSA-supported guidelines are required to be covered without cost-sharing by certain group health plans and health insurance issuers. The Department adopted the Bright Futures Periodicity Schedule as a HRSA-supported guideline for infants, children, and adolescents under section 2713 of the Public Health Service Act. See 75 FR 41726, 41740 (July 19, 2010). To develop recommendations for HRSA's consideration, the Bright Futures Program convenes a panel of pediatric primary care experts to conduct rigorous reviews of current scientific evidence, solicit and consider public input, and make recommendations to HRSA regarding screenings and assessments recommended at each well-child visit from infancy through adolescence. HRSA then determines whether to support, in whole or in part, the recommended updates. The schedule of preventive care and screenings for infants, children, and adolescents is reflected in the Bright Futures Periodicity Schedule. This work is supported through the Bright Futures Program via cooperative agreement with the American Academy of Pediatrics.

The Bright Futures Program convenes a panel of pediatric primary care experts that examines the evidence to develop new (and update existing) recommendations for pediatric preventive services. The Bright Futures Program also disseminates final HRSA-supported recommendations through the annual publication of the updated Bright Futures Periodicity Schedule, with associated resources for practitioners and families.

The Bright Futures Program bases its recommended updates to the Guidelines on review and synthesis of existing clinical guidelines and new scientific evidence. Additionally, HRSA requires that the Bright Futures Program incorporate processes to assure opportunity for public comment in the development of the updated Bright Futures Periodicity Schedule.

The Bright Futures Program proposed and HRSA has accepted recommended updates to the Bright Futures Periodicity Schedule relating to increasing the upper age limit for Screening for HIV as detailed below.

Screening for HIV

In the current Bright Futures Periodicity Schedule, the age range recommended for adolescent universal screening for HIV is between the 15-year visit and 18-year visit. The Bright Futures Program proposed and HRSA has accepted an update that would expand the recommended age range for adolescent universal screening for HIV to between the 15-year visit and 21-year visit.

In the Bright Futures Periodicity Schedule, a ''dot'' with an ''arrow'' indicates a ''range during which a service may be provided.'' The previous guideline and updated guideline on HIV screening is reflected in the chart below:

TOPIC	ADOLESCENCE										
PROCEDURES	11 Y	12 Y	13 Y	14 Y	15 Y	16 Y	17 Y	18 Y	19 Y	20 Y	21 Y
HIV (Current) [30]	★	★	★	★	←—	—	•—	—→	★	★	★
HIV (Update) [30]	★	★	★	★	•	——	——	——	——	——	——→

All such screenings (universal and risk-based) within this age range are within the scope of the guideline. The update also includes an accompanying footnote to provide updated information about more frequent screening for youth assessed as at high risk of HIV infection. The full footnote reads: ''Screen adolescents for HIV at least once between the ages of 15 and 21 making every effort to preserve confidentiality of the adolescent, as per ''Human

Immunodeficiency Virus (HIV) Infection: Screening'' (*https://www.uspreventiveservicestaskforce.org/uspstf/recommendation/human-immunodeficiency-virus-hiv-infection-screening*), and after initial screening, youth at increased risk of HIV infection should be retested annually or more frequently, as per ''Adolescents and Young Adults: The Pediatrician's Role in HIV Testing and Pre- and Postexposure HIV Prophylaxis'' (*https://doi.org/10.1542/peds.2021-055207*).

Discussion of Recommended Updated Guidelines

Early detection of an infection with HIV in adolescents and young adults can lead to improved health outcomes and reduce the further spread of HIV by individuals who are not yet aware they are infected. Universal screening is a type of screening that a provider may recommend without first identifying a specific risk factor or symptom. Given the sustained high numbers of people living with HIV in the United States; documented missed opportunities for HIV testing; advances in HIV diagnostics, treatment, and prevention; and age stratified epidemiological data around HIV incidence and HIV risk related behaviors, the range for universal screening is being extended to the 21-year visit.[1] [2] The aim is to better detect, treat, support, and prevent HIV infection among adolescents and youth, as well as the population at large.

A **Federal Register** notice on November 2, 2022 sought public comment on these proposed updates (87 FR 66197).[3] The Bright Futures Program considered all public comments as part of its deliberative process and provided the comments to HRSA for its consideration. A total of 10 responders provided comments, the majority of whom agreed with the proposed update. Two respondents provided additional views. One comment suggested lowering the screening age range. Current clinical guidance to begin universal screening at age 15 is based on the age-stratified incidence of HIV infection and data on sexual activity in youth. No changes were made in response to this comment. The other comment did not specifically address HIV screening and is therefore beyond the scope of the proposed update.

After consideration of public comment, the Bright Futures Program submitted recommended updates for HIV screening to HRSA for consideration, as detailed above. On December 30, 2022, the HRSA Administrator accepted the Bright Futures Program recommendations and, as such, updated the guidelines. Non-grandfathered group health plans and health insurance issuers offering group or individual health insurance coverage must cover without cost-sharing the services and screenings listed as the HRSA-supported preventive services guidelines for infants, children, and adolescents for plan years (in the individual market, policy years) that begin one year after this date. Thus, for most plans, this update will take effect for purposes of the Section 2713 coverage requirement in 2024. Additional information regarding the Bright Futures Program can be accessed at the following link: *https://mchb.hrsa.gov/maternal-child-health-topics/child-health/bright-futures.html.*

Authority: Section 2713(a)(4) of the Public Health Service Act, 42 U.S.C. 300gg–13(a)(4).

Carole Johnson,

Administrator.

[FR Doc. 2022–28661 Filed 1–4–23; 8:45 am]

BILLING CODE 4165–15–P

[1] Hsu KKC, Rakhmanina NY, Chadwick EG. et al. Adolescents and young adults: the pediatrician's role in HIV testing and pre- and postexposure HIV prophylaxis. Pediatrics 2022; 149 (01) e2021055207.

[2] US Preventive Services Task Force Final Recommendation Statement: Human Immunodeficiency Virus (HIV) Infection: Screening. 2019. Available at: *https://www.uspreventiveservicestaskforce.org/uspstf/recommendation/human-immunodeficiency-virus-hiv-infection-screening.*

[3] *See https://www.federalregister.gov/documents/2022/11/02/2022-23845/notice-of-request-for-public-comment-on-proposed-update-to-the-bright-futures-periodicity-schedule.*

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request; Information Collection Request Title: Health Resources and Services Administration Uniform Data System, OMB No. 0915–0193—Revision

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR must be received no later than February 6, 2023.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 14N39, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA OMB PRA Officer, Samantha Miller, at (301) 443–1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

Information Collection Request Title: HRSA Uniform Data System (UDS) OMB No. 0915–0193—Revision.

Abstract: The Health Center Program, administered by HRSA, is authorized under section 330 of the Public Health Service (PHS) Act (42 U.S.C. 254b). Health centers are community-based and patient-directed organizations that deliver affordable, accessible, quality, and cost-effective primary health care services to patients regardless of their ability to pay. Nearly 1,400 health centers operate approximately 12,000 service delivery sites that provide primary health care to more than 30 million people in every U.S. state, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and the Pacific Basin. HRSA uses the UDS [1] for annual reporting by Health Center Program awardees (those funded under section 330 of the PHS Act), Health Center Program look-alikes, and Nurse Education, Practice, Quality and Retention [2] (NEPQR) Program awardees (specifically those funded under the practice priority areas of section 831(b) of the PHS Act). Look-alikes do not routinely receive Federal funding under section 330 of the PHS Act, but meet the Health Center Program requirements for designation under the program (42 U.S.C. 1395x(aa)(4)(A)(ii) and 42 U.S.C. 1396d(l)(2)(B)(ii)).

Need and Proposed Use of the Information: UDS data collection updates must be completed in a timely manner in order for health centers to fulfill Health Center Program requirements. Approval of these

[1] *https://www.cms.gov/files/document/sgm-clearinghouse-uds.pdf.*

[2] *https://www.hrsa.gov/grants/find-funding/hrsa-20-012.*

changes is needed by February 1, 2023, to implement the changes in the data collection system and to provide adequate information on UDS reporting guidance to health centers, partners, and key stakeholders. HRSA plans to make the following updates for the performance year 2023 UDS data collection:

- *Table 3B (Demographic Characteristics),* will be updated to include additional subpopulations selection options to better reflect the diversity of patients served by health centers. Race/ethnicity categories will be updated to align with U.S. Department of Health and Human Services (HHS) data standards.[3] In accordance with section 4302 within the Office of the Assistant Secretary for Planning and Evaluation (ASPE)[4] *Implementation Guidance on Data Standards for Race, Ethnicity, Sex, Primary Language, and Disability Status,* the UDS will be updated to include subpopulations categories for: Asian, Native Hawaiian, Other Pacific Islanders as well as a broader selection for Hispanic ethnicity.

The 2011 HHS race and ethnicity categories maintains alignment with the 1997 OMB[5] minimum categories for race and ethnicity allow for a better understanding of the cultural diversity of patients served by health centers.

- *Table 5 (Staffing and Utilization),* will be updated to include four distinct lines for reporting Pharmacy Personnel categorized by Pharmacists, Clinical Pharmacist, Pharmacy Technicians, and Other Pharmacy Personnel. Health center personnel are critical to the functioning of health centers, collecting inclusive information about the health center workforce, will allow HRSA's Bureau of Primary Health Care to better understand workforce composition as well as improve the ability to articulate the role that pharmacy personnel play in an integrated primary care.
- *Table 6A (Selected Diagnoses and Services Rendered),* will be updated to include a diagnostic measure representing long COVID. This measure is labeled *Post COVID–19 condition, unspecified,* within the Selected Infectious and Parasitic Diseases grouping of measures. With this measure, health centers are able to report both number of patients with this diagnosis as well as the number of patient visits related to the diagnosis.[6] The Centers for Disease Control and Prevention classifies long COVID, also known as post-COVID, conditions as a wide range of new, returning, or ongoing health problems people can experience four or more weeks after first being infected with the virus that causes COVID–19.[7] Data on this measure will lead to better understanding the impact of COVID–19 post-acute infection on health center patients.
- *Table 6A (Selected Diagnoses and Services Rendered),* will be updated to include a measure that tracks the number of patients who receive pediatric developmental screening and evaluation services. The 2023 UDS will include developmental screening, behavioral screening/testing, and administrative assessment International Classification of Diseases diagnostic and Current Procedural Terminology billing codes for use to track the changes in the number of children who receive developmental screening and evaluation services. Early childhood is a critical period for physical, cognitive, and social development, laying the foundation for life-long health and well-being.[8] Children who experience poverty, particularly during early life are at risk of adverse health and developmental outcomes.
- *Table 6B* (*Quality of Care Measures*), and *Table 7* (*Health Outcomes and Disparities*), collected UDS clinical quality measures[9] (CQMs) where applicable. Collected UDS CQMs will be updated in alignment with specifications of the issued performance year 2023 electronic-specified clinical quality measures, released by the Centers for Medicare and Medicaid Services for use by eligible providers. Clinical performance measure alignment across national programs promotes data standardization, quality, and transparency, and decreases reporting burden for providers and organizations participating in multiple Federal programs.
- *Appendix D: (Health Center Health Information Technology* {*HIT*} *Capabilities Form),* will be updated with a question asking health centers to provide the total number of patients that were screened for social risk factors, using a standardized screener, during the calendar year. This question provides a more accurate view of the impact of social risk on the health center patient population and continues to reinforce Social Determinates of Health as a priority area intrinsically linked with health equity.
- Beginning with the *2023 UDS,* health centers will be able to submit patient-level data in fulfillment of data elements on Tables:
  - Table PBZC (Patients by Zip Code)
  - Table 3A (Patients by Age and Sex Assigned at Birth)
  - Table 3B (Demographic Characteristics)
  - Table 4 (Selected Characteristics)
  - Table 6A (Selected Diagnoses and Services Rendered)
  - Table 6B (Quality of Care Measures)
  - Table 7 (Health Outcomes and Disparities

UDS+ Patent Level Reporting leverages a methodological shift in the process by which health centers submit their annual UDS report, while maintaining historic UDS measures. High-quality accessible data are critical to strategically meeting the needs of patients and identifying opportunities for clinical process improvement. The growth in health information technology coupled with the increased adoption of electronic health records has transformed patient care delivery and underscored the need for secure and rapid exchange of health data between disparate systems. Health Level Seven International[10] developed Fast Healthcare Interoperability Resources[11] (FHIR) to standardize the electronic exchange of patient data across systems. FHIR, which is the current gold standard, has the flexibility to support a variety of user needs and enhances interoperability by transmitting health data rapidly and more securely than ever before. It is important for the collection of UDS data to align with interoperability standards and reporting requirements across HHS and the healthcare industry. Leveraging FHIR to collect UDS patient-level data will improve data granularity, allow for the development of robust patient management programs, and improve equitable access to high-quality, cost-effective primary care services.

This electronic reporting mechanism will reduce reliance on manual data entry to populate the annual UDS report, in turn yielding a reduction in reporting effort burden, and will greatly

[3] *https://aspe.hhs.gov/reports/hhs-implementation-guidance-data-collection-standards-race-ethnicity-sex-primary-language-disability-0.*

[4] *https://aspe.hhs.gov/reports/hhs-implementation-guidance-data-collection-standards-race-ethnicity-sex-primary-language-disability-0#:~:text=Section%204302%20requires%20the%20Secretary,all%20national%20population%20health%20surveys.*

[5] *https://obamawhitehouse.archives.gov/omb/fedreg_1997standards.*

[6] *https://www.cdc.gov/coronavirus/2019-ncov/long-term-effects/index.html.*

[7] *https://www.cdc.gov/coronavirus/2019-ncov/long-term-effects/index.html.*

[8] *https://www.hrsa.gov/grants/find-funding/hrsa-22-091.*

[9] *https://www.cms.gov/regulations-and-guidance/legislation/ehrincentiveprograms/downloads/guidetocqms_remediated_2011.pdf.*

[10] *https://www.hl7.org/.*

[11] *https://ecqi.healthit.gov/fhir.*

increase the analytical value of UDS data for informing policy and Program decision-making.

Likely Respondents: Likely respondents will include Health Center Program award recipients, Health Center Program look-alikes, and Nurse Education, Practice, Quality and Retention Program awardees funded under the practice priority areas of section 831(b) of the PHS Act.

Burden Statement: Burden includes the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and use technology and systems for the purpose of collecting, validating, and verifying information, processing, and maintaining information, disclosing, and providing information. FHIR standards align with the Centers for Medicare and Medicaid Services electronic clinical quality measures, allow for standardization of data, and reduce the potential for misinterpretation of measures or calculation errors. FHIR also accounts for time to train personnel, respond to a collection of information, search data sources, complete and review the collection of information, and transmit or otherwise disclose the information. FHIR will also include testing information necessary to support the UDS Test Cooperative. No more than three tests will be conducted each calendar year and no more than one hundred health centers will participate in one test. Participation is voluntary and will not affect their funding status. The total annual burden hours estimated for this Information Collection Request are summarized in the forthcoming table.

Form name	Estimated number of respondents	Estimated number of responses per respondent	Average burden per response (in hours)	Estimated total burden hours
Universal Report	*Total:* 1,505 H80s: 1,370. LALs: 117. BHW: 18.	1.00	238	358,190
Grant Report	*Total:* 438 438 Health Centers submitted 1 or more Grant Reports. 1: 346. 2: 80. 3: 12.	1.24	30	16,294
UTC Tests	35	3.00	8	840
Total	1,978	5.24		375,324

HRSA specifically requests comments on: (1) the necessity and feasibility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2022–28621 Filed 1–4–23; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Update to the HRSA-Supported Women's Preventive Services Guidelines Relating to Screening for Diabetes in Pregnancy and Screening for Diabetes After Pregnancy

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: A **Federal Register** notice published on November 3, 2022, detailed and sought public comment on recommendations under development by the Women's Preventive Services Initiative (WPSI), regarding updates to the HRSA-supported Women's Preventive Services Guidelines (Guidelines). The proposed updates specifically related to (1) Screening for Diabetes in Pregnancy and (2) Screening for Diabetes after Pregnancy. WPSI convenes health professionals to develop draft recommendations for HRSA's consideration. Three comments were received and considered as detailed below. On December 30, 2022, HRSA accepted as final WPSI's recommended updates to the (1) Screening for Diabetes in Pregnancy and (2) Screening for Diabetes after Pregnancy guidelines. Under applicable law, non-grandfathered group health plans and health insurance issuers offering non-grandfathered group and individual health insurance coverage must include coverage, without cost sharing, for certain preventive services, including those provided for in the HRSA-supported Guidelines. The Departments of Labor, Health and Human Services, and the Treasury have previously issued regulations describing how group health plans and health insurance issuers apply the coverage requirements. Please see *https://www.hrsa.gov/womens-guidelines* for additional information.

FOR FURTHER INFORMATION CONTACT: Kimberly Sherman, HRSA, Maternal and Child Health Bureau, telephone: (301) 443–8283, email: *wellwomancare@hrsa.gov.*

SUPPLEMENTARY INFORMATION: Under the Patient Protection and Affordable Care Act, Public Law 111–148, the preventive care and screenings set forth in the Guidelines are required to be covered without cost-sharing by certain group health plans and health insurance issuers. HRSA established the Guidelines in 2011 based on expert recommendations by the Institute of Medicine, now known as the National Academy of Medicine, developed under a contract with the Department of Health and Human Services. Since 2016, HRSA has funded cooperative agreements with the American College of Obstetricians and Gynecologists (ACOG) for the Women's Preventive Services Initiative (WPSI), to convene a coalition representing clinicians, academics, and consumer-focused health professional organizations to

conduct a rigorous review of current scientific evidence, solicit and consider public input, and make recommendations to HRSA regarding updates to the Guidelines to improve adult women's health across the lifespan. HRSA then determines whether to support, in whole or in part, the recommended updates to the Guidelines.

WPSI incudes an Advisory Panel and two expert committees, the Multidisciplinary Steering Committee and the Dissemination and Implementation Steering Committee, which are comprised of a broad coalition of organizational representatives who are experts in disease prevention and women's health issues. With oversight by the Advisory Panel, and with input from the Multidisciplinary Steering Committee, WPSI examines the evidence to develop new (and update existing) recommendations for women's preventive services. WPSI's Dissemination and Implementation Steering Committee takes HRSA-approved recommendations and disseminates them through the development of implementation tools and resources for both patients and practitioners.

WPSI bases its recommended updates to the Guidelines on review and synthesis of existing clinical guidelines and new scientific evidence, following the National Academy of Medicine standards for establishing foundations for and rating strengths of recommendations, articulation of recommendations, and external reviews. Additionally, HRSA requires that WPSI incorporate processes to assure opportunity for public comment, including participation by patients and consumers, in the development of the updated Guidelines.

WPSI proposed and HRSA has accepted recommended updates to the Guidelines relating to Screening for Diabetes in Pregnancy and Screening for Diabetes after Pregnancy as detailed below:

(1) *Screening for Diabetes in Pregnancy:*

The current ''Screening for Gestational Diabetes Mellitus'' title is now revised to read ''Screening for Diabetes in Pregnancy'' and the clinical recommendation is now revised to state: ''The Women's Preventive Services Initiative recommends screening pregnant women for gestational diabetes mellitus after 24 weeks of gestation (preferably between 24 and 28 weeks of gestation) to prevent adverse birth outcomes. WPSI recommends screening pregnant women with risk factors for type 2 diabetes or GDM before 24 weeks of gestation—ideally at the first prenatal visit.''

(2) *Screening for Diabetes after Pregnancy:*

The current ''Screening for Diabetes Mellitus after Pregnancy'' title is now revised to read ''Screening for Diabetes after Pregnancy'' and the clinical recommendation is now revised to state: ''The WPSI recommends screening for type 2 diabetes in women with a history of gestational diabetes mellitus (GDM) who are not currently pregnant and who have not previously been diagnosed with type 2 diabetes. Initial testing should ideally occur within the first year postpartum and can be conducted as early as 4–6 weeks postpartum. Women who were not screened in the first year postpartum or those with a negative initial postpartum screening test result should be screened at least every 3 years for a minimum of 10 years after pregnancy. For those with a positive screening test result in the early postpartum period, testing should be repeated at least 6 months postpartum to confirm the diagnosis of diabetes regardless of the type of initial test (*e.g.,* fasting plasma glucose, hemoglobin A1c, oral glucose tolerance test). Repeat testing is also indicated for women screened with hemoglobin A1c in the first 6 months postpartum regardless of whether the test results are positive or negative because the hemoglobin A1c test is less accurate during the first 6 months postpartum.''

Discussion of Recommended Updated Guidelines

Screening for Diabetes in Pregnancy

WPSI recommended three updates to the Guideline on Screening for Gestational Diabetes Mellitus. The first change is a revision to the title of the Guideline from ''Screening for Gestational Diabetes Mellitus'' to ''Screening for Diabetes in Pregnancy.'' This change to the title was made for consistency with the clinical recommendation, which includes screening for gestational diabetes and screening for preexisting diabetes, as the previous title described a more limited scope in screening. The second update recommended by WPSI is to change language in the second sentence of the recommendation from ''diabetes mellitus'' to ''type 2 diabetes or GDM.'' This change reflects that ''diabetes mellitus'' is commonly described as type 2 diabetes. Third, WPSI modified the recommendation by relocating the information on specific types of screening to the Implementation Considerations section of the Guideline. The existing Guideline recommends the 2-step approach, because of its high sensitivity and specificity. In its recommended update, WPSI continues to recommend the 2-step approach, but has relocated it to the Implementation Considerations section, and added the 1-step approach to the list of screening modalities in the Implementation Considerations section, because both approaches are acceptable screening tests based on studies described in the updated 2021 United States Preventive Services Task Force evidence review. Both the 1-step and 2-step screening modalities are within the scope of this Guideline.

Screening for Diabetes After Pregnancy

WPSI also recommended five updates to the Guideline on Screening for Diabetes Mellitus After Pregnancy. The first change is a revision to the title of the Guideline, from ''Screening for Diabetes Mellitus After Pregnancy'' to ''Screening for Diabetes After Pregnancy.'' This change was made because ''diabetes mellitus'' is more commonly described as diabetes. Second, WPSI recommended removing the reference to Table 1, ''Preferred Testing Strategy Based on Postpartum Timeframe'' based upon feedback from the clinical community, noting that the table might be confusing and could be simplified in written format, and recommended including this information in narrative form. Third, WPSI recommended screening for ''women who are not screened in the first year postpartum'' and ''women with a positive screening test result in early postpartum.'' This recommendation was added to ensure screening for women who were not screened postpartum for various reasons (*e.g.,* scheduling, lack of transportation, availability of testing, etc.), and to reflect that universal screening for women with a history of GDM is more appropriate than risk-based screening because the risk of developing type 2 diabetes is high among all such individuals. Fourth, WPSI recommended adding new language to recommend repeat testing after 6 months postpartum to confirm a positive test result from the early postpartum period. Fifth, WPSI recommended adding new language to the Guideline explaining that hemoglobin A1c tests conducted within the first 6 months postpartum should be repeated because the test is less accurate when conducted during the first 6 months postpartum. Screening for type 2 diabetes after pregnancy as described in this Guideline, including follow-up

diabetes screening testing, is within the scope of this Guideline.

A **Federal Register** notice published on November 3, 2022 sought public comment on these proposed updates (87 FR 66310).[1] WPSI considered all public comments as part of its deliberative process and provided the comments to HRSA for its consideration. A total of three respondents provided comments during the public comment period. One commenter suggested that the word, ''all'' be added in front of ''pregnant women'' in the first sentence of the recommendation on Screening for Diabetes in Pregnancy. This comment was not accepted as the current wording already pertains to all individuals to which it applies. The remaining comments did not specifically address the recommended proposed updates. WPSI also removed the parenthetical description of the early postpartum period ''(*i.e.,* 4–6 weeks postpartum)'' to better align with medical evidence.

After consideration of public comment, WPSI submitted the recommended updates for (1) Screening for Diabetes in Pregnancy and (2) Screening for Diabetes after Pregnancy as detailed above. On December 30, 2022, the HRSA Administrator accepted WPSI's recommendations and, as such, updated the Women's Preventive Services Guidelines. Non-grandfathered group health plans and health insurance issuers offering group or individual health insurance coverage must cover without cost-sharing the services and screenings listed on the updated Women's Preventive Services Guidelines for plan years (in the individual market, policy years) that begin 1 year after this date. Thus, for most plans, this update will take effect for purposes of the section 2713 coverage requirement in 2024. Additional information regarding the Women's Preventive Services Guidelines can be accessed at the following link: *https://www.hrsa.gov/womens-guidelines.*

Authority: Section 2713(a)(4) of the Public Health Service Act, 42 U.S.C. 300gg–13(a)(4).

Carole Johnson,

Administrator.

[FR Doc. 2022–28662 Filed 1–4–23; 8:45 am]

BILLING CODE 4165–15–P

[1] *See https://www.federalregister.gov/documents/2022/11/03/2022-23860/notice-of-request-for-public-comment-on-two-draft-recommendations-to-update-the-hrsa-supported.*

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2022–0706]

Great Lakes Pilotage Advisory Committee Meeting; February 2023 Meeting

AGENCY: U.S. Coast Guard, Department of Homeland Security.

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: The Great Lakes Pilotage Advisory Committee (Committee) will meet in Covington, Louisiana, to discuss matters relating to Great Lakes Pilotage, including review of proposed Great Lakes Pilotage regulations and policies. The meeting will be open to the public.

DATES:

Meeting: The Committee will meet on Wednesday, February 8, 2023, from 8 a.m. to 5:30 p.m. Central Standard Time (CST). Please note that this meeting may adjourn early if the Committee has completed its business.

Comments and supporting documentations: To ensure your comments are received by Committee members before the meeting, submit your written comments no later than February 1, 2023.

ADDRESSES: The meeting will be held at the Covington Firehouse Event Center, 432 N Theard Street, Covington, LA, 70433; *https://covla.com/city-departments/facilities/.*

Pre-registration Information: Pre-registration is not required for access to the meeting. Attendees at the meeting will be required to follow COVID–19 safety guidelines promulgated by the Centers for Disease Control and Prevention (CDC), which may include the need to wear masks. CDC guidance on COVID protocols can be found here: *https://www.cdc.gov/coronavirus/2019-ncov/communication/guidance.html.*

The Great Lakes Pilotage Advisory Committee is committed to ensuring all participants have equal access regardless of disability status. If you require reasonable accommodation due to a disability to fully participate, please email Mr. Francis Levesque at *Francis.R.Levesque@uscg.mil* or call (571) 308–4941 as soon as possible.

Instructions: You are free to submit comments at any time, including orally at the meeting, but if you want Committee members to review your comment before the meeting, please submit your comments no later than February 1, 2023. We are particularly interested in comments regarding the topics in the ''Agenda'' section below. We encourage you to submit comments through the Federal eRulemaking Portal at: *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov* contact the individual in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. You must include the docket number [USCG–2022–0706]. Comments received will be posted without alteration at *https://www.regulations.gov* including any personal information you provided. You may wish to view the Privacy and Security Notice found via link *https://www.regulations.gov.* For more about the privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). If you encounter technical difficulties with comment submission, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Docket Search: Documents mentioned in this notice as being available in the docket, and all public comment, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign-up for email alerts, you will be notified when comments are posted.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Levesque, Alternate Designated Federal Officer of the Great Lakes Pilotage Advisory Committee, telephone (571) 308–4941 or email *Francis.R.Levesque@uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is in compliance with the *Federal Advisory Committee Act* (5 U.S.C. appendix). The Committee is established under the authority of 46 U.S.C. 9307 and makes recommendations to the Secretary of Homeland Security and the U.S. Coast Guard on matters relating to Great Lakes pilotage, including review of proposed Great Lakes pilotage regulations and policies.

Agenda: The Great Lakes Pilotage Advisory Committee will meet on Wednesday, February 8, 2023, to review, discuss, deliberate and formulate recommendations, as appropriate on the following topics:

1. Value of Great Lakes Pilotage Advisory Committee Meetings.
2. The date a pilot is counted in the rate.
3. Number of pilots needed.
4. Winter navigation.
5. Best Practices.
6. 2023 Annual Rule Update.
7. Expense and Revenue Report Update.

8. Modernization Rulemaking Update.
9. Staffing Model.
10. Discussion of the 2013 Memorandum of Understanding between U.S. Coast Guard and Canada.
11. Public Comments.

A copy of all meeting documentation will be available at *https://www.dco.uscg.mil/Our-Organization/Assistant-Commandant-for-Prevention-Policy-CG-5P/Marine-Transportation-Systems-CG-5PW/Office-of-Waterways-and-Ocean-Policy/Great-Lakes-Pilotage-Advisory-Committee/* no later than February 22, 2023. Alternatively, you may contact Mr. Frank Levesque as noted in the **FOR FURTHER INFORMATION CONTACT** section above.

Public comments or questions will be taken throughout the meeting as the Committee discusses the issues and prior to deliberations and voting. There will also be a public comment period at the end of the meeting. Speakers are requested to limit their comments to 5 minutes. Contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section above, to register as a speaker.

Dated: December 29, 2022.

Michael D. Emerson,

U.S. Coast Guard, Headquarters, Director, Marine Transportation Systems.

[FR Doc. 2022–28636 Filed 1–4–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[Docket No. BIA–2022–0005–0024; 2231A2100DD/AAKC001030/A0A501010.999900; OMB Control Number 1076–0017, 1076–0100, 1076–0172, 1076–0176, 1076–0177, 1076–0179, 1076–0187, 1076–0188, 1076–0195, 1076–0196]

Agency Information Collection Activities; Request for Comment on Fiscal Year 2024 Expirations Under the Paperwork Reduction Act

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Indian Affairs (BIA), Bureau of Indian Education (BIE), and Office of the Assistant Secretary—Indian Affairs (AS–IA) are proposing to renew ten (10) information collections. Office of Management and Budget (OMB) Control Number 1076–0017, 1076–0100, 1076–0172, 1076–0176, 1076–0177, 1076–0179, 1076–0187, 1076–0188, 1076–0195, and 1076–0196.

DATES: Interested persons are invited to submit comments on or before March 6, 2023.

ADDRESSES: To submit a comment, please visit *https://www.regulations.gov/document/BIA-2022-0005-0024* or *https://www.regulations.gov/docket/BIA-2022-0005* or use the search field on *https://www.regulations.gov* to find the ''BIA–2022–0005'' docket. Please follow the comment instructions on *Regulations.gov* and reference the applicable OMB Control Number within your comment submission.

FOR FURTHER INFORMATION CONTACT: Steven Mullen, Information Collection Clearance Officer, by email at *comments@bia.gov* or telephone at (202) 924–2650. 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. 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), all information collections require approval under the PRA. 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.

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 the 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 our estimate of the burden for the collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve the 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.

OMB Control Number 1076–0017

Abstract: We, Bureau of Indian Affairs (BIA) are proposing to renew an information collection. The information collection allows BIA to determine whether an individual is eligible for assistance and services under 25 CFR part 20 when comparable financial assistance or social services either are not available or not provided by State, Tribal, county, local, or other Federal agencies. No third-party notification or public disclosure burden is associated with this collection.

Title of Collection: Financial Assistance and Social Services Program.

OMB Control Number: 1076–0017.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Individual Indians seeking financial assistance or social services from BIA.

Total Estimated Number of Annual Respondents: 140,000 provide information on the application; of those, 72,000 contribute information to an employability assessment and ISP.

Total Estimated Number of Annual Responses: 196,000.

Estimated Completion Time per Response: One half hour for the application and 1 hour for the employability assessment and ISP.

Total Estimated Number of Annual Burden Hours: 134,000 hours.

Respondent's Obligation: Required to obtain a benefit.

Frequency of Collection: Once per respondent.

Total Estimated Annual Nonhour Burden Cost: $0.

OMB Control Number 1076–0100

Abstract: We, the Bureau of Indian Affairs (BIA), are proposing to renew an

information collection. Section 5 of the Indian Reorganization Act of June 18, 1934 (25 U.S.C. 5108) and the Indian Land Consolidation Act of January 12, 1983 (25 U.S.C. 2202) authorize the Secretary of the Interior (Secretary), in his/her discretion, to acquire lands through purchase, relinquishment, gift, exchange, or assignment within or without existing reservations for the purpose of providing land for Indian Tribes. Other specific laws also authorize the Secretary to acquire lands for individual Indians and Tribes. Regulations implementing the acquisition authority are at 25 CFR 151. In order for the Secretary to acquire land on behalf of individual Indians and Tribes, the BIA must collect certain information to identify the party(ies) involved and to describe the land in question. The Secretary also solicits additional information deemed necessary to make a determination to accept or reject an application to take land into trust for the individual Indian or Tribe, as set out in 25 CFR 151. This information collection allows the BIA to review applications for compliance with regulatory and statutory requirements. No specific form is used.

Title of Collection: Acquisition of Trust Land.

OMB Control Number: 1076–0100.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Individual Indians and Federally Recognized Indian Tribes seeking acquisition of land into trust status.

Total Estimated Number of Annual Respondents: 500.

Total Estimated Number of Annual Responses: 500.

Estimated Completion Time per Response: Ranges from 100 to 150 hours.

Total Estimated Number of Annual Burden Hours: 55,000.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: $0.

OMB Control Number 1076–0172

Abstract: We, the Office of the Assistant Secretary—Indian Affairs (AS–IA), are proposing to renew an information collection. The information collected includes Tribal-state compacts or compact amendments entered into by Indian Tribes and State governments. The Secretary of the Interior reviews this information under 25 CFR 293, Class III Tribal-State Gaming Compact Process and the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. 2710(d)(8)(A), (B) and (C), which authorizes the Secretary to approve, disapprove, or ''consider approved'' (*i.e.,* deemed approved) a Tribal-state gaming compact or compact amendment and publish notice of that approval or considered approval in the **Federal Register**.

Title of Collection: Class III Tribal-State Gaming Compact Process.

OMB Control Number: 1076–0172.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Indian Tribes and State governments.

Total Estimated Number of Annual Respondents: 40 per year.

Total Estimated Number of Annual Responses: 40 per year.

Estimated Completion Time per Response: 200 hours.

Total Estimated Number of Annual Burden Hours: 8,000 hours.

Respondent's Obligation: Required to obtain a benefit.

Frequency of Collection: One time.

Total Estimated Annual Nonhour Burden Cost: $0.

OMB Control Number 1076–0176

Abstract: We, the Bureau of Indian Education (BIE) are proposing to renew an information collection. Indian Tribes and Tribal organizations must submit information to the BIE if they are served by elementary or secondary schools for Indian children that, through Department of the Interior, receive allocations of funding under the IDEIA for the coordination of assistance for Indian children 0 to 5 years of age with disabilities on reservations. The information must be provided on two forms. The Part B form addresses Indian children 3 to 5 years of age on reservations served by Bureau-funded schools. The Part C form addresses Indian children up to 3 years of age on reservations served by Bureau-funded schools. The information required by the forms includes counts of children as of a certain date each year.

Title of Collection: IDEIA Part B and Part C Child Count.

OMB Control Number: 1076–0176.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Indian Tribes and Tribal organizations.

Total Estimated Number of Annual Respondents: 118.

Total Estimated Number of Annual Responses: 118.

Estimated Completion Time per Response: 20 hours per form.

Total Estimated Number of Annual Burden Hours: 2,360 hours.

Respondent's Obligation: Required to obtain a benefit.

Frequency of Collection: Twice (once per year for each form).

Total Estimated Annual Nonhour Burden Cost: $0.

OMB Control Number 1076–0177

Abstract: We, the Office of the Assistant Secretary—Indian Affairs (AS–IA), are proposing to renew an information collection. The Energy Policy Act of 2005 authorizes the Secretary of the Interior to provide assistance to Indian Tribes and Tribal energy resource development organizations for energy development and appropriates funds for such projects on a year-to-year basis. See 25 U.S.C. 3502. When funding is available, the Office of Indian Energy and Economic Development (IEED) may solicit proposals for projects for building capacity for Tribal energy resource development on Indian land from Tribal energy resource development organizations and Indian Tribes, including Alaska Native regional and village corporations under the TEDC program. For the purposes of this program, ''Indian land'' includes: all land within the boundaries of an Indian reservation, pueblo, or rancheria; any land outside those boundaries that is held by the United States in trust for a Tribe or individual Indian or by a Tribe or individual Indian with restrictions on alienation; and land owned by an Alaska Native regional or village corporation.

Title of Collection: Tribal Energy Development Capacity Program.

OMB Control Number: 1076–0177.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Indian Tribes and Tribal energy resource development organizations under 25 U.S.C. 3502.

Total Estimated Number of Annual Respondents: 26 per year, on average; 9 project participants each year, on average.

Total Estimated Number of Annual Responses: 40 applications per year, on average; 44 progress reports per year, on average.

Estimated Completion Time per Response: 40 hours per application; 1.5 hours per progress report.

Total Estimated Number of Annual Burden Hours: 1,666 hours (1,600 for applications and 66 for progress reports).

Respondent's Obligation: Responses required to receive a benefit.

Frequency of Collection: Once per year for applications; 4 times per year for progress reports.

Total Estimated Annual Nonhour Burden Cost: $0.

OMB Control Number 1076–0179

Abstract: We, the Bureau of Indian Education (BIE) are proposing to renew an information collection. The Individuals with Disabilities Education Improvement Act (IDEA) of 2004, (20 U.S.C. 1400 *et seq.*) requires the Bureau of Indian Education (BIE) to establish an Advisory Board on Exceptional Education. See 20 U.S.C. 1411(h)(6). BIE is seeking renewal for an information collection that would allow it to collect information regarding individuals' qualifications to serve on the Federal advisory committee known as the Advisory Board for Exceptional Children (Board). This information collection requires persons interested in being nominated to serve on the Board to provide information regarding their qualifications. This Board is currently in operation. This information collection allows BIE to better manage the nomination process for future appointments to the Board.

Title of Collection: Solicitation of Nominations for the Advisory Board for Exceptional Children.

OMB Control Number: 1076–0179.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Individuals.

Total Estimated Number of Annual Respondents: 20, per year.

Total Estimated Number of Annual Responses: 20, per year.

Estimated Completion Time per Response: 1 hour.

Total Estimated Number of Annual Burden Hours: 20 hours.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: Once.

Total Estimated Annual Nonhour Burden Cost: $0.

OMB Control Number 1076–0187

Abstract: We, the Bureau of Indian Education (BIE) are proposing to renew an information collection. The BIE is establishing standards for the appropriate use of lands and facilities by third parties. These standards address the following: The execution of lease agreements; the establishment and administration of mechanisms for the acceptance of consideration for the use and benefit of a Bureau-operated school; the assurance of ethical conduct; and monitoring the amount and terms of consideration received, the manner in which the consideration is used, and any results achieved by such use. The paperwork burden associated with the rule results from lease provisions; lease violations; and assignments, subleases, or mortgages of leases.

Title of Collection: Use of Bureau-Operated Schools by Third Parties.

OMB Control Number: 1076–0187.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Individuals and private sector.

Total Estimated Number of Annual Respondents: 17.

Total Estimated Number of Annual Responses: 24.

Estimated Completion Time per Response: One to three hours.

Total Estimated Number of Annual Burden Hours: 68 hours.

Respondent's Obligation: Required to obtain a benefit.

Frequency of Collection: Annually.

Total Estimated Annual Nonhour Burden Cost: $0.

OMB Control Number 1076–0188

Abstract: We, the Bureau of Indian Affairs (BIA), are proposing to renew an information collection. Title III of the Indian Trust Asset Reform Act (25 U.S.C. 5601, *et seq.*) requires the Secretary of the Interior to publish minimum qualifications for appraisers of Indian property and allows the Secretary to accept appraisals performed by those appraisers without further review or approval. The Secretary has developed a regulation at 43 CFR 100 to implement these provisions. The regulation requires appraisers to submit certain information so that the Secretary can verify that the appraiser meets the minimum qualifications.

Title of Collection: Appraisals & Valuations of Indian Property.

OMB Control Number: 1076–0188.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Individual Indians and Federally Recognized Indian Tribes.

Total Estimated Number of Annual Respondents: 379.

Total Estimated Number of Annual Responses: 1,137.

Estimated Completion Time per Response: One hour.

Total Estimated Number of Annual Burden Hours: 1,137.

Respondent's Obligation: Required to obtain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: $0.

OMB Control Number 1076–0195

Abstract: We, the Bureau of Indian Affairs (BIA), are proposing to renew an information collection. This information collection is authorized under 25 U.S.C. 5135; 70 Stat. 62 and 25 CFR 152.34 which provides individual Indians owning an individual tract of trust land the ability to mortgage their land for the purpose of home acquisition and construction, home improvements, and economic development. The BIA is required to review the trust mortgage application for conformity to statutes, policies, and regulations. Mortgage documents submitted to BIA from the lending institutions will assist BIA staff in their analysis to approve or disapprove a trust land mortgage application request.

Title of Collection: Trust Land Mortgage Lender Checklists.

OMB Control Number: 1076–0195.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Individuals/households, Tribal governments.

Total Estimated Number of Annual Respondents: 56.

Total Estimated Number of Annual Responses: 131.

Estimated Completion Time per Response: Varies from 20 to 40 hours.

Total Estimated Number of Annual Burden Hours: 3,840.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: Annually.

Total Estimated Annual Nonhour Burden Cost: $0.

OMB Control Number 1076–0196

Abstract: We, the Bureau of Indian Affairs (BIA), are proposing to renew an information collection. The Land Title and Records Office (LTRO) maintains title documents for land that the United States holds in trust or restricted status for individual Indians or Tribes (Indian land), much like counties and other localities maintain title documents for fee land within their jurisdictions. Individuals or entities that are requesting information regarding title documents—either for property they own or for property they seek to lease or encumber—must provide certain information to the LTRO in order for LTRO to accurately identify the property for which they are seeking information. LTRO uses the information provided by individuals or entities in order to identify the property so that they can retrieve the appropriate title documents and produce reports for that property. The collection of information

is found in § 150.305, which provides that anyone requesting title documents or reports must provide certain information, such as the name of the reservation where the land is located and the tract number or legal description.

Title of Collection: Requests for Indian Land Title and Records Information.

OMB Control Number: 1076–0196.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Individuals, private sector, government.

Total Estimated Number of Annual Respondents: 36.

Total Estimated Number of Annual Responses: 36.

Estimated Completion Time per Response: 0.5 hours.

Total Estimated Number of Annual Burden Hours: 19 hours (consisting of 10 hours for private sector respondents, 3 hours for individual respondents—rounded up from 2.5 hours, and 6 hours for government respondents—rounded up from 5.5 hours).

Respondent's Obligation: Required to obtain a benefit.

Frequency of Collection: Occasionally.

Total Estimated Annual Nonhour Burden Cost: $500.

Authority

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 these ICR actions is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Steven Mullen,

Information Collection Clearance Officer, Office of Regulatory Affairs and Collaborative, Office of the Assistant Secretary—Indian Affairs.

[FR Doc. 2022–28612 Filed 1–4–23; 8:45 am]

BILLING CODE 4337–15–P

INTERNATIONAL TRADE COMMISSION

Notice of Request for Extension of a Previously Approved Information Collection

AGENCY: United States International Trade Commission.

ACTION: 60-Day notice and request for comment.

SUMMARY: This notice announces the intention of the U.S. International Trade Commission (Commission) to request a three-year extension, under the Paperwork Reduction Act of 1995 (the Act), of the current generic survey clearance that the Office of Management and Budget (OMB) previously approved. The Commission uses this clearance to issue information collections for investigations that it is required to conduct under the Tariff Act of 1930, the Trade Act of 1974, and other trade-remedy statutes that require or authorize the Commission to make findings or determinations. The current generic survey clearance is assigned OMB Control No. 3117–0016; it will expire on June 30, 2023. The Commission requests comments concerning the proposed information collections under section 3506(c)(2)(A) of the Act; this notice describes such comments in greater detail in the supplementary information section below.

DATES: To assure that the Commission will consider your comments, it must receive them no later than 60 days after publication of this notice in the **Federal Register**.

ADDRESSES: Submit signed comments to Katherine Hiner, Acting Secretary to the Commission, (*Katherine.Hiner@usitc.gov*). Please note the Secretary's Office will accept only electronic filings at this time. No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the proposed information collection and supporting documentation from Stamen Borisson, Office of Investigations, *stamen.borisson@usitc.gov,* (202) 205–3125. 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. You may also obtain general information concerning the Commission by accessing its website (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION:

Request for Comments

The Commission solicits comments as to: (1) whether the proposed information collection is necessary for the proper performance of the Commission's functions; (2) the accuracy of the Commission's estimate of the burden of the proposed information collection; (3) the quality, utility, clarity, and design of the information to be collected; and (4) minimization of the burden of the proposed information collection on those who are to respond (including through the use of appropriate automation, electronic filing, or other forms of information technology). To the extent appropriate, please cite to specific experiences that your firm has had with other governmental surveys and data collections.

Summary of the Proposed Information Collections

(1) Need for the Proposed Information Collections

The Commission utilizes, or may utilize, the information requested in questionnaires and five-year review institution notices issued under the generic survey clearance in the following statutory investigation types: antidumping duty, countervailing duty, safeguards, other import competition, market disruption, interference with programs of the U.S. Department of Agriculture, and cross-border long-haul trucking. This clearance also covers questionnaires needed for new types of trade-remedy investigations when directed in new legislation, such as rules of origin investigations or other matters in which the Commission is directed to make a determination or findings. The vast majority of information requests issued by the Commission under the existing generic clearance authority relate to antidumping and countervailing duty investigations, or reviews of orders previously issued in such investigations. The Commission's generic survey clearance to issue questionnaires does not apply to fact-finding investigations or technical assistance conducted under section 332 of the Trade Act of 1974.

The information provided by firms in response to the questionnaires under this authority provides information that the Commission uses in making its findings and determinations. Commission staff consolidates submitted information and provides it to the Commission primarily in the form of data tables, figures, and analysis within a written report. In addition, in the majority of its investigations, the Commission releases completed questionnaires returned by industry participants to representatives of parties to its investigations under an administrative protective order, the terms of which safeguard the confidentiality of any business proprietary or business confidential information. Representatives of interested parties also receive a confidential version of Commission reports under that same administrative protective order. Included in the proposed generic clearance is the administrative protective order

application form and the forms associated with submitting new petitions to the Commission. Also included in the proposed generic clearance are the institution notices for the five-year reviews of antidumping and countervailing duty orders and suspended investigations. The Commission evaluates responses to the institution notices, which will form much of the record supporting the Commission's determinations to conduct either expedited or full five-year reviews of existing antidumping and countervailing duty orders.

(2) Information Collection Plan

The Commission sends questionnaires for specific investigations to all identified domestic producers of the product(s) in question subject to the Commission proceeding. The Commission also sends importer and purchaser questionnaires to all substantial U.S. importers and purchasers of the product(s). Further, the Commission sends questionnaires to all foreign manufacturers of the product(s) in question that are represented by counsel, and, in addition, it attempts to contact any other foreign manufacturers, especially if they export the product(s) in question to the United States. Firms receiving questionnaires include businesses, farms, and other for-profit institutions; responses by domestic firms are mandatory. The Commission publishes institution notices for the five-year reviews in the **Federal Register** and solicits comments from interested parties (*e.g.,* U.S. producers within the industry in question, as well as labor unions or representative groups of workers, U.S. importers and foreign exporters, and involved foreign country governments).

(3) Description of the Information To Be Collected

As it relates to import injury questionnaires, the content of each questionnaire will differ based on the needs of a particular investigation; questionnaires are based on long-established, generic formats, that align the data being gathered to the specific points of analysis that the statutes direct the Commission to analyze. Producer questionnaires generally consist of the following four parts: (part I) general questions relating to the organization and activities of the firm; (part II) data on capacity, production, inventories, employment, and the quantity and value of the firm's shipments and purchases from various sources; (part III) financial data, including income-and-loss data on the product in question, data on asset valuation, research and development expenses, and capital expenditures; and (part IV) pricing and market factors. Questionnaires may, on occasion, also contain additional parts depending on the facts of the case and the arguments raised by interested parties, the most frequent of which relate to information to assess proposed alternative definitions of the domestic like product.

Importer questionnaires generally consist of three parts: (part I) general questions relating to the organization and activities of the firm; (part II) data on the firm's imports and the shipment and inventories of its imports; and (part III) pricing and market factors similar to that requested in the domestic producer questionnaire. Purchaser questionnaires generally consist of four parts: (part I) general questions relating to the organization and activities of the firm; (part II) data concerning the purchases of the product by the firm and the names of the firm's vendors; (part III) market characteristics and purchasing practices; and (part IV) comparisons between imported and U.S.-produced product. The Commission may send an abbreviated purchaser questionnaire: (1) in a preliminary phase investigation, consisting of two parts: (part I) data concerning the purchases of the product by the firm; and (part II) questions regarding purchasing practices; or (2) in an adequacy phase of a review investigation, consisting of one part: (part I) general questions regarding the industry. Foreign producer questionnaires generally consist of: (part I) general questions relating to the organization and activities of the firm; (part II) data concerning the firm's manufacturing operations; and may include (part III) market factors. The notices of institution for the five-year reviews include 11 specific requests for information that firms are to provide if their response is to be considered by the Commission.

(4) Estimated Burden of the Proposed Information Collection

The Commission estimates that information collections issued under the requested generic clearance will impose an average annual burden of 409,050 hours on 12,935 respondents (*i.e.,* recipients that provide a response to the Commission's questionnaires, notices of institution of five-year reviews, and other investigations and forms).

(5) Minimization of Burden

The Commission periodically reviews its investigative processes, including data collection, to reduce the information burden. Questionnaires clearly state that reasonable estimates are acceptable for certain items. The questionnaires are designed in part with check-in type formats to simplify the response. The reporting burden is reduced by limiting data to a terminal year when a time series is not required. Moreover, the reporting burden for smaller firms is reduced in that the sections of the questionnaire that are applicable to their operations are typically more limited and, when pertinent, there are fewer requested data points. The Commission will not accept requests by parties to expand the data collection or add items to the questionnaire for specific investigations if it believes that such requests will increase the response burden without substantially adding to the investigative record. Respondents submit the information provided in response to the Commission's notices of institution for the five-year reviews electronically to the Commission's Electronic Data Information System (EDIS) and Electronic Docket. In addition, the Commission has reduced the information burden by streamlining the questionnaires. For example, the Commission removed redundant fields, added auto-calculated reconciliation fields, enabled population of whole data tables, and reduced the number of years for which data is collected in certain five-year reviews. In addition, the Commission ceased collecting nonsubject pricing data in preliminary proceedings.

No record keeping burden is known to result from the proposed collection of information.

By order of the Commission.

Issued: December 29, 2022.

Jessica Mullan,

Acting Supervisory Attorney.

[FR Doc. 2022–28591 Filed 1–4–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Selective Thyroid Hormone Receptor-Beta Agonists, Processes for Manufacturing or Relating to Same, and Products Containing Same, DN 3662;* the Commission is soliciting comments on any public

interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Katherine M. Hiner, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Viking Therapeutics, Inc. on December 29, 2022. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of regarding certain selective thyroid hormone receptor-beta agonists, processes for manufacturing or relating to same, and products containing same. The complainant names as respondents: Ascletis Pharma Inc. of China; Ascletis Pharmaceuticals Co. Ltd. of China; Ascletis Bioscience Co., Ltd. of China; Gannex Pharma Co., Ltd. of China; Jinzi Jason Wu of Seattle, WA. The complainant requests that the Commission issue a permanent exclusion order, a cease and desist order, and impose a bond upon respondent's alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3662'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures).[1] Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: December 29, 2022.

Jessica Mullan,

Acting Supervisory Attorney.

[FR Doc. 2022–28610 Filed 1–4–23; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by the party listed below.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before February 6, 2023.

ADDRESSES: You may submit comments identified by Docket No. MSHA–2022–0070 by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for MSHA–2022–0070.
2. *Fax:* 202–693–9441.
3. *Email: petitioncomments@dol.gov.*
4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452.

Attention: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *Petitionsformodification@dol.gov* (email), or 202–693–9441 (fax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or
2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2022–034–C.

Petitioner: Century Mining, LLC, 7004 Buckhannon Road, Volga, West Virginia 26238.

Mine: Longview Mine, MSHA ID No. 46–09447, located in Barbour County, West Virginia.

Regulation Affected: 30 CFR 75.1002(a), Installation of electric equipment and conductors; permissibility.

Modification Request: The petitioner requests a modification of 30 CFR 75.1002(a) to permit the use of the CleanSpace EX Powered Respirator, a battery powered respirable protection unit, within 150 feet of pillar workings and longwall faces.

The petitioner states that:

(a) They are seeking an alternative to the 3M Airstream helmet to provide miners with respirable protection against coal mine dust, a protection that can provide long-term health benefits.

(b) The 3M Airstream helmet has been used in mines for over 40 years. 3M faced component disruptions for the Airstream product, causing 3M to discontinue, globally, the Airstream on June 1, 2020. The ability to order an Airstream system and components ended in February 2020, with components available through June 2020. Currently, there are no replacement powered air purifying respirators (PAPRs) that meet the MSHA standard for permissibility. PAPRs provide a constant flow of filtered air and offer respiratory protection and comfort in hot working environments.

(c) The CleanSpace EX Powered Respirator (CleanSpace EX) is UL certified to the ANSI/UL 60079–11 standard and can be used in hazardous locations because it meets the intrinsic safety protection level. It is acceptable in other jurisdictions for use in mines with the potential for methane accumulation. The product is not MSHA approved, and the manufacturer is not pursuing approval. The standards for the approval of these respirators are an accepted alternative to MSHA's standards and provide the same level of protection.

(d) The CleanSpace EX uses a lithium-ion polymer battery that is neither accessible nor removable. The lithium-ion polymer battery and motor/blower assembly are both contained within the sealed power pack assembly. It charges as a complete unit.

(e) The CleanSpace EX can be easily disassembled and cleaned.

(f) The CleanSpace EX is designed to utilize either a half or full facemask and NIOSH-approved particulate filters. It does not impair vision nor communication. The CleanSpace EX provides more comfort, as it allows the miner to simultaneously wear the issued hardhat with a headlamp. The PAPR's filter housing and fan assembly are above the shoulders, reducing ergonomic restrictions, freeing the miner from wearing the fan and filter unit around the waist, and eliminating hose attachments to the unit, which could create added hazards.

The petitioner proposes the following alternative method:

(a) Affected mine employees shall be trained in the proper use and maintenance of the CleanSpace EX in accordance with the established manufacturer guidelines. Mine employees shall also be trained to inspect the unit before each use to determine if there is any damage or defects to the unit that would negatively impact intrinsic safety. This inspection shall include all associated wiring and connections and shall take place prior to the equipment being taken underground.

(b) If it is determined that there is damage that may negatively impact the intrinsic safety, the PAPR shall be immediately removed from service.

(c) The CleanSpace EX user shall conduct daily examinations of the filter and replace as needed.

(d) When fitting a new filter on the CleanSpace EX, the Blocked Filter Alarm shall be tested by the user before the PAPR is put back into service.

(e) CleanSpace EX units shall be charged outby the last open crosscut and shall utilize the manufacturer approved battery charger. CleanSpace EX charging stations located underground shall be enclosed in a properly constructed steel box designed for such purpose.

(f) A qualified person under 30 CFR 75.151 shall monitor for methane as is required by the standard in the affected areas of the mine.

(g) The operator shall comply with all requirements of 30 CFR 75.323. The CleanSpace EX shall not be used if

methane is detected in concentrations at or above 1.0 percent methane. When 1.0 percent or more methane is detected while the CleanSpace EX is being used, the equipment shall be deenergized immediately. When 1.5 percent or more methane is detected, the CleanSpace EX shall be withdrawn from the affected area outby the last open crosscut.

(h) Employees shall be trained on how to properly use and take care of the CleanSpace EX according to manufacturer guidelines as well as all stipulations of the Decision and Order. Qualified miners shall receive training regarding the information in the Decision and Order before using equipment in the relevant part of the mine. A record of the training shall be kept and made available upon request.

(i) Within 60 days of the Decision and Order becoming finalized, the petitioner shall submit proposed revisions to the mine ventilation plan per 30 CFR 75.370, to be approved under the 30 CFR part 48 training plan by the Coal Mine Safety and Health District Manager. The revisions shall specify initial and refresher training. When the training is conducted, a MSHA Certificate of Training (Form 5000–23) shall be completed, with comments on the certificate noting non-permissible testing equipment training.

The petitioner asserts that the alternative method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Song-ae Aromie Noe,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2022–28624 Filed 1–4–23; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by the party listed below.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before February 6, 2023.

ADDRESSES: You may submit comments identified by Docket No. MSHA–2022–0069 by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for MSHA–2022–0069.
2. *Fax:* 202–693–9441.
3. *Email: petitioncomments@dol.gov.*
4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452.

Attention: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *Petitionsformodification@dol.gov* (email), or 202–693–9441 (fax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or
2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2022–033–C.

Petitioner: Century Mining, LLC, 7004 Buckhannon Road, Volga, West Virginia 26238.

Mine: Longview Mine, MSHA ID No. 46–09447, located in Barbour County, West Virginia.

Regulation Affected: 30 CFR 75.507–1(a), Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements.

Modification Request: The petitioner requests a modification of 30 CFR 75.507–1(a) to permit the use of the CleanSpace EX Powered Respirator, a battery powered respirable protection unit, in return airways as an alternative method of respirable dust protection.

The petitioner states that:

(a) They are seeking an alternative to the 3M Airstream helmet to provide miners with respirable protection against coal mine dust, a protection that can provide long-term health benefits.

(b) The 3M Airstream helmet has been used in mines for over 40 years. 3M faced component disruptions for the Airstream product, causing 3M to discontinue, globally, the Airstream on June 1, 2020. The ability to order an Airstream system and components ended in February 2020, with components available through June 2020. Currently, there are no replacement powered air purifying respirators (PAPRs) that meet the MSHA standard for permissibility. PAPRs provide a constant flow of filtered air and offer respiratory protection and comfort in hot working environments.

(c) The CleanSpace EX Powered Respirator (CleanSpace EX) is UL certified to the ANSI/UL 60079–11 standard and can be used in hazardous locations because it meets the intrinsic safety protection level. It is acceptable in other jurisdictions for use in mines with the potential for methane accumulation. The product is not MSHA approved, and the manufacturer is not pursuing approval. The standards for the approval of these respirators are an accepted alternative to MSHA's standards and provide the same level of protection.

(d) The CleanSpace EX uses a lithium-ion polymer battery that is neither accessible nor removable. The lithium-ion polymer battery and motor/blower assembly are both contained within the sealed power pack assembly. It charges as a complete unit.

(e) The CleanSpace EX can be easily disassembled and cleaned.

(f) The CleanSpace EX is designed to utilize either a half or full facemask and NIOSH-approved particulate filters. It does not impair vision nor communication. The CleanSpace EX provides more comfort, as it allows the miner to simultaneously wear the issued hardhat with a headlamp. The PAPR's

filter housing and fan assembly are above the shoulders, reducing ergonomic restrictions, freeing the miner from wearing the fan and filter unit around the waist, and eliminating hose attachments to the unit, which could create added hazards.

The petitioner proposes the following alternative method:

(a) Affected mine employees shall be trained in the proper use and maintenance of the CleanSpace EX in accordance with the established manufacturer guidelines. Mine employees shall also be trained to inspect the unit before each use to determine if there is any damage or defects to the unit that would negatively impact intrinsic safety. This inspection shall include all associated wiring and connections and shall take place prior to the equipment being taken underground.

(b) If it is determined that there is damage that may negatively impact the intrinsic safety, the PAPR shall be immediately removed from service.

(c) The CleanSpace EX user shall conduct daily examinations of the filter and replace as needed.

(d) When fitting a new filter on the CleanSpace EX, the Blocked Filter Alarm shall be tested by the user before the PAPR is put back into service.

(e) CleanSpace EX units shall be charged outby the last open crosscut and shall utilize the manufacturer approved battery charger. CleanSpace EX charging stations located underground shall be enclosed in a properly constructed steel box designed for such purpose.

(f) A qualified person under 30 CFR 75.151 shall monitor for methane as is required by the standard in the affected areas of the mine.

(g) The operator shall comply with all requirements of 30 CFR 75.323. The CleanSpace EX shall not be used if methane is detected in concentrations at or above 1.0 percent methane. When 1.0 percent or more methane is detected while the CleanSpace EX is being used, the equipment shall be deenergized immediately. When 1.5 percent or more methane is detected, the CleanSpace EX shall be withdrawn from the affected area outby the last open crosscut.

(h) Employees shall be trained on how to properly use and take care of the CleanSpace EX according to manufacturer guidelines as well as all stipulations of the Decision and Order. Qualified miners shall receive training regarding the information in the Decision and Order before using equipment in the relevant part of the mine. A record of the training shall be kept and made available upon request.

(i) Within 60 days of the Decision and Order becoming finalized, the petitioner shall submit proposed revisions to the mine ventilation plan per 30 CFR 75.370, to be approved under the 30 CFR part 48 training plan by the Coal Mine Safety and Health District Manager. The revisions shall specify initial and refresher training. When the training is conducted, a MSHA Certificate of Training (Form 5000–23) shall be completed, with comments on the certificate noting non-permissible testing equipment training.

The petitioner asserts that the alternative method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Song-ae Aromie Noe,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2022–28623 Filed 1–4–23; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by the party listed below.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before February 6, 2023.

ADDRESSES: You may submit comments identified by Docket No. MSHA–2022–0068 by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for MSHA–2022–0068.
2. *Fax:* 202–693–9441.
3. *Email: petitioncomments@dol.gov.*
4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452.

Attention: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *Petitionsformodification@dol.gov* (email), or 202–693–9441 (fax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or
2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2022–032–C.

Petitioner: Century Mining, LLC, 7004 Buckhannon Road, Volga, West Virginia, 26238.

Mine: Longview Mine, MSHA ID No. 46–09447, located in Barbour County, West Virginia.

Regulation Affected: 30 CFR 75.500(d), Permissible electric equipment.

Modification Request: The petitioner requests a modification of 30 CFR 75.500(d) to permit the use of the CleanSpace EX Powered Respirator, a battery powered respirable protection unit, in or inby the last open crosscut as an alternative method of respirable dust protection.

The petitioner states that:

(a) They are seeking an alternative to the 3M Airstream helmet to provide miners with respirable protection against coal mine dust, a protection that can provide long-term health benefits.

(b) The 3M Airstream helmet has been used in mines for over 40 years. 3M

faced component disruptions for the Airstream product, causing 3M to discontinue, globally, the Airstream on June 1, 2020. The ability to order an Airstream system and components ended in February 2020, with components available through June 2020. Currently, there are no replacement powered air purifying respirators (PAPRs) that meet the MSHA standard for permissibility. PAPRs provide a constant flow of filtered air and offer respiratory protection and comfort in hot working environments.

(c) The CleanSpace EX Powered Respirator (CleanSpace EX) is UL certified to the ANSI/UL 60079–11 standard and can be used in hazardous locations because it meets the intrinsic safety protection level. It is acceptable in other jurisdictions for use in mines with the potential for methane accumulation. The product is not MSHA approved, and the manufacturer is not pursuing approval. The standards for the approval of these respirators are an accepted alternative to MSHA's standards and provide the same level of protection.

(d) The CleanSpace EX uses a lithium-ion polymer battery that is neither accessible nor removable. The lithium-ion polymer battery and motor/blower assembly are both contained within the sealed power pack assembly. It charges as a complete unit.

(e) The CleanSpace EX can be easily disassembled and cleaned.

(f) The CleanSpace EX is designed to utilize either a half or full facemask and NIOSH-approved particulate filters. It does not impair vision nor communication. The CleanSpace EX provides more comfort, as it allows the miner to simultaneously wear the issued hardhat with a headlamp. The PAPR's filter housing and fan assembly are above the shoulders, reducing ergonomic restrictions, freeing the miner from wearing the fan and filter unit around the waist, and eliminating hose attachments to the unit, which could create added hazards.

The petitioner proposes the following alternative method:

(a) Affected mine employees shall be trained in the proper use and maintenance of the CleanSpace EX in accordance with the established manufacturer guidelines. Mine employees shall also be trained to inspect the unit before each use to determine if there is any damage or defects to the unit that would negatively impact intrinsic safety. This inspection shall include all associated wiring and connections and shall take place prior to the equipment being taken underground.

(b) If it is determined that there is damage that may negatively impact the intrinsic safety, the PAPR shall be immediately removed from service.

(c) The CleanSpace EX user shall conduct daily examinations of the filter and replace as needed.

(d) When fitting a new filter on the CleanSpace EX, the Blocked Filter Alarm shall be tested by the user before the PAPR is put back into service.

(e) CleanSpace EX units shall be charged outby the last open crosscut and shall utilize the manufacturer approved battery charger. CleanSpace EX charging stations located underground shall be enclosed in a properly constructed steel box designed for such purpose.

(f) A qualified person under 30 CFR 75.151 shall monitor for methane as is required by the standard in the affected areas of the mine.

(g) The operator shall comply with all requirements of 30 CFR 75.323. The CleanSpace EX shall not be used if methane is detected in concentrations at or above 1.0 percent methane. When 1.0 percent or more methane is detected while the CleanSpace EX is being used, the equipment shall be deenergized immediately. When 1.5 percent or more methane is detected, the CleanSpace EX shall be withdrawn from the affected area outby the last open crosscut.

(h) Employees shall be trained on how to properly use and take care of the CleanSpace EX according to manufacturer guidelines as well as all stipulations of the Decision and Order. Qualified miners shall receive training regarding the information in the Decision and Order before using equipment in the relevant part of the mine. A record of the training shall be kept and made available upon request.

(i) Within 60 days of the Decision and Order becoming finalized, the petitioner shall submit proposed revisions to the mine ventilation plan per 30 CFR 75.370, to be approved under the 30 CFR part 48 training plan by the Coal Mine Safety and Health District Manager. The revisions shall specify initial and refresher training. When the training is conducted, a MSHA Certificate of Training (Form 5000–23) shall be completed, with comments on the certificate noting non-permissible testing equipment training.

The petitioner asserts that the alternative method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Song-ae Aromie Noe,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2022–28622 Filed 1–4–23; 8:45 am]

BILLING CODE 4520–43–P

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collections for OMB Review; Comment Request; Multiemployer Plan Regulations

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intention to request extension of OMB approval of information collections.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) intends to request that the Office of Management and Budget (OMB) extend approval, under the Paperwork Reduction Act, of collections of information in PBGC's regulations on multiemployer plans under the Employee Retirement Income Security Act of 1974 (ERISA). This notice informs the public of PBGC's intent and solicits public comment on the collections of information.

DATES: Comments must be received on or before March 6, 2023.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* (Follow the online instructions for submitting comments.)
- *Email: paperwork.comments@pbgc.gov.* Refer to refer to multiemployer information collection in the subject line.
- *Mail or Hand Delivery:* Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101.

Commenters are strongly encouraged to submit public comments electronically. PBGC expects to have limited personnel available to process comment that are submitted on paper through mail. Until further notice, any comments submitted on paper will be considered to the extent practicable.

All submissions received must include the agency's name (Pension Benefit Guaranty Corporation, or PBGC) and refer to multiemployer information collection. All comments received will be posted without change to PBGC's website at *https://www.pbgc.gov,* including any personal information

provided. Do not submit comments that include any personally identifiable information or confidential business information.

Copies of the collections of information may also be obtained by writing to Disclosure Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101, or calling 202–326–4040 during normal business hours. If you are deaf or hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

FOR FURTHER INFORMATION CONTACT: Hilary Duke (*duke.hilary@pbgc.gov*), Assistant General Counsel for Regulatory Affairs, Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101; 202–229–3839. If you are deaf or hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: OMB has approved and issued control numbers for seven collections of information in PBGC's regulations relating to multiemployer plans. These collections of information are described below. OMB approvals for these collections of information expire June 30, 2023. PBGC intends to request that OMB extend its approval of these collections of information for 3 years. 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. PBGC is soliciting public comments to—

- Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collections of information, including the validity of the methodologies and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Comments should identify the specific part number(s) of the regulation(s) to which they relate.

1. Extension of Special Withdrawal Liability Rules (29 CFR Part 4203) (OMB Control Number 1212–0023)

Sections 4203(f) and 4208(e)(3) of ERISA allow PBGC to permit a multiemployer plan to adopt special rules for determining whether a withdrawal from the plan has occurred, subject to PBGC approval.

The regulation specifies the information that a plan that adopts special rules must submit to PBGC about the rules, the plan, and the industry in which the plan operates. PBGC uses the information to determine whether the rules are appropriate for the industry in which the plan functions and do not pose a significant risk to the insurance system.

PBGC estimates that at most one plan sponsor submits a request each year under this regulation. The estimated annual burden of the collection of information is 4 hours and $10,000.

2. Variances for Sale of Assets (29 CFR Part 4204) (OMB Control Number 1212–0021)

If an employer's covered operations or contribution obligation under a plan ceases, the employer must generally pay withdrawal liability to the plan. Section 4204 of ERISA provides an exception, under certain conditions, where the cessation results from a sale of assets. Among other things, the buyer must furnish a bond or escrow, and the sale contract must provide for secondary liability of the seller.

The regulation establishes general variances (rules for avoiding the bond/escrow and sale-contract requirements) and authorizes plans to determine whether the variances apply in particular cases. It also allows buyers and sellers to request individual variances from PBGC. Plans and PBGC use the information to determine whether employers qualify for variances. PBGC estimates that each year, 100 employers submit, and 100 plans respond to, variance requests under the regulation, and one employer submits a variance request to PBGC. The estimated annual burden of the collection of information is 1,050 hours and $501,000.

3. Reduction or Waiver of Complete Withdrawal Liability (29 CFR Part 4207) (OMB Control Number 1212–0044)

Section 4207 of ERISA allows PBGC to provide for abatement of an employer's complete withdrawal liability, and for plan adoption of alternative abatement rules, where appropriate.

Under the regulation, an employer applies to a plan for an abatement determination, providing information the plan needs to determine whether withdrawal liability should be abated, and the plan notifies the employer of its determination. The employer may, pending plan action, furnish a bond or escrow instead of making withdrawal liability payments, and must notify the plan if it does so. When the plan then makes its determination, it must so notify the bonding or escrow agent.

The regulation also permits a plan to adopt its own abatement rules and request PBGC approval. PBGC uses the information in such a request to determine whether the amendment should be approved.

PBGC estimates that each year at most one employer submits and one plan responds to an application for abatement of complete withdrawal liability, and no plan sponsors request approval of plan abatement rules from PBGC. The estimated annual burden of the collection of information is 0.5 hours and $1,000.

4. Reduction or Waiver of Partial Withdrawal Liability (29 CFR Part 4208) (OMB Control Number 1212–0039)

Section 4208 of ERISA provides for abatement, in certain circumstances, of an employer's partial withdrawal liability and authorizes PBGC to issue additional partial withdrawal liability abatement rules.

Under the regulation, an employer applies to a plan for an abatement determination, providing information the plan needs to determine whether withdrawal liability should be abated, and the plan notifies the employer of its determination. The employer may, pending plan action, furnish a bond or escrow instead of making withdrawal liability payments, and must notify the plan if it does so. When the plan then makes its determination, it must so notify the bonding or escrow agent.

The regulation also permits a plan to adopt its own abatement rules and request PBGC approval. PBGC uses the information in such a request to determine whether the amendment should be approved.

PBGC estimates that each year at most one employer submits and one plan responds to an application for abatement of partial withdrawal liability, and no plan sponsors request approval of plan abatement rules from PBGC. The estimated annual burden of the collection of information is 0.50 hours and $1,000.

5. Allocating Unfunded Vested Benefits to Withdrawing Employers (29 CFR Part 4211) (OMB Control Number 1212–0035)

Section 4211(c)(5)(A) of ERISA requires PBGC to prescribe how plans can, with PBGC approval, change the way they allocate unfunded vested benefits to withdrawing employers for purposes of calculating withdrawal liability.

The regulation prescribes the information that must be submitted to PBGC by a plan seeking such approval. PBGC uses the information to determine how the amendment changes the way the plan allocates unfunded vested benefits and how the amendment will affect the risk of loss to plan participants and PBGC.

PBGC estimates that 10 plan sponsors submit approval requests each year under this regulation. The estimated annual burden of the collection of information is 200 hours and $200,000.

6. Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR Part 4219) (OMB Control Number 1212–0034)

Section 4219(c)(1)(D) of ERISA requires that PBGC prescribe regulations for the allocation of a plan's total unfunded vested benefits in the event of a ''mass withdrawal.'' Section 4209(c) of ERISA deals with an employer's liability for de minimis amounts if the employer withdraws in a ''substantial withdrawal.''

The reporting requirements in the regulation give employers notice of a mass withdrawal or substantial withdrawal and advise them of their rights and liabilities. They also provide notice to PBGC so that it can monitor the plan, and they help PBGC assess the possible impact of a withdrawal event on participants and the multiemployer plan insurance program.

PBGC estimates that there are six mass withdrawals and three substantial withdrawals per year. The plan sponsor of a plan subject to a withdrawal covered by the regulation provides notices of the withdrawal to PBGC and to employers covered by the plan, liability assessments to the employers, and a certification to PBGC that assessments have been made. (For a mass withdrawal, there are two assessments and two certifications that deal with two different types of liability. For a substantial withdrawal, there is one assessment and one certification (combined with the withdrawal notice to PBGC).) The estimated annual burden of the collection of information is 15 hours and $49,500.

7. Procedures for PBGC Approval of Plan Amendments (29 CFR Part 4220) (OMB Control Number 1212–0031)

Under section 4220 of ERISA, a plan may within certain limits adopt special plan rules regarding when a withdrawal from the plan occurs and how the withdrawing employer's withdrawal liability is determined. Any such special rule is effective only if, within 90 days after receiving notice and a copy of the rule, PBGC either approves or fails to disapprove the rule. The regulation provides rules for requesting PBGC's approval of an amendment. PBGC needs the required information to identify the plan; evaluate the risk of loss, if any, posed by the plan amendment; and determine whether to approve or disapprove the amendment.

PBGC estimates that at most one plan sponsor submits an approval request per year under this regulation. The estimated annual burden of the collection of information is 2 hours and $7,000 dollars.

Issued in Washington, DC.

Hilary Duke,

Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation.

[FR Doc. 2022–28609 Filed 1–4–23; 8:45 am]

BILLING CODE 7709–02–P

POSTAL SERVICE

Product Change—Parcel Select Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* January 5, 2023.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 28, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Parcel Select Contract 58 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–108, CP2023–109.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2022–28652 Filed 1–4–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and Parcel Select Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* January 5, 2023.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 27, 2022, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail & Parcel Select Contract 8 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–102, CP2023–103.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2022–28646 Filed 1–4–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* January 5, 2023.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby

gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 27, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 107 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–101, CP2023–102.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2022–28645 Filed 1–4–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Parcel Return Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* January 5, 2023.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 28, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Parcel Return Service Contract 19 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–107, CP2023–108.

Sean C. Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2022–28651 Filed 1–4–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail, First-Class Package Service & Parcel Select Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* January 5, 2023.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 28, 2022, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail, First-Class Package Service & Parcel Select Contract 6 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–106, CP2023–107.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2022–28650 Filed 1–4–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail, First-Class Package Service & Parcel Select Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* January 5, 2023.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 28, 2022, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail, First-Class Package Service & Parcel Select Contract 5 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–105, CP2023–106.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2022–28649 Filed 1–4–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—First-Class Package Service & Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* January 5, 2023.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 27, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add First-Class Package Service & Parcel Select Service Contract 1 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–104, CP2022–105.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2022–28648 Filed 1–4–23; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail, Parcel Select and Parcel Return Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* January 5, 2023.

FOR FURTHER INFORMATION CONTACT: Sean C. Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on December 27, 2022, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail, Parcel Select and Parcel Return Service Contract 1 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–103, CP2023–104.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2022–28647 Filed 1–4–23; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96592; File No. SR–NASDAQ–2022–080]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Implementation Date for Certain Risk Checks of Rule Nasdaq Equity 6, Section 5 Risk Settings That Provide Participants With Additional Optional Settings

December 29, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 20, 2022, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the implementation date for certain risk checks of Rule Nasdaq Equity 6, Section 5 (Risk Settings) that provide Participants with additional optional settings.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is filing this proposal to extend the implementation date of Rule Nasdaq Equity 6, Section 5 (Risk Settings) that provide Participants with additional optional settings to Q1 2023; and to make certain technical modification without changing the substance of the rules.

Nasdaq proposed rule changes under Rule Nasdaq Equity 6, Section 5 (Risk Settings) to provide Participants [3] with additional optional settings to assist them in their efforts to manage risk on their order flow. These additional settings provide participants with extra oversight and controls on orders coming into the exchange. Once the optional risk controls are set, the Exchange is authorized to take automated action if a designated risk level for a Participant is exceeded. Such risk settings would provide Participants with enhanced abilities to manage their risk with respect to orders on the Exchange. All proposed risk settings are optional for Participants and afford flexibility to Participants to select their own risk tolerance levels. These changes were filed by Nasdaq on August 8, 2022, and published in the **Federal Register** on August 18, 2022.[4]

Nasdaq indicated that it intends to implement the proposed rule changes on or before December 30, 2022. Due to re-prioritization, Nasdaq is delaying the implementation of the additional, optional risk checks, as described in the Proposal, until March 31, 2023. The Exchange will issue an Equity Trader Alert to members announcing the exact date the Exchange will implement the risk protections.

[3] Pursuant to Rule Nasdaq Equity 1, Section 1(a)(5), a ''Participant'' is defined as an entity that fulfills the obligations contained in Equity 2, Section 3 regarding participation in the System, and shall include: (1) ''Nasdaq ECNs,'' members that meet all of the requirements of Equity 2, Section 14, and that participates in the System with respect to one or more System Securities; (2) ''Nasdaq Market Makers'' or ''Market Makers'', members that are registered as Nasdaq Market Makers for purposes of participation in the System on a fully automated basis with respect to one or more System securities; and (3) ''Order Entry Firms,'' members that are registered as Order Entry Firms for purposes of entering orders in System Securities into the System. This term shall also include any Electronic Communications Network or Alternative Trading System (as such terms are defined in Regulation NMS) that fails to meet all the requirements of Equity 2, Section 14.

[4] *See* Securities Exchange Act Release No. 95495 (August 12, 2022), 86 FR 24685 (August 18, 2022) (SR–NASDAQ–2022–047) (the ''Proposal'').

Nasdaq also proposes to modify the risk setting titled ''Restricted Stock List.'' As described in the Proposal, this control allows a Participant to restrict the types of securities transacted by setting a list of symbols for which orders cannot be entered. This control also allows Participants to set an easy to borrow list, which is a list of symbols for which short sale orders may be entered. Short sale orders for symbols not on the easy to borrow list will not be accepted; however, Participants will have an option to indicate that short sales orders are permitted for all symbols.

Nasdaq proposes to modify this risk check to such that a Participant can set a hard to borrow list, which is a list of symbols for which short sale orders may not be entered, rather than an easy to borrow list. Short sale orders for symbols not on the hard to borrow list will be accepted; however, Participants will have an option to indicate that short sales orders are permitted for all symbols by not maintaining a hard to borrow list. Nasdaq believes that this modification does not substantively change the Restricted Stock List risk setting. This setting continues to be similar to Interpretations and Policies .01(d) of BZX Rule 11.13.[5]

Nasdaq also proposes to modify Market Impact Check and Gross Exposure Check to correct typographical errors and clarify the rule language without substantively changing it.

Implementation

As stated above, the Exchange intends to implement the proposed rule changes on or before March 31, 2023. The Exchange will issue an Equity Trader Alert to members announcing the exact date the Exchange will implement the risk protections.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The purpose of this proposal is to modify the timing of the planned implementation for the optional risk checks, described above, and to inform

[5] *See* Securities Exchange Act Release No. 80611 (May 5, 2017) 82 FR 22045 (May 11, 2017) (SR–BatsBZX–2017–24).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

the SEC and market participants of that change. The introduction of the optional additional risk checks was proposed in a rule filing that was submitted to the SEC, and the Exchange is now modifying the implementation date for this product. Nasdaq is delaying the implementation date in order to complete testing in line with Nasdaq's re-prioritized product pipeline.

Nasdaq believes that the proposed changes to modify the risk setting titled ''Restricted Stock List'' is a technical modification that does not change the substance of this rule. Similarly, Nasdaq believes that the proposal to modify Market Impact Check and Gross Exposure Check to correct typographical errors and clarify the rule language without substantively changing it is ministerial.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As explained above, the purpose of this proposal is to modify the timing of the planned implementation for the optional additional risk checks and to inform the SEC and market participants of that change. The existing Nasdaq products will continue to be available, and the implementation delay will impact all market participants equally. The Exchange does not expect the date change to place any burden on competition. Similarly, Nasdaq believes that correction of typographical errors, technical changes, and clarifications of existing rules do not place any burden on competition because these changes do not affect the substance of the existing rules.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and subparagraph (f)(6) of Rule 19b–4 thereunder.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2022–080 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2022–080. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2022–080 and should be submitted on or before January 26, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–28599 Filed 1–4–23; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–382, OMB Control No. 3235–0435]

Proposed Collection; Comment Request; Extension: Customer Account Statements

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 607 (17 CFR 242.607) under the Securities Exchange Act of 1934 (17 U.S.C. 78a *et seq.*) (''Exchange Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget) (''OMB'') for extension and approval.

Rule 607 requires disclosure on each new account and on a yearly basis thereafter, on the annual statement, the firm's policies regarding receipt of payment for order flow from any market makers, exchanges or exchange members to which it routes customers' order in national market system securities for execution; and

information regarding the aggregate amount of monetary payments, discounts, rebates or reduction in fees received by the firm over the past year.

The information collected pursuant to Rule 607 is necessary to facilitate the establishment of a national market system for securities. The purpose of the rule is to ensure that customers are adequately apprised of the broker-dealer's order routing practices with respect to the customer's order, in furtherance of the Commission's statutory mandate to protect investors.

The Commission estimates that approximately 3,643 respondents will make the third-party disclosures required in the collection of information requirements to 183,511,801 customer accounts each year. The Commission estimates that the average number of hours necessary for each respondent to comply with Rule 607 per year is 39.714 hours, which results in an average aggregated annual burden of 144,678.102 hours.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing by March 6, 2023.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: PRA_*Mailbox@sec.gov.*

Dated: December 29, 2022.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–28600 Filed 1–4–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96591; File No. SR–NYSE–2022–58]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make Permanent the Temporary Rule Relief in Rule 36.30

December 29, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 23, 2022, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make permanent the temporary rule relief in Rule 36.30 to allow DMM units to maintain a telephone line at its trading post location, which relief expires on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on December 31, 2022. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to make permanent the temporary rule relief to Rule 36.30 to allow a DMM unit may maintain a telephone line at its trading post location, which relief expires on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on December 31, 2022.[3]

Background

In connection with its response to COVID–19 and its impact on the Trading Floor, the Exchange modified certain of its rules to provide temporary relief,[4] certain of which relief was extended several times.[5] In particular, the Exchange modified Rule 36 to adopt rule text allowing DMMs to use telephones installed at the DMM unit trading post to communicate with personnel not assigned to the Trading Floor but working in locations other than the off-Floor offices of the DMM unit; provided, however, that the telephone numbers of such off-Floor personnel are provided to the Exchange in advance.[6] The temporary relief afforded in Rule 36.30 is set to expire on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on December 31, 2022. Although the Exchange no longer requires DMM firms to operate with reduced staff, DMM firms have chosen to continue to operate with a mix of employees working remotely and others physically present on the Trading Floor.

Proposed Rule Change

In order to address the technological shift in how business communications are conducted in the wake of the pandemic, and how business communications will likely continue

[3] *See* Securities Exchange Act Release No. 88933 (May 22, 2020), 85 FR 32059 (May 28, 2020) (SR–NYSE–2020–47) (Notice of filing and immediate effectiveness of proposed rule change).

[4] *See, e.g.,* Securities Exchange Act Release Nos. 89086 (June 17, 2020), 85 FR 37712 (SR–NYSE–2020–52) (amending Rules 7.35A to add Commentary .06, 7.35B to add Commentary .03, 76 to add Supplementary Material 20, and Supplementary Material .30 to Rule 36).

[5] *See, e.g.*, Securities Exchange Act Release No. 94585 (April 1, 2022) 87 FR 20479 (April 7, 2022) (SR–NYSE–2022–18) (Notice of filing and immediate effectiveness of proposed rule change to extend the temporary period for specified Commentaries to Rules 7.35A and 7.35C and temporary rule relief in Rule 36.30 to end on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on July 31, 2022).

[6] *See* NYSE Rule 36.30.

even after the pandemic ends, the Exchange proposes to make permanent the amendments to Rule 36.30. To effectuate this change, the Exchange proposes to eliminate language regarding the temporary nature of the relief.[7]

The Exchange believes this proposed rule change would continue to provide DMMs with flexibility to communicate with staff not assigned to the Trading Floor, but who are working remotely. The Exchange believes that remote work options for employees—whether full or part-time—have become a permanent feature of the modern workplace and are likely to persist once the pandemic fully subsides. As such, the Exchange believes that allowing DMM units to continue communicating with employees working off-site (at designated phone numbers shared with the Exchange) would continue to provide flexibility to DMMs to maintain necessary communication with staff at the DMM firm with whom they would otherwise communicate if such staff were physically present at an office. As a result, the Exchange believes the proposed change would enable DMM units to continue to efficiently allocate resources and permit Floor-based staff to communicate more easily and seamlessly with off-Floor staff whether such off-Floor staff are working at an office or remotely.

As is the case today, Rule 36.30 telephones installed at the DMM unit trading post ''shall not be used for the purpose of transmitting to the Floor orders for the purchase or sale of securities.'' [8] Moreover, the (continued) requirement that DMM units provide the Exchange with the telephone numbers of the permitted contacts working remotely is an additional safeguard that would provide the Exchange with information that may be important in determining whether DMM units are only communicating with personnel from their off-Floor offices in a manner permitted under Rule 98.[9]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5) of the Act,[11] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed rule change would continue to provide DMMs with flexibility to communicate with staff not assigned to the Trading Floor, but who are working remotely. The Exchange believes that remote work options for employees—whether full or part-time—have become a permanent feature of the modern workplace and are likely to persist once the pandemic fully subsides. As such, the Exchange believes that allowing DMM units to communicate with employees working remotely would continue to enhance communications and ease the logistical burdens associated with operating with staff working on the Trading Floor and staff working remotely and provide DMMs with needed flexibility in managing their operations. As a result, the Exchange believes the proposed change would enable DMM units to more efficiently allocate resources and permit Floor-based staff to communicate more easily and seamlessly with off-Floor staff whether such off-Floor staff are working at an office or remotely.

The Exchange also believes that the proposal is designed to prevent fraudulent and manipulative acts and practices and would be consistent with the public interest and the protection of investors because DMM units would continue to need to identify the persons working in locations other than the DMM unit's off-Floor offices and submit the telephone numbers of such persons to the Exchange in advance. This additional safeguard would provide the Exchange with information that may be important to determining whether DMM units are only communicating with personnel from their off-Floor offices in a manner permitted under Rule 98. As such, the Exchange believes that the continuation of the existing safeguards are appropriate for supervising and monitoring use of telephones on the Exchange's Trading Floor consistent with the objectives of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather would make permanent amendments to Rule 36.30 that enhance a DMM unites ability to communicate with staff working remotely (*i.e.,* not on the Trading Floor).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [12] and Rule 19b–4(f)(6) thereunder.[13] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [14] and Rule 19b–4(f)(6)(iii) thereunder.[15]

A proposed rule change filed under Rule 19b–4(f)(6) [16] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[17] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may

[7] *See* proposed NYSE Rule 36.30 (providing that ''[a] DMM unit may maintain a telephone line at its trading post location to communicate with DMM unit personnel working in locations other than the off-Floor offices of the DMM unit, provided that the telephone numbers of such persons are provided to the Exchange in advance.'').

[8] *See* NYSE Rule 36.30.

[9] Communications by DMM staff on the Trading Floor are governed by NYSE Rule 98.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(6).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

become operative immediately upon filing.

The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to it will allow the rules discussed above to remain in effect for DMM firms to continue to operate with a mix of employees working remotely and others physically present on the Trading Floor. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[18]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[19] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2022–58 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2022–58. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2022–58 and should be submitted on or before January 26, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–28598 Filed 1–4–23; 8:45 am]

BILLING CODE 8011–01–P

[18] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[19] 15 U.S.C. 78s(b)(2)(B).

[20] 17 CFR 200.30–3(a)(12), (59).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34794]

Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

December 30, 2022.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'')

ACTION: Notice.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of December 2022. A copy of each application may be obtained via the Commission's website by searching for the applicable file number listed below, or for an applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at *https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the relevant applicant with a copy of the request by email, if an email address is listed for the relevant applicant below, or personally or by mail, if a physical address is listed for the relevant applicant below. Hearing requests should be received by the SEC by 5:30 p.m. on January 24, 2023, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.*

FOR FURTHER INFORMATION CONTACT: Shawn Davis, Assistant Director, at (202) 551–6413 or Chief Counsel's Office at (202) 551–6821; SEC, Division of Investment Management, Chief Counsel's Office, 100 F Street NE, Washington, DC 20549–8010.

Anchor Series Trust [File No. 811–03836]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to SunAmerica Series Trust, and on November 8, 2021 made a final distribution to its shareholders based on net asset value. Expenses of $541,860 incurred in connection with the reorganization were paid by the applicant's investment adviser.

Filing Date: The application was filed on December 6, 2022.

Applicant's Address: egluck@willkie.com.

Global Beta ETF Trust [File No. 811–23450]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On August 29, 2022, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of $9,500 incurred in connection with the liquidation were paid by the applicant's investment advisor.

Filing Dates: The application was filed on October 17, 2022, and amended on December 12, 2022.

Applicant's Address: mschapiro@stradley.com.

SunAmerica Equity Funds [File No. 811–04801]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Touchstone Strategic Trust, and on July 16, 2021 made a final distribution to its shareholders based on net asset value. Expenses of $7,150,960 incurred in connection with the reorganization were paid by the applicant's investment adviser.

Filing Date: The application was filed on November 23, 2022.

Applicant's Address: egluck@willkie.com.

SunAmerica Money Market Funds, Inc. [File No. 811–03807]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On July 13, 2021, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of $7,150,960 incurred in connection with the liquidation were paid by the fund's investment adviser.

Filing Date: The application was filed on November 23, 2022.

Applicant's Address: egluck@willkie.com.

SunAmerica Series, Inc. [File No. 811–07797]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Touchstone Strategic Trust and Touchstone Funds Group Trust, and on July 16, 2021 made a final distribution to its shareholders based on net asset value. Expenses of $7,150,960 incurred in connection with the reorganization were paid by the applicant's investment adviser.

Filing Date: The application was filed on November 23, 2022.

Applicant's Address: egluck@willkie.com.

SunAmerica Specialty Series [File No. 811–21482]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Touchstone Strategic Trust and Touchstone Funds Group Trust, and on July 16, 2021 made a final distribution to its shareholders based on net asset value. Expenses of $7,150,960 incurred in connection with the reorganization were paid by the applicant's investment adviser.

Filing Date: The application was filed on November 23, 2022.

Applicant's Address: egluck@willkie.com.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 2022–28642 Filed 1–4–23; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 11961]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Death is Not the End'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition ''Death is Not the End'' at the Rubin Museum of Art, New York, New York, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Elliot Chiu, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Stacy E. White,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2022–28638 Filed 1–4–23; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 11962]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''From Depero to Rotella: Italian Commercial Posters between Advertising and Art'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition ''From Depero to Rotella: Italian Commercial Posters between Advertising and Art'' at the Center for Italian Modern Art, New York, New York, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Elliot Chiu, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Stacy E. White,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2022–28637 Filed 1–4–23; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 11960]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Monet/Mitchell: Painting the French Landscape'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition ''Monet/Mitchell: Painting the French Landscape'' at the Saint Louis Art Museum, St. Louis, Missouri, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Elliot Chiu, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Stacy E. White,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2022–28625 Filed 1–4–23; 8:45 am]

BILLING CODE 4710–05–P

SURFACE TRANSPORTATION BOARD

[Docket No. MCF 21103]

Transdev Group, S.A.—Acquisition of Control—First Transit Topco, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice tentatively approving and authorizing finance transaction.

SUMMARY: Transdev Group, S.A. (Transdev), a noncarrier, its noncarrier subsidiary Transdev North America, Inc. (TNA), and TNA's carrier subsidiary Transdev Services, Inc. (TSI) (collectively, Applicants) have filed an application for TNA to acquire all voting securities of noncarrier First Transit Topco Inc. (Topco), and thereby acquire control of a Topco subsidiary, First Transit, Inc. (FT), an interstate passenger motor carrier, from Recess Holdco LLC, a noncarrier affiliate of FT. The Board is tentatively approving and authorizing this transaction. If no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments must be filed by February 21, 2023. If any comments are filed, Applicants may file a reply by March 6, 2023. If no opposing comments are filed by February 21, 2023, this decision will be final on February 22, 2023.

ADDRESSES: Comments may be filed with the Board either via e-filing on the Board's website or mailing to the Board's offices. Comments may be e-filed at *www.stb.gov/proceedings-actions/e-filing/other-filings/* and must reference Docket No. MCF 21103. Mailed comments may be sent to: Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001. In addition, one copy of comments must be sent to Applicants' representative: Mark J. Andrews, Clark Hill PLC, 1001 Pennsylvania Avenue NW, Suite 1300 South, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Jonathon Binet at (202) 245–0368. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: According to the application,[1] Transdev is under the majority ownership of Caisse des depots et consignations, a French public-sector financial institution, and the minority ownership of Rethmann Group, a family-owned German company.[2] (Appl. 6.) Transdev does not have interstate carrier authority. (*See id.* at 2 (stating that Transdev is a noncarrier).) Transdev controls TNA,[3] a noncarrier that controls interstate motor carrier TSI and its two interstate motor carrier subsidiaries, Pittsburgh Transportation Group Charter Services and SFO Airporter, Inc.[4] (*Id.* at 2, 4; Suppl. 4.) Applicants state that Transdev is generally engaged in providing contract-based passenger transportation services to transit authorities, other governmental agencies, corporations, educational institutions, and healthcare facilities wishing to outsource such transportation services. (Appl. 6; *see also* Suppl. Ex. C (identifying Transdev Clients, Locations, Equipment, and Employees.) According to Applicants, TSI and its carrier affiliates perform a very small amount of charter work, representing less than .0054% of Transdev's total U.S. business, in San Marcos, Tex., San Jose, Cal., and Pittsburgh, Pa. (Suppl. 4–5.)

The application explains that under this transaction, all voting securities of Topco would be acquired by TNA, and Topco would become a direct subsidiary of TNA and an indirect subsidiary of Transdev. (Appl. 2, 6.) Topco, a noncarrier, is an intermediate parent company of FT,[5] a passenger motor carrier that controls various noncarrier subsidiaries.[6] [7] (*Id.* at 2.) According to the application, FT and certain noncarrier FT affiliates (collectively, the FT entities) transport 300 million passengers annually to and from approximately 300 locations across North America, utilizing approximately 12,000 vehicles. (*Id.* at 5; *see also* Suppl. Ex. E, First Transit Customer Location and Fleet Report; *id.,* Ex. G, First Transit Employee Locations by State.) FT provides essential mobility services including fixed route bus services, paratransit, shuttle bus services, and

[1] The application initially was filed on November 10, 2022. On December 6, 2022, Applicants filed a supplement to the application. Therefore, for purposes of determining the procedural schedule and statutory deadlines, the filing date of the application is December 6, 2022. *See* 49 CFR 1182.4(a).

[2] More information about Transdev's corporate structure and ownership can be found in the application and the supplement. (*See* Appl. 6; Suppl. Ex. A.)

[3] TNA was formerly known as Veolia Transportation.

[4] Further information about these motor carriers, including U.S. Department of Transportation (USDOT) numbers, motor carrier numbers, and USDOT safety fitness ratings, can be found in the application. (*See* Appl. 4.)

[5] Transdev also would acquire control of various noncarrier subsidiaries of FT. With respect to the acquisition of the non-regulated FT subsidiaries, the appropriate filing was made under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 18a (HSR). (Appl. 3 n.2.) On December 12, 2022, Applicants filed a letter stating that the HSR 30-day period has expired without any action being taken and, accordingly, the HSR process has concluded.

[6] The indirect beneficial owners of FT are EQT Infrastructure V Collect EUR SCSp and EQT Infrastructure V Collect USD SCSp (collectively, EQT). EQT's control of FT was approved by the Board in *EQT Infrastructure V Collect EUR SCSp—Acquisition of Control—First Student, Inc.,* MCF 21093 (STB served May 21, 2021).

[7] More information about Topco's corporate structure and ownership can be found in the application and the supplement. (*See* Appl. 2–3; Suppl. Ex. B.)

vehicle maintenance services. (Appl. 4.) Applicants state that FT's contract customers include state and local transit agencies, as well as other governmental agencies, airports, and private institutions. (*Id.; see also* Suppl. Ex. E.) The application explains that FT holds operating authority from FMCSA because it occasionally conducts regulated interstate charter operations when its vehicles and drivers are not engaged in its primary business of contract transit services. (Appl. 4.) According to the application, FT also engages in regulated intrastate transportation in California, Rhode Island, and the Washington, DC metropolitan area. (*Id.* at 4–5.) TNA's acquisition of Topco's voting securities would make FT a direct subsidiary of TNA and an indirect subsidiary of Transdev. (*Id.* at 6.)

Under 49 U.S.C. 14303(b), the Board must approve and authorize a transaction that it finds consistent with the public interest, taking into consideration at least (1) the effect of the proposed transaction on the adequacy of transportation to the public, (2) the total fixed charges resulting from the proposed transaction, and (3) the interest of affected carrier employees. Applicants have submitted information required by 49 CFR 1182.2, including information demonstrating that the proposed transaction is consistent with the public interest under 49 U.S.C. 14303(b), *see* 49 CFR 1182.2(a)(7), and a jurisdictional statement under 49 U.S.C. 14303(g) that the aggregate gross operating revenues of the involved carriers exceeded $2 million during the 12-month period immediately preceding the filing of the application, *see* 49 CFR 1182.2(a)(5). (*See* Appl. 7–9; Suppl. 2–4.)

Applicants assert that the proposed transaction is not expected to have an adverse impact on the adequacy of transportation services available to the public. (Appl. 7–9; *see also* Suppl. 2–4.) Applicants state that there are a large number of charter bus service companies and that barriers to entry into the passenger motor carrier business are low, and therefore the transaction will not result in any meaningful reduction in competitive charter bus services. (Appl. 7–8 (citing *All Aboard America! Holdings, Inc.—Acquis. of Control—Lux Bus America Co.,* MCF 21082 (STB served Sept. 21, 2018).) Regarding their contract services, Applicants claim that the contract-driven nature of the services involved here means that Applicants and FT will have every incentive to maintain and improve the adequacy of their services to the public. (*Id.* at 8.) According to Applicants, this is because contract renewals in this sector involve highly visible and intense negotiations among multiple bidders, governmental bodies, unions, political activists and other interested parties, and customers always have the option of taking such operations in-house. (*Id.* at 8.) Applicants claim that a May 2022 report by Kearney & Company shows that outsourced passenger transportation services contracts are highly contestable by firms of all sizes. (*Id.* at 8; *see also* Suppl Ex. H, Kearney Report.) Applicants state the report shows that the four largest companies in this sector (National Express, MV, Transdev/Veolia, and First Transit) saw a significant decline of the contracts awarded from approximately 46 percent to 34 percent, while Transdev and First Transit's combined shares fell from 31 percent to 20 percent. (Appl. 8.) At the same time, the market share of participants other than the four leading entities increased from 54 percent to 67 percent. (*Id.*) According to Applicants, this shows that the market would remain subject to intense competition even after the proposed transaction, requiring Applicants and FT to maintain high service levels to compete against a wide variety of providers. (*Id.*)

Applicants argue that, for the same reasons that the transaction will not have an adverse impact on the adequacy of transportation services available to the public, it will also not adversely affect competition. (*Id.* at 7–9; *see also* Suppl. 2–4.) For the charter services market, Applicants state that competitors could include virtually any regulated bus operator in the geographic area where the charter services are conducted. (Suppl. 7.) As to government contract operations, Applicants identify numerous competitors in that market. (*See* id. at 6–7.)

Applicants state that the proposed transaction will not increase fixed charges payable by FT. (Appl. 9.) Applicants explain that they intend to pay the purchase price with a combination of cash in hand and a portion of a revolving credit facility that has been in place for TNA and affiliates since 2019; FT will not be added as a co-obligor on the credit facility. (*Id.; see also* Suppl. Ex. I, Transdev Financing/''Fixed Charges.'') Applicants also represent that, given the longstanding shortage of qualified drivers and maintenance personnel, the transaction is highly unlikely to have adverse impacts on any employees or employment levels, with the possible exception of a handful of top management personnel. (Appl. 11; Suppl. 7.)

Based on Applicants' representations, the Board finds that the acquisition as proposed in the application is consistent with the public interest and should be tentatively approved and authorized. If any opposing comments are timely filed, these findings will be deemed vacated, and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. *See* 49 CFR 1182.6. If no opposing comments are filed by expiration of the comment period, this notice will take effect automatically and will be the final Board action.

This action is categorically excluded from environmental review under 49 CFR 1105.6(c).

Board decisions and notices are available at *www.stb.gov.*

It is ordered:

1. The proposed transaction is approved and authorized, subject to the filing of opposing comments.

2. If opposing comments are timely filed, the findings made in this notice will be deemed vacated.

3. This notice will be effective February 22, 2023, unless opposing comments are filed by February 21, 2023. If any comments are filed, Applicant may file a reply by March 6, 2023.

4. A copy of this notice will be served on: (1) the U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue NW, Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 1200 New Jersey Avenue SE, Washington, DC 20590.

Decided: December 29. 2022.

By the Board, Board Members, Fuchs, Hedlund, Oberman, Primus, and Schultz.

Tammy Lowery,

Clearance Clerk.

[FR Doc. 2022–28607 Filed 1–4–23; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36656]

Colorado Pacific Rio Grande Railroad, LLC—Acquisition and Operation Exemption Containing Interchange Commitment—San Luis & Rio Grande Railroad, Inc.

On December 20, 2022, the Colorado Pacific Rio Grande Railroad, LLC (CP Rio Grande), a non-carrier, filed a verified notice of exemption under 49

CFR 1150.31 to acquire and operate the following railroad track and other assets of the San Luis & Rio Grande Railroad, Inc. (SLRG): (1) from milepost 299.30 near Derrick, Colo., to milepost 180.00 near Walsenburg, Colo., comprising SLRG's Alamosa Subdivision, and (2) between milepost 251.7 at Alamosa, Colo., and milepost 281.78 at Antonito, Colo. (the Antonito Subdivision), a total distance of approximately 149.38 miles (collectively, the Line).[1] According to the verified notice, CP Rio Grande is also acquiring incidental trackage rights conveyed to SLRG by UP in the vicinity of Walsenburg between milepost 180.00 and milepost 175.00.

According to the verified notice, the proposed transaction is the culmination of involuntary Chapter 11 bankruptcy proceedings before the United States Bankruptcy Court for the District of Colorado. The verified notice states that, on November 17, 2022, KCVN LLC (KCVN) was the successful bidder at auction for substantially all the assets of SLRG, and an Asset Purchase Agreement was executed between SLRG and KCVN ''or its permitted assignee.'' The verified notice further states that the Bankruptcy Court approved the sale to KCVN or its permitted assignee pursuant to the Asset Purchase Agreement on November 29, 2022. According to the verified notice, on December 19, 2022, KCVN assigned all of its rights in the Asset Purchase Agreement to CP Rio Grande.[2]

CP Rio Grande certifies that its projected annual revenues from this transaction will not exceed $5 million and will not result in CP Rio Grande becoming a Class II or Class I rail carrier. CP Rio Grande further certifies that the transaction involves an interchange commitment that would limit future interchange with a third-party carrier other than UP in Walsenburg Yard,[3] and CP Rio Grande has provided additional information regarding the interchange commitment as required by 49 CFR 1150.33(h).

The transaction may be consummated on or after January 19, 2023, the effective date of the exemption (30 days after the verified notice was filed).

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 January 12, 2023 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36656, must 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, a copy of each pleading must be served on SLRG's representative: Thomas W. Wilcox, Law Office of Thomas W. Wilcox, LLC, 1629 K Street NW, Suite 300, Washington, DC 20006.

According to CP Rio Grande, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: December 30, 2022.

By the Board,

Mai T. Dinh,

Director, Office of Proceedings.

Stefan Rice,

Clearance Clerk.

[FR Doc. 2022–28644 Filed 1–4–23; 8:45 am]

BILLING CODE 4915–01–P

[1] The verified notice states that SLRG acquired the Line from the Union Pacific Railroad Company (UP) in 2003. *See San Luis & Rio Grande R.R.—Acquis. & Operation Exemption—Union Pac. R.R.,* FD 34350 (STB served July 18, 2003).

[2] KCVN is the parent company of Colorado Pacific Railroad, LLC (CRX), a Class III carrier. CP Rio Grande is an independent entity that is not owned or controlled by KCVN. According to the verified notice, the intention is for CP Rio Grande to continue the operations of the SLRG separate and apart from KCVN and CRX.

[3] According to the verified notice, the incidental trackage rights being acquired by CP Rio Grande are subject to an existing interchange commitment between SLRG and UP that was created when UP conveyed the Line to SLRG. However, the existence of the interchange commitment was not disclosed in the verified notice of exemption for that transaction because the regulations at 49 CFR 1150.33(h) requiring such disclosure were not in effect yet. *See San Luis & Rio Grande R.R.,* Docket No. FD 34350.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2022–1739]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Airport Grants Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The collection involves gathering data from airport sponsors and planning agencies to determine eligibility, ensure compliance with Federal requirements, and ensure proper use of Federal funds and project accomplishments for the Airport Improvement Program. Submission is required to receive funds.

DATES: Written comments should be submitted by March 6, 2023.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into search field).

By mail: Carlos Fields, Office of Airports Planning and Programming, APP, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

By fax: 202–267–5302.

FOR FURTHER INFORMATION CONTACT: Carlos Fields by email at: *Carlos.Fields@faa.gov;* phone: 202–267–8826.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0569.

Title: Airport Grants Program.

Form Numbers: FAA Forms 5100–100, 5100–101, 5100–108, 5100–110, 5100–126, 5100–127, 5100–128, 5100–129, 5100–130, 5100–131, 5100–132, 5100–133, 5100–134, 5100–135, 5100–136, 5100–137, 5100–138, 5100–139, 5100–140, 5100–141, 5100–142, 5100–143, 5100–144, 5100–145, 5370–1.

Type of Review: Renewal of an information collection.

Background: Codification of certain U.S. Transportation laws at 49 U.S.C., repealed the Airport and Airway Improvement Act of 1982, as amended, and the Aviation Safety and Noise Abatement Act of 1979, as amended, and re-codified them without substantive change at Title 49 U.S.C., which is referred to as the ''Act.'' The Act provides funding for airport planning and development projects at airports included in the National Plan of Integrated Airport Systems. The Act also authorizes funds for noise compatibility

planning and to carry out noise compatibility programs. The Coronavirus Response and Relief Supplemental Appropriation Act (CRRSAA) (Pub. L. 116–260) (PDF), signed into law on December 27, 2020, authorizes funds to be awarded as economic relief to eligible U.S. airports and eligible concessions at those airports to prevent, prepare for, and respond to the coronavirus disease 2019 (COVID–19) pandemic. The Coronavirus Aid, Relief, and Economic Security (CARES) Act (H.R. 748, Pub. L. 116–136) (PDF), signed into law on March 27, 2020, authorizes funds to be awarded as economic relief to eligible U.S. airports affected by the prevention of, preparation for, and response to the COVID–19 pandemic. The information required by these programs is necessary to protect the Federal interest in safety, efficiency, and utility of the Airport. Data is collected to meet report requirements of 2 CFR part 200 for certifications of domestic preferences and representations, financial management and performance measurement.

Respondents: Approximately 13,000 applicants.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: Approximately 9.5 hours.

Estimated Total Annual Burden: Approximately 123,000 hours.

Issued in Washington, DC, on December 29, 2022.

Carlos N. Fields,

Management & Program Analyst, Airports Financial Assistance Division, APP–520.

[FR Doc. 2022–28597 Filed 1–4–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2022–0037]

Qualification of Drivers; Exemption Applications; Hearing

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

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt nine individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. The exemptions enable these hard of hearing and deaf individuals to operate CMVs in interstate commerce.

DATES: The exemptions are applicable on December 30, 2022. The exemptions expire on December 30, 2024.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001, (202) 366–4001, *fmcsamedical@dot.gov.* Office hours are from 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number (FMCSA–2022–0037) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, 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.

B. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption requests. 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 (Federal Docket Management System (FDMS)), which can be reviewed at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices,* the comments are searchable by the name of the submitter.

II. Background

On November 17, 2022, FMCSA published a notice announcing receipt of applications from nine individuals requesting an exemption from the hearing requirement in 49 CFR 391.41(b)(11) to operate a CMV in interstate commerce and requested comments from the public (87 FR 69076). The public comment period ended on December 19, 2022, and one comment was received.

FMCSA has evaluated the eligibility of these applicants and determined that granting exemptions to these individuals would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(11).

The physical qualification standard for drivers regarding hearing found in § 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid (35 FR 6458, 6463 [Apr. 22, 1970] and 36 FR 12857 [July 8, 1971], respectively).

III. Discussion of Comments

FMCSA received one comment in this proceeding. An individual anonymously commented that they are in favor of ''granting exemptions for the applicants provided the applicants are otherwise qualified to drive CMVs in interstate traffic.'' However, they believe that the exemption should not be necessary for individuals who are hearing impaired as these individuals do not pose any risk to safety. The individual notes that based on FMCSA's continued decisions to grant exemptions to individuals who are hearing impaired and studies that support hearing impaired individuals are not a risk to safety, and that ''Congress does not have a legitimate interest in disallowing persons with hearing impairments from obtaining CDLs without first applying for an exemption and being submitted to the lengthy public comment process.'' They go on to ask why there is a general law from 1971 banning CMV drivers who are deaf or hard of hearing from driving that requires the driver to appeal to a bureaucratic process. The majority of their comment falls outside the scope of this notice. FMCSA grants exemptions based an individual assessment of each applicant that focuses on whether an equal or greater level of safety would likely be achieved by permitting each of these drivers to drive in interstate commerce.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statutes also allow the Agency to renew exemptions at the end of the 5-year period. However, FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on relevant scientific information and literature, and the 2008 Evidence Report, ''Executive Summary on Hearing, Vestibular Function and Commercial Motor Driving Safety.'' The evidence report reached two conclusions regarding the matter of hearing loss and CMV driver safety: (1) no studies that examined the relationship between hearing loss and crash risk exclusively among CMV drivers were identified; and (2) evidence from studies of the private driver's license holder population does not support the contention that individuals with hearing impairment are at an increased risk for a crash. In addition, the Agency reviewed each applicant's driving record found in the Commercial Driver's License Information System, for commercial driver's license (CDL) holders, and inspections recorded in the Motor Carrier Management Information System. For non-CDL holders, the Agency reviewed the driving records from the State Driver's Licensing Agency. Each applicant's record demonstrated a safe driving history. Based on an individual assessment of each applicant that focused on whether an equal or greater level of safety would likely be achieved by permitting each of these drivers to drive in interstate commerce, the Agency finds the drivers granted this exemption have demonstrated that they do not pose a risk to public safety.

Consequently, FMCSA finds further that in each case exempting these applicants from the hearing standard in § 391.41(b)(11) would likely achieve a level of safety equal to that existing without the exemption, consistent with the applicable standard in 49 U.S.C. 31315(b)(1).

V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and include the following: (1) each driver must report any crashes or accidents as defined in § 390.5T; (2) each driver must report all citations and convictions for disqualifying offenses under 49 CFR parts 383 and 391 to FMCSA; and (3) each driver is prohibited from operating a motorcoach or bus with passengers in interstate commerce. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. In addition, the exemption does not exempt the individual from meeting the applicable CDL testing requirements.

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the nine exemption applications, FMCSA exempts the following drivers from the hearing standard; in § 391.41(b)(11), subject to the requirements cited above:

Vanessa Bonilla (TX)

Saranne Fewel (CA)

James Harris (FL)

Jared Healan (CO)

Brandon Hester (TX)

Dustin Jackson (NJ)

Sondra McCoy (NC)

Sarah Nickell (IN)

Joshua Osborn (CA)

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136, 49 U.S.C. chapter 313, or the FMCSRs.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2022–28628 Filed 1–4–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0154; FMCSA–2014–0103; FMCSA–2014–0106; FMCSA–2014–0384; FMCSA–2014–0386; FMCSA–2015–0328; FMCSA–2016–0002; FMCSA–2017–0057; FMCSA–2017–0058; FMCSA–2018–0135; FMCSA–2018–0136; FMCSA–2019–0111; FMCSA–2020–0028]

Qualification of Drivers; Exemption Applications; Hearing

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

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for 25 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these hard of hearing and deaf individuals to continue to operate CMVs in interstate commerce.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates provided below. Comments must be received on or before February 6, 2023.

ADDRESSES: You may submit comments identified by the Federal Docket Management System Docket No. FMCSA–2012–0154, Docket No. FMCSA–2014–0103, Docket No. FMCSA–2014–0106, Docket No. FMCSA–2014–0384, Docket No. FMCSA–2014–0386, Docket No. FMCSA–2015–0328, Docket No. FMCSA–2016–0002, Docket No. FMCSA–2017–0057, Docket No. FMCSA–2017–0058, Docket No. FMCSA–2018–0135, Docket No. FMCSA–2018–0136, Docket No. FMCSA–2019–0111, or Docket No. FMCSA–2020–0028 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov/,* insert the docket number (FMCSA–2012–0154, FMCSA–2014–0103, FMCSA–2014–0106, FMCSA–2014–0384, FMCSA–2014–0386, FMCSA–2015–0328, FMCSA–2016–0002, FMCSA–2017–0057, FMCSA–2017–0058, FMCSA–2018–0135, FMCSA–2018–0136, FMCSA–2019–0111, or FMCSA–2020–0028) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click on the ''Comment''

button. Follow the online instructions for submitting comments.

- *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:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001, (202) 366–4001, *fmcsamedical@dot.gov.* Office hours are 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2012–0154, Docket No. FMCSA–2014–0103, Docket No. FMCSA–2014–0106, Docket No. FMCSA–2014–0384, Docket No. FMCSA–2014–0386, Docket No. FMCSA–2015–0328, Docket No. FMCSA–2016–0002, Docket No. FMCSA–2017–0057, Docket No. FMCSA–2017–0058, Docket No. FMCSA–2018–0135, Docket No. FMCSA–2018–0136, Docket No. FMCSA–2019–0111, or Docket No. FMCSA–2020–0028) indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. 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 that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *www.regulations.gov/,* insert the docket number (FMCSA–2012–0154, FMCSA–2014–0103, FMCSA–2014–0106, FMCSA–2014–0384, FMCSA–2014–0386, FMCSA–2015–0328, FMCSA–2016–0002, FMCSA–2017–0057, FMCSA–2017–0058, FMCSA–2018–0135, FMCSA–2018–0136, FMCSA–2019–0111, or FMCSA–2020–0028) 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. FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number (FMCSA–2012–0154, FMCSA–2014–0103, FMCSA–2014–0106, FMCSA–2014–0384, FMCSA–2014–0386, FMCSA–2015–0328, FMCSA–2016–0002, FMCSA–2017–0057, FMCSA–2017–0058, FMCSA–2018–0135, FMCSA–2018–0136, FMCSA–2019–0111, or FMCSA–2020–0028) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, 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.

C. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption requests. 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 (Federal Docket Management System (FDMS)), which can be reviewed at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices,* the comments are searchable by the name of the submitter.

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statutes also allow the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding hearing found in 49 CFR 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, (35 FR 6458, 6463 (Apr. 22, 1970) and 36 FR 12857 (July 8, 1971), respectively).

The 25 individuals listed in this notice have requested renewal of their exemptions from the hearing standard in § 391.41(b)(11), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

IV. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315(b), each of the 25 applicants has satisfied the renewal conditions for obtaining an exemption from the hearing requirement. The 25 drivers in this notice remain in good standing with the Agency. In addition, for commercial

driver's license (CDL) holders, the Commercial Driver's License Information System and the Motor Carrier Management Information System are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency. These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each of these drivers for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

In accordance with 49 U.S.C. 31136(e) and 31315(b), the following groups of drivers received renewed exemptions in the month of January and are discussed below.

As of January 15, 2023, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following 16 individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers:

Michael Arwood (TN)
David Chappelear (TX)
Joshua Cogan (MD)
Sean Dearsman (OH)
Jan Epitacio (CA)
Jerry Jones (TX)
Robert Knapp (MD)
James Laughrey (KS)
Christopher McKenzie (TX)
Kathy Miller (IA)
Ervin Mitchell (TX)
Lesley O'Rorke (IL)
Gerson Ramirez (MT)
William Ranson (AR)
William Tassell (OH)
Michael Wilkes (MA)

The drivers were included in docket numbers FMCSA–2012–0154, FMCSA–2014–0103, FMCSA–2014–0106, FMCSA–2014–0384, FMCSA–2014–0386, FMCSA–2016–0002, FMCSA–2017–0057, FMCSA–2017–0058, FMCSA–2018–0135, FMCSA–2018–0136, or FMCSA–2019–0111. Their exemptions are applicable as of January 15, 2023 and will expire on January 15, 2025.

As of January 22, 2023, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following nine individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers:

Hassan Abdi (MN)
Gage Burchett (VA)
Jeffrey Daniel (NV)
Gabriel Despanie (LA)
Jaymes Haar (IA)
Andrew Hatch (IA)
MarcKenzie Loriston (FL)
Carlos Sotelo Sanchez (CA)
Matthew Spainhoward (KY)

The drivers were included in docket numbers FMCSA–2015–0328 or FMCSA–2020–0028. Their exemptions are applicable as of January 22, 2023 and will expire on January 22, 2025.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) each driver must report any crashes or accidents as defined in § 390.5T; and (2) report all citations and convictions for disqualifying offenses under 49 CFR parts 383 and 391 to FMCSA; and (3) each driver prohibited from operating a motorcoach or bus with passengers in interstate commerce. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. In addition, the exemption does not exempt the individual from meeting the applicable CDL testing requirements. Each exemption will be valid for 2 years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the 25 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the hearing requirement in § 391.41(b)(11). In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for two years unless revoked earlier by FMCSA.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2022–28627 Filed 1–4–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2015–0323; FMCSA–2016–0008; FMCSA–2018–0056; FMCSA–2019–0035]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

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

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for seven individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to continue to operate CMVs in interstate commerce.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates stated in the discussions below. Comments must be received on or before February 6, 2023.

ADDRESSES: You may submit comments identified by the Federal Docket Management System Docket No. FMCSA–2015–0323, Docket No. FMCSA–2016–0008, Docket No. FMCSA–2018–0056, or Docket No. FMCSA–2019–0035 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov/,* insert the docket number (FMCSA–2015–03023, FMCSA–2016–0008, FMCSA–2018–0056, or FMCSA–2019–0035) in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click on the ''Comment'' button. Follow the online instructions for submitting comments.
- *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:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington,

DC, 20590–0001 between 9 a.m. and 5 p.m. ET Monday through Friday, except Federal holidays.

- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001, (202) 366–4001, *fmcsamedical@dot.gov.* Office hours are from 8:30 a.m. to 5 p.m. ET Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2015–0323, Docket No. FMCSA–2016–0008, Docket No. FMCSA–2018–0056, or Docket No. FMCSA–2019–0035), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. 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 that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *www.regulations.gov/,* insert the docket number (FMCSA–2015–03023, FMCSA–2016–0008, FMCSA–2018–0056, or FMCSA–2019–0035) 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. FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number FMCSA–2015–03023, FMCSA–2016–0008, FMCSA–2018–0056, or FMCSA–2019–0035 in the keyword box and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, 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.

C. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption request. 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 (Federal Docket Management System), which can be reviewed at *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices,* the comments are searchable by the name of the submitter.

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statutes also allow the Agency to renew exemptions at the end of the 5-year period. However, FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding epilepsy found in 49 CFR 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist Medical Examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

The seven individuals listed in this notice have requested renewal of their exemptions from the epilepsy and seizure disorders prohibition in § 391.41(b)(8), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

IV. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315(b), each of the seven applicants has satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition. The seven drivers in this notice remain in good standing with the Agency, have maintained their medical monitoring and have not exhibited any medical issues that would compromise their ability to safely operate a CMV during the previous 2-year exemption period. In addition, for commercial driver's license (CDL) holders, the Commercial Driver's License Information System and the Motor Carrier Management Information System are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency. These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

In accordance with 49 U.S.C. 31136(e) and 31315(b), the following groups of

[1] These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. *Epilepsy:* § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

drivers received renewed exemptions in the month of January and are discussed below.

As of January 1, 2023, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following six individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers:

Robert Davidson (ID)
Jordan Hyster (OH)
Everett Letourneau (ND)
Douglas Simms (NC)
Donald Smith (NY)
Ronald Wagner (OH)

The drivers were included in docket number FMCSA–2015–03023, FMCSA–2016–0008, FMCSA–2018–0056, or FMCSA–2019–0035. Their exemptions are applicable as of January 1, 2023 and will expire on January 1, 2025.

As of January 11, 2023, and in accordance with 49 U.S.C. 31136(e) and 31315(b), Robert Schauer (IA) has satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers.

This driver was included in docket number FMCSA–2016–0008. Their exemption is applicable as of January 11, 2023 and will expire on January 11, 2025.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) each driver must remain seizure-free and maintain a stable treatment during the 2-year exemption period; (2) each driver must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free; (3) each driver must undergo an annual medical examination by a certified ME, as defined by § 390.5; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy of his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. The exemption will be rescinded if: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based on its evaluation of the seven exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the epilepsy and seizure disorders prohibition in § 391.41(b)(8). In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for 2 years unless revoked earlier by FMCSA.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2022–28630 Filed 1–4–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0294; FMCSA–2013–0443; FMCSA–2013–0444; FMCSA–2014–0212; FMCSA–2014–0213; FMCSA–2014–0382; FMCSA–2015–0321; FMCSA–2015–0323; FMCSA–2018–0028; FMCSA–2018–0050; FMCSA–2018–0051; FMCSA–2018–0052; FMCSA–2018–0054; FMCSA–2019–0034; FMCSA–2020–0046; FMCSA–2020–0049; FMCSA–2020–0050]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

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

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for 28 individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to continue to operate CMVs in interstate commerce.

DATES: The exemptions are applicable on October 24, 2022. The exemptions expire on October 24, 2024. Comments must be received on or before February 6, 2023.

ADDRESSES: You may submit comments identified by the Federal Docket Management System Docket No. FMCSA–2012–0294, Docket No. FMCSA–2013–0443, Docket No. FMCSA–2013–0444, Docket No. FMCSA–2014–0212, Docket No. FMCSA–2014–0213, Docket No. FMCSA–2014–0382, Docket No. FMCSA–2015–0321, Docket No. FMCSA–2015–0323, Docket No. FMCSA–2018–0028, Docket No. FMCSA–2018–0050, Docket No. FMCSA–2018–0051, Docket No. FMCSA–2018–0052, Docket No. FMCSA–2018–0054, Docket No. FMCSA–2019–0034, Docket No. FMCSA–2020–0046, Docket No. FMCSA–2020–0049, or Docket No. FMCSA–2020–0050 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov/,* insert the docket number, FMCSA–2012–0294, FMCSA–2013–0443, FMCSA–2013–0444, FMCSA–2014–0212, FMCSA–2014–0213, FMCSA–2014–0382, FMCSA–2015–0321, FMCSA–2015–0323, FMCSA–2018–0028, FMCSA–2018–0050, FMCSA–2018–0051, FMCSA–2018–0052, FMCSA–2018–0054, FMCSA–2019–0034, FMCSA–2020–0046, FMCSA–2020–0049, or FMCSA–2020–0050 in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click on the ''Comment'' button. Follow the online instructions for submitting comments.
- *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:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2012–0294, Docket No. FMCSA–2013–0443, Docket No. FMCSA–2013–0444, Docket No. FMCSA–2014–0212, Docket No. FMCSA–2014–0213, Docket No. FMCSA–2014–0382, Docket No. FMCSA–2015–0321, Docket No. FMCSA–2015–0323, Docket No. FMCSA–2018–0028, Docket No. FMCSA–2018–0050, Docket No. FMCSA–2018–0051, Docket No. FMCSA–2018–0052, Docket No. FMCSA–2018–0054, Docket No. FMCSA–2019–0034, Docket No. FMCSA–2020–0046, Docket No. FMCSA–2020–0049, or Docket No. FMCSA–2020–0050), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. 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 that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *www.regulations.gov/,* insert the docket number, FMCSA–2012–0294, FMCSA–2013–0443, FMCSA–2013–0444, FMCSA–2014–0212, FMCSA–2014–0213, FMCSA–2014–0382, FMCSA–2015–0321, FMCSA–2015–0323, FMCSA–2018–0028, FMCSA–2018–0050, FMCSA–2018–0051, FMCSA–2018–0052, FMCSA–2018–0054, FMCSA–2019–0034, FMCSA–2020–0046, FMCSA–2020–0049, or FMCSA–2020–0050 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.

B. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number, FMCSA–2012–0294, FMCSA–2013–0443, FMCSA–2013–0444, FMCSA–2014–0212, FMCSA–2014–0213, FMCSA–2014–0382, FMCSA–2015–0321, FMCSA–2015–0323, FMCSA–2018–0028, FMCSA–2018–0050, FMCSA–2018–0051, FMCSA–2018–0052, FMCSA–2018–0054, FMCSA–2019–0034, FMCSA–2020–0046, FMCSA–2020–0049, or FMCSA–2020–0050 in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, 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.

C. Privacy Act

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption request. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy,* the comments are searchable by the name of the submitter.

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding epilepsy found in 49 CFR 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist Medical Examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

The 28 individuals listed in this notice have requested renewal of their exemptions from the epilepsy and seizure disorders prohibition in § 391.41(b)(8), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

IV. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315(b), each of the 28 applicants has satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition. The 28 drivers in this notice remain in good standing with the Agency, have maintained their medical monitoring and have not exhibited any medical issues that would compromise their ability to safely operate a CMV during the previous 2-year exemption period. In addition, for commercial driver's license (CDL) holders, the Commercial Driver's License Information System and the Motor Carrier Management Information System are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency. These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in

[1] These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. *Epilepsy:* § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

As of October 24, 2022, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following 28 individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers:

Lee Anderson (MA)
Jay Asack (MA)
Peter Bender (MN)
Kenneth Boglia (NC)
Jeremy Bradford (AL)
Brian Duncan (IL)
Steven Ford (WI)
Terry Hamby (NC)
Eric Hilmer (WI)
Clint Honea (AL)
Gerald Klein, Jr. (ID)
Thomas Kline (PA)
James Klucas (KS)
Jeffrey Kuper (IL)
Jeffrey T. Lang (PA)
Jose Lara-Ramirez (NV)
Ty Martin (WV)
Roland Mezger (PA)
Troy Nichols (TX)
Domenick Panfile (NJ)
Nicholas Ramirez (CA)
Michael Ranalli (PA)
Bryan Sheehan (FL)
Matthew Staley (CO)
Joshua Thomas (MN)
Robert Thomas, Jr. (NC)
Peter Thompson (FL)
Trever Williams (MN)

The drivers were included in docket number FMCSA–2012–0294, FMCSA–2013–0443, FMCSA–2013–0444, FMCSA–2014–0212, FMCSA–2014–0213, FMCSA–2014–0382, FMCSA–2015–0321, FMCSA–2015–0323, FMCSA–2018–0028, FMCSA–2018–0050, FMCSA–2018–0051, FMCSA–2018–0052, FMCSA–2018–0054, FMCSA–2019–0034, FMCSA–2020–0046, FMCSA–2020–0049, or FMCSA–2020–0050. Their exemptions are applicable as of October 24, 2022 and will expire on October 24, 2024.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) each driver must remain seizure-free and maintain a stable treatment during the 2-year exemption period; (2) each driver must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free; (3) each driver must undergo an annual medical examination by a certified ME, as defined by § 390.5; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy of his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. The exemption will be rescinded if: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based on its evaluation of the 28 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the epilepsy and seizure disorders prohibition in § 391.41(b)(8). In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for 2 years unless revoked earlier by FMCSA.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2022–28608 Filed 1–4–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2022–0166]

Pipeline Safety: Request for Special Permit; Columbia Gas Transmission, LLC

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice.

SUMMARY: PHMSA is publishing this notice to solicit public comments on a request for special permit received from Columbia Gas Transmission, LLC (TCO). The special permit request is seeking relief from compliance with certain requirements in the federal pipeline safety regulations. At the conclusion of the 30-day comment period, PHMSA will review the comments received from this notice as part of its evaluation to grant or deny the special permit request.

DATES: Submit any comments regarding this special permit request by February 6, 2023.

ADDRESSES: Comments should reference the docket number for this special permit request and may be submitted in the following ways:

- *E-Gov Website: https://www.Regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System: 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:* Docket Management System: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: You should identify the docket number for the special permit request you are commenting on at the beginning of your comments. If you submit your comments by mail, please submit two (2) copies. To receive confirmation that PHMSA has received your comments, please include a self-addressed stamped postcard. Internet users may submit comments at *https://www.Regulations.gov.*

Note: There is a privacy statement published on *https://www.Regulations.gov.* Comments, including any personal information provided, are posted without changes or edits to *https://www.Regulations.gov.*

Confidential Business Information: 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 notice 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 notice, it is important that you clearly designate the submitted comments as CBI. Pursuant to 49 Code of Federal Regulations (CFR) 190.343, you may ask PHMSA to give confidential treatment to information you give to the agency by taking the following steps: (1) mark each page of the original document

submission containing CBI as ''Confidential''; (2) send PHMSA, along with the original document, a second copy of the original document with the CBI deleted; and (3) explain why the information you are submitting is CBI. Unless you are notified otherwise, PHMSA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this notice. Submissions containing CBI should be sent to Kay McIver, DOT, PHMSA–PHP–80, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Any commentary PHMSA receives that is not specifically designated as CBI will be placed in the public docket for this matter.

FOR FURTHER INFORMATION CONTACT:

General: Ms. Kay McIver by telephone at 202–366–0113, or by email at *kay.mciver@dot.gov.*

Technical: Mr. Steve Nanney by telephone at 713–272–2855, or by email at *steve.nanney@dot.gov.*

SUPPLEMENTARY INFORMATION: PHMSA received a special permit request from TCO, a subsidiary of TC Energy, Inc., seeking a waiver from the requirements of 49 CFR 192.611(a) and (d): Change in class location: Confirmation or revision of maximum allowable operating pressure and 49 CFR 192.619(a): Maximum allowable operating pressure: Steel or plastic pipelines.

This special permit is being requested in lieu of pipe replacement, pressure reduction, or new pressure tests for a Class 1 to 3 location change on one (1) gas transmission special permit segment totaling 1,450 feet (approximately 0.275 miles). This pipeline segment, which has changed from a Class 1 to Class 3 location, is as follows:

Special permit segment No.	County, state	Outside diameter (inches)	Line name	Length (feet)	Year installed	Maximum allowable operating pressure (psig)
1 (TC 7)	Montgomery, Maryland	30	Line MC	1,450	1962	898

The special permit request, proposed special permit with conditions, and draft environmental assessment (DEA) for the above listed TCO pipeline segment is available for review and public comments in Docket Number PHMSA–2022–0166. PHMSA invites interested persons to review and submit comments on the special permit request and DEA in the docket. Please include any comments on potential safety and environmental impacts that may result if the special permit is granted. Comments may include relevant data.

Before issuing a decision on the special permit request, PHMSA will evaluate all comments received on or before the comments closing date. Comments received after the closing date will be evaluated, if it is possible to do so without incurring additional expense or delay. PHMSA will consider each relevant comment it receives in making its decision to grant or deny this special permit request.

Issued in Washington, DC, on December 28, 2022, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.

[FR Doc. 2022–28654 Filed 1–4–23; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2022–0167]

Pipeline Safety: Request for Special Permit; East Tennessee Natural Gas Transmission, LLC

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice.

SUMMARY: PHMSA is publishing this notice to solicit public comments on a request for special permit received from East Tennessee Natural Gas Transmission, LLC (ETNG). The special permit request is seeking relief from compliance with certain requirements in the Federal pipeline safety regulations. At the conclusion of the 30-day comment period, PHMSA will review the comments received from this notice as part of its evaluation to grant or deny the special permit request.

DATES: Submit any comments regarding this special permit request by February 6, 2023.

ADDRESSES: Comments should reference the docket number for the specific special permit request and may be submitted in the following ways:

- *E-Gov Website: http://www.Regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System: 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:* Docket Management System: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Instructions: You should identify the docket number for the special permit request you are commenting on at the beginning of your comments. If you submit your comments by mail, please submit two (2) copies. To receive confirmation that PHMSA has received your comments, please include a self-addressed stamped postcard. Internet users may submit comments at *http://www.Regulations.gov.*

Note: There is a privacy statement published on *http://www.Regulations.gov.* Comments, including any personal information provided, are posted without changes or edits to *http://www.Regulations.gov.*

Confidential Business Information: 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 notice 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 notice, it is important that you clearly designate the submitted comments as CBI. Pursuant to 49 Code of Federal

Regulations (CFR) 190.343, you may ask PHMSA to give confidential treatment to information you give to the Agency by taking the following steps: (1) mark each page of the original document submission containing CBI as ''Confidential''; (2) send PHMSA, along with the original document, a second copy of the original document with the CBI deleted; and (3) explain why the information you are submitting is CBI. Unless you are notified otherwise, PHMSA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this notice. Submissions containing CBI should be sent to Kay McIver, DOT, PHMSA–PHP–80, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Any commentary PHMSA receives that is not specifically designated as CBI will be placed in the public docket for this matter.

FOR FURTHER INFORMATION CONTACT:

General: Ms. Kay McIver by telephone at 202–366–0113, or by email at *kay.mciver@dot.gov.*

Technical: Mr. Steve Nanney by telephone at 713–272–2855, or by email at *steve.nanney@dot.gov.*

SUPPLEMENTARY INFORMATION: PHMSA received a special permit request from ETNG, owned and operated by Enbridge Inc., seeking a waiver from the requirements of 49 CFR 192.53(c), 192.121, 192.144, 192.149, 192.150, 192.619(a), 192.624, 192.710, and 192.714, for the use of composite pipe (Smartpipe®) and fittings to replace approximately 0.64 miles of an interstate gas transmission pipeline located in a Class 3 location in Roanoke County, Virginia. Smartpipe® is a flexible reinforced thermoplastic pipe that is not authorized by 49 CFR part 192. ETNG proposes to insert the Smartpipe®, 6-inch inside diameter and 7.6-inch outside diameter, into the existing 8.625-inch outside diameter steel pipeline, known as ETNG's Line No. 3320A–100 Pipeline. ETNG's request proposes the pipe pulling tensile force would be limited to 40,000 pounds during installation of the Smartpipe®, which is 44 percent of the Smartpipe® rating of 90,000 pounds. The request also proposes that the Line No. 3320A–100 Pipeline would have a maximum allowable operating pressure of 813 pounds per square inch gauge after installation of the Smartpipe®. The existing Line No. 3320A–100 Pipeline is externally coated with coal tar enamel.

The special permit request, proposed special permit with conditions, and draft environmental assessment (DEA) for the ETNG Line No. 3320A–100 Pipeline are available for review and public comment in the Docket No. PHMSA–2022–0167. PHMSA invites interested persons to review and submit comments on the special permit request, proposed special permit with conditions, and DEA in the docket. Please include any comments on potential safety and environmental impacts that may result if the special permit is granted. Comments may include relevant data.

Before issuing a decision on the special permit requests, PHMSA will evaluate all comments received on or before the comment closing date. Comments received after the closing date will be evaluated, if it is possible to do so without incurring additional expense or delay. PHMSA will consider each relevant comment it receives in making its decision to grant or deny this request.

Issued in Washington, DC, on December 28, 2022, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.

[FR Doc. 2022–28653 Filed 1–4–23; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Requesting Comments on Form 8975 and Schedule A (Form 8975)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 8975, Country-by-Country Report, and Schedule A (Form 8975), Tax Jurisdiction and Constituent Entity Information.

DATES: Written comments should be received on or before March 6, 2023 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov.* Include OMB Control No. 1545–2272 in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to Jon Callahan, (737) 800–7639, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *jon.r.callahan@irs.gov.*

SUPPLEMENTARY INFORMATION: The IRS is currently seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

Title: Country-by-Country Reporting.

OMB Number: 1545–2272.

Form Number: Form 8975 and Schedule A (Form 8975).

Abstract: 26 CFR 1.6038–4, issued under the authority of 26 U.S.C. 6001, 6011, 6012, 6031, 6038, and 7805, requires U.S. persons that are the ultimate parent entity of a U.S. multinational enterprise (U.S. MNE) group with annual revenue for the preceding reporting period of $850 million or more to file Form 8975 with their income tax return. Form 8975 and Schedules A (Form 8975) are used by filers to annually report certain information with respect to the filer's U.S. MNE group on a country-by-country basis. The filer must list the U.S. MNE group's constituent entities, indicating each entity's tax jurisdiction (if any), country of organization and main business activity, and provide financial and employee information for each tax jurisdiction in which the U.S. MNE does business. The financial information includes revenues, profits, income taxes paid and accrued, stated capital, accumulated earnings, and tangible assets other than cash. Separate Schedules A (Form 8975) are filed for each tax jurisdiction in which a group has one or more constituent entities resident.

Current Actions: There is no change to the existing collection previously approved by OMB. However, the total burden has increased due to better estimates.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,045.

Estimated Number of Responses: 46,790.

Estimated Time per Response: 6.41 hours.

Estimated Total Annual Burden Hours: 299,822.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to

respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 30, 2022.

Jon R. Callahan,

Tax Analyst.

[FR Doc. 2022–28640 Filed 1–4–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Requesting Comments on Form 1097–BTC

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 1097–BTC, Bond Tax Credit.

DATES: Written comments should be received on or before March 6, 2023 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov.* Include OMB Control No. 1545–2197 in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to Jon Callahan, (737) 800–7639, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *jon.r.callahan@irs.gov.*

SUPPLEMENTARY INFORMATION:

The IRS is currently seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

Title: Election to Expense Certain Depreciable Assets.

OMB Number: 1545–2197.

Form Number: Form 1097–BTC.

Abstract: Form 1097–BTC, Bond Tax Credit, is an information return used by a regulated investment company (RIC) to report tax credit bond credits distributed to shareholders. Shareholders of the RIC include their proportionate share of the interest income attributable to the credits and are allowed to claim the proportionate share of credits on their tax returns. A RIC must report the shareholder's proportionate share of credits and gross income after the close of the RIC's tax year. Form 1097–BTC, Bond Tax Credit, has been designed to report to the taxpayers and the IRS the tax credit distributed.

Current Actions: There is no change to the existing collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 1,500.

Estimated Time per Respondent: 19 minutes.

Estimated Total Annual Burden Hours: 474.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 30, 2022.

Jon R. Callahan,

Tax Analyst.

[FR Doc. 2022–28641 Filed 1–4–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Financial Services Center (FSC), Department of Veterans Affairs (VA).

ACTION: Notice of a new system of records.

SUMMARY: Pursuant to the Privacy Act of 1974, notice is hereby given that the Department of Veterans Affairs (VA) proposes to establish a new system of records entitled, ''Online Forms Submission'' (OFS). This system is used by VA employees and contractors to submit a request (*e.g.,* visitor access requests, facility access requests, procurement requests, etc.) and route a request to the relevant individuals for approval.

DATES: Comments on this new system of records must be received no later than 30 days after date of publication in the **Federal Register**. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the new system of records will become effective a minimum of 30 days after date of publication in the **Federal Register**. If VA receives public comments, VA shall review the comments to determine whether any changes to the notice are necessary.

ADDRESSES: Comments may be submitted through *www.Regulations.gov* or mailed to VA Privacy Service, 810 Vermont Avenue NW, (005R1A), Washington, DC 20420. Comments should indicate that they are submitted in response to ''Online Forms Submission—211VA0478C''. Comments received will be available at *www.Regulations.gov* for public viewing, inspection or copies.

FOR FURTHER INFORMATION CONTACT: Howard Ebron, IT Specialist, FSC, 7600 Metropolis Dr., Austin, TX 78744, Telephone: 512–460–5606 (Note: this is not a toll-free number), Email: *Howard.Ebron@va.gov.*

SUPPLEMENTARY INFORMATION: OFS is an online form entry portal that provides VA employees and contractors the ability to submit a request (*e.g.,* visitor access requests, facility access requests, procurement requests, etc.) and route a request to relevant individuals for approval. In accordance with 5 U.S.C. 552a(r), the notice of intent to publish and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director, Office of Management and Budget.

Signing Authority

The Senior Agency Official for Privacy, or designee, approved this document 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. Kurt D. DelBene, Assistant Secretary for Information and Technology and Chief Information Officer, approved this document on November 28, 2022 for publication.

Dated: December 30, 2022.

Amy L. Rose,

Program Analyst, VA Privacy Service, Office of Information Security, Office of Information and Technology, Department of Veterans Affairs.

SYSTEM NAME AND NUMBER:

Online Forms Submission—VA (211VA0478C)

SECURITY CLASSIFICATION:

Unclassified

SYSTEM LOCATION:

Records are maintained at the FSC, 7600 Metropolis Dr., Austin, TX 78744.

SYSTEM MANAGER(S):

Jonathan Lindow Information System Owner, FSC, 7600 Metropolis Dr., Austin, TX 78744 Email: *Jonathan.Lindow@va.gov* and Eric Gonzalez, Email: *Eric.Gonzalez@va.gov,* Telephone: 737–278–1978 (this is not a toll free number).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Budget and Accounting Act of 1950 and General Accounting Office Title 8, Chapter 3. Social Security Numbers (SSN) are used to index and store pay affecting documents. SSNs are required from the customer for Internal Revenue Service (IRS) tax reporting and cannot be eliminated. SSNs are required for security clearance processing, which is authorized under Executive Orders 9397, 10450, 10865, 12333 and 12356; sections 3301 and 9101 of 5 U.S.C. and Homeland Security Presidential Directive 12.

PURPOSE(S) OF THE SYSTEM:

The OFS system provides a central web-based location for submitting forms electronically. OFS allows for the creation of request forms for submittal, approval, completion routing, auditing and administration. Approval and completion groups can be created and assigned various tasks for any form and all routing is data-driven. Audit information is collected about every submitted form for tracking and process-flows are reviewed for efficiency. All form submissions are stored electronically in a centralized database. OFS ensures that only relevant personnel are involved with completing the requested action(s) on the forms, thereby improving process efficiency and accuracy.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

These records include information on current and former VA Employees and Contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records include name, SSN, business email address, personal email address, business phone number and home address.

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by the VA Employee or Contractor and pulled from the global address list and/or active directory.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

1. *Congress:* to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

2. *Data Breach, Response and Remediation for VA:* to appropriate agencies, entities and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records; (2) VA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, VA (including its information systems, programs and operations), the Federal Government or national security; and (3) the disclosure made to such agencies, entities and persons is reasonably necessary to assist in connection with VA's efforts to respond to the suspected or confirmed breach or to prevent, minimize or remedy such harm.

3. *Data Breach, Response and Remediation for Another Federal Agency:* to another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach; or (2) preventing, minimizing or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs and operations), the Federal Government or national security, resulting from a suspected or confirmed breach.

4. *Law Enforcement:* to a Federal, state, local, territorial, tribal or foreign law enforcement authority or other appropriate entity charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing such law, provided that the disclosure is limited to information that, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature. The disclosure of the names and addresses of Veterans and their dependents from VA records under this routine use must also comply with the provisions of 38 U.S.C. 5701.

5. *Department of Justice (DOJ), Litigation, Administrative Proceeding:* to DOJ, or in a proceeding before a court, adjudicative body or other administrative body before which VA is authorized to appear, when:

(a) VA or any component thereof;

(b) Any VA employee in his or her official capacity;

(c) Any VA employee in his or her individual capacity where DOJ has agreed to represent the employee; or

(d) The United States, where VA determines that litigation is likely to affect the agency or any of its components,

is a party to such proceedings or has an interest in such proceedings, and VA determines that use of such records is

relevant and necessary to the proceedings.

6. *Contractors:* to contractors, grantees, experts, consultants, students and others performing or working on a contract, service, grant, cooperative agreement or other assignment for VA, when reasonably necessary to accomplish an agency function related to the records.

7. *Office of Personnel Management (OPM):* to OPM in connection with the application or effect of civil service laws, rules, regulations or OPM guidelines in particular situations.

8. *Equal Employment Opportunity Commission (EEOC):* to EEOC in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or other functions of the Commission as authorized by law.

9. *Federal Labor Relations Authority (FLRA):* to FLRA in connection with the investigation and resolution of allegations of unfair labor practices, the resolution of exceptions to arbitration awards when a question of material fact is raised, matters before the Federal Service Impasses Panel and the investigation of representation petitions and the conduct or supervision of representation elections.

10. *Merit Systems Protection Board (MSPB):* to MSPB in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices and such other functions promulgated in 5 U.S.C. 1205 and 1206, or as authorized by law.

11. *National Archives and Records Administration (NARA):* to NARA in records management inspections conducted under 44 U.S.C. 2904 and 2906 or other functions authorized by laws and policies governing NARA operations and VA records management responsibilities.

12. *Office of Management and Budget (OMB):* to OMB for the performance of its statutory responsibilities for evaluating Federal programs.

13. *Former Employee, Contractor or Legal Representatives:* to a former VA employee or contractor, as well as the authorized representative of a current or former employee or contractor of VA, in connection with matters before the EEOC, FLRA, MSPB or in litigation.

14. *Witnesses:* to potential witnesses as appropriate and necessary to perform the agency's functions under 42 U.S.C. 2000d, 29 CFR 1614, 29 CFR 1630, Sections 501, 504 and 505 of the Rehabilitation Act of 1973, 45 CFR Subpart D § 86.31 and 42 U.S.C. 6101–6107.

15. *Sources of Information:* to any authorized source from which additional information is requested in the course of processing a complaint or report of harassment.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records for this system are stored electronically in the OFS database.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

OFS forms can be retrieved based on unique ID, search based on type of form and submission date. OFS roles include Auditor, OFS Admin, Basic User and Supervisor and the user roles which dictate the kind of the data that can be viewed by the user.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records in this system are retained and disposed of in accordance with the schedule approved by the Archivist of the United States, General Records Schedules: 3.1, Item 020; 5.6, Item 111; 5.6, Item 120; 1.1, Item 011; 5.6, Item 010; 2.2, Item 010; and, 2.2, Item 080.

ADMINISTRATIVE, TECHNICAL AND PHYSICAL SAFEGUARDS:

Information in the system is protected from unauthorized access through administrative, physical, and technical safeguards. Access to computerized information is restricted to authorized OFS personnel on a need-to-know basis. OFS personnel require valid Personal Identity Verification cards and need to be assigned relevant user roles to access the OFS system.

RECORD ACCESS PROCEDURES:

Individuals seeking information on the existence and content of records in this system pertaining to them should contact the system manager(s) in writing as indicated above. A request for access to records must contain the requester's full name, address, telephone number, be signed by the requester, and describe the records sought in sufficient detail to enable VA personnel to locate them with a reasonable amount of effort.

CONTESTING RECORD PROCEDURES:

Individuals seeking to contest or amend records in this system pertaining to them should contact the system manager in writing as indicated above. A request to contest or amend records must state clearly and concisely what records is being contested, the reasons for contesting it, and the proposed amendment to the record.

NOTIFICATION PROCEDURES:

Generalized notice is provided by the publication of this notice. For specific notice, see Record Access Procedure, above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

No privacy exemptions exist for the system.

HISTORY:

None.

[FR Doc. 2022–28643 Filed 1–4–23; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 88 Thursday,

No. 3 January 5, 2023

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 217

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Geophysical Surveys in the Gulf of Mexico; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 217

[Docket No. 221221–0280]

RIN 0648–BL68

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Geophysical Surveys in the Gulf of Mexico

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS is reassessing the statutorily mandated findings supporting its January 19, 2021, final rule and Regulations Governing Taking Marine Mammals Incidental to Geophysical Survey Activities in the Gulf of Mexico issued pursuant to the Marine Mammal Protection Act (MMPA), in light of updated information following the discovery that the estimates of incidental take of marine mammals anticipated from the activities analyzed for the 2021 regulations were erroneous. The correction of this error, as well as other newly available and pertinent information, has bearing on the analyses supporting some of the prior findings in the 2021 final rule and the taking allowable under the regulations. There are no changes to the specified activities or the specified geographical region in which those activities would be conducted, nor to the original 5-year period of effectiveness. Here, in light of the new information, NMFS presents new ''negligible impact'' analyses supporting our preliminary affirmance of the negligible impact determinations for all species, and proposes to affirm that the existing regulations, which contain mitigation, monitoring, and reporting requirements, are consistent with the ''least practicable adverse impact standard'' of the MMPA. Pursuant to the MMPA, NMFS is requesting comments on its revised negligible impact analyses and proposed findings and proposed retention of the existing regulations as consistent with the MMPA's least practicable adverse impact standard and will consider public comments relevant to this proposed rule prior to issuing any final rule. Agency responses will be included in the notice of the final decision.

DATES: Comments and information must be received no later than February 6, 2023.

ADDRESSES: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov* and enter NOAA–NMFS–2022–0090 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Regulatory Action

On January 19, 2021 (86 FR 5322), in response to a petition request from the Bureau of Ocean Energy Management (BOEM), NMFS issued a final rule under the MMPA, 16 U.S.C. 1361 *et seq.,* for regulations governing the take of marine mammals incidental to the conduct of geophysical survey activities in the Gulf of Mexico (GOM). This incidental take regulation (ITR), which became effective on April 19, 2021, established a framework to allow for the issuance of Letters of Authorization (LOAs) to authorize take by individual survey operators (50 CFR 216.106; 86 FR 5322 (January 19, 2021)). Take is expected to occur by Level A and/or Level B harassment incidental to use of active sound sources as described below.

Errors discovered in the maximum annual and 5-year take numbers during implementation of the ITR preclude NMFS from issuing LOAs for the full amount of activity described by BOEM in the petition (as revised) and intended to be covered under the ITR. As a result, the utility of the rule has been limited. NMFS has produced corrected take estimates, including updates to the best available science incorporated to the take estimation process (*i.e.,* new marine mammal density information), with the result that allowable take numbers are changed through this rule. Changes to the take numbers require additional analysis to ensure that the necessary statutory findings can still be made. This proposed rule revises NMFS' analysis and affirms the statutory findings that underlie its January 19, 2021, final rule (86 FR 5322), based on consideration of information that corrects errors in the take estimates that were considered for the final rule. NMFS solicits public comment on this proposed rule, including but not limited to NMFS' proposed or preliminary findings, determinations or conclusions regarding the MMPA standards, and the information NMFS relies on in support of those findings, determinations, or conclusions; and NMFS' preliminary decisions to reaffirm or not make changes to the 2021 final rule, and the information NMFS relies on in support of those preliminary decisions.

Legal Authority for the Action

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1371(a)(5)(A)) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region for up to 5 years if, after notice and public comment, the agency makes certain findings and issues regulations that set forth permissible methods of taking pursuant to that activity and other means of effecting the ''least practicable adverse impact'' on the affected species or stocks and their habitat (see the discussion below in the Proposed Mitigation section), as well as monitoring and reporting requirements. Under NMFS' implementing regulations for section 101(a)(5)(A), NMFS issues LOAs to individuals (including entities) seeking authorization for take under the activity-specific incidental take regulations (50 CFR 216.106).

Summary of Major Provisions Within the Regulations

Following is a summary of the major provisions of the current regulations regarding geophysical survey activities, which NMFS proposes to reaffirm. The regulations contain requirements for mitigation, monitoring, and reporting, including:

- Standard detection-based mitigation measures, including use of visual and acoustic observation to detect marine mammals and shut down acoustic sources in certain circumstances;

• A time-area restriction designed to avoid effects to bottlenose dolphins in times and places believed to be of particular importance;
• Vessel strike avoidance measures; and
• Monitoring and reporting requirements.

The ITR would continue to govern and allow for the issuance of LOAs for the take of marine mammals incidental to the specified activity (which is unchanged from what was described in the 2021 final rule), within the upper bounds of take evaluated herein.

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to as ''mitigation''); and set forth requirements pertaining to the monitoring and reporting of the takings. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

On October 17, 2016, BOEM submitted a revised petition [1] to NMFS for rulemaking under section 101(a)(5)(A) of the MMPA to authorize take of marine mammals incidental to conducting geophysical surveys during oil and gas industry exploration and development activities in the GOM. This revised petition was deemed adequate and complete based on NMFS' implementing regulations at 50 CFR 216.104.

NMFS published a notice of proposed rulemaking in the **Federal Register** for a 60-day public review on June 22, 2018 (83 FR 29212) (''2018 proposed rule''). All comments received are available online at *www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico.*

On February 24, 2020, BOEM submitted a notice to NMFS of its ''updated proposed action and action area for the ongoing [ITR] process[.]'' This update consisted of removal of the area then under a Congressional leasing moratorium under the Gulf of Mexico Energy Security Act (GOMESA) (Sec. 104, Pub. L. 109–432) [2] from consideration in the ITR. BOEM stated in its notice that survey activities are not likely to be proposed within the area subject to the leasing moratorium during the 5-year period of effectiveness for the ITR and, therefore, that the ''number, type, and effects of any such proposed [survey] activities are simply too speculative and uncertain for BOEM to predict or meaningfully analyze.'' Based on this updated scope, BOEM on March 26, 2020, submitted revised projections of expected activity levels and corresponding changes to modeled acoustic exposure numbers (*i.e.,* take estimates). BOEM's notice and updated information are available online at: *www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico.* NMFS incorporated this change in scope and issued a final rule and ITR on January 19, 2021 (86 FR 5322) (''2021 final rule'' or ''2021 ITR''), which became effective on April 19, 2021. Consistent with section 101(a)(5)(A), NMFS may issue LOAs under the 2021 ITR for a period of 5 years.

While processing requests for individual LOAs under the ITR using the methodology for developing LOA-specific take numbers presented in the rule, NMFS discovered that the estimated maximum annual incidental take and estimated total 5-year take from all survey activities that BOEM projected for its revised scope appeared to be in error, in that maximum annual incidental take was likely to be reached much sooner than was anticipated for some species based on the level of activity described in BOEM's petition (as revised in 2020). NMFS contacted BOEM regarding this, and BOEM determined that, when it reduced its scope of specified activity in March 2020 by removing the GOMESA moratorium area from its proposed action, it underestimated the level of take by inadvertently factoring species density estimates into its revised exposure estimates twice. Generally, this miscalculation caused BOEM to underestimate the total predicted exposures of species from all survey activities in its revision to the petition, most pronouncedly for those species with the lowest densities (*e.g.,* killer whales).

BOEM provided NMFS with an explanation of the miscalculation with regard to its incidental take estimate and revised take estimates. See the Estimated Take section for additional discussion. NMFS then determined it would conduct a rulemaking to analyze the revised take estimates and, if appropriate, to revise its incidental take rule accordingly.

Since issuance of the 2021 final rule (at time this proposed rule was submitted to the **Federal Register**), NMFS has issued 34 LOAs (*www.fisheries.noaa.gov/issued-letters-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico*). Of these 34 LOAs, 17 have included authorization of take for killer whales. An additional 7 requests for authorization remain pending as a result of limitations on NMFS' ability to authorize additional take of killer whales under the rule.

National Environmental Policy Act (NEPA)

In 2017, BOEM produced a final Programmatic Environmental Impact Statement (PEIS) to evaluate the direct, indirect, and cumulative impacts of geological and geophysical survey activities in the GOM, pursuant to requirements of NEPA. These activities include geophysical surveys, as are described in the MMPA petition submitted by BOEM to NMFS. The PEIS is available online at: *www.boem.gov/Gulf-of-Mexico-Geological-and-Geophysical-Activities-Programmatic-EIS/.* NOAA, through NMFS, participated in preparation of the PEIS as a cooperating agency due to its legal jurisdiction and special expertise in conservation and management of marine mammals, including its responsibility to authorize incidental take of marine mammals under the MMPA.

[1] In the 2018 notice of proposed rulemaking (83 FR 29212, June 22, 2018), NMFS provided a brief history of prior petitions received from BOEM's predecessor agencies.

[2] The Congressional moratorium in GOMESA was in place until June 30, 2022. On September 8, 2020, the President withdrew, under section 12 of the Outer Continental Shelf Lands Act, the same area covered by the prior GOMESA moratorium from disposition by leasing for 10 years, beginning on July 1, 2022, and ending on June 30, 2032.

In 2020, NMFS prepared a Record of Decision (ROD) for the following purposes: (1) to adopt BOEM's Final PEIS to support NMFS' analysis associated with issuance of incidental take authorizations pursuant to section 101(a)(5)(A) or (D) of the MMPA and the regulations governing the taking and importing of marine mammals (50 CFR part 216); and (2) in accordance with 40 CFR 1505.2, to announce and explain the basis for NMFS' decision to review and potentially issue incidental take authorizations under the MMPA on a case-by-case basis, if appropriate.

The Council on Environmental Quality (CEQ) regulations state that ''[a]gencies shall prepare supplements to either draft or final environmental impact statements if: (i) the agency makes substantial changes in the proposed action that are relevant to environmental concerns; or (ii) there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.'' (40 CFR 1502.09(c)). In addition, NMFS has considered CEQ's ''significance'' criteria at 40 CFR 1508.27 and the criteria relied upon for the 2020 ROD to determine whether any new circumstances or information are ''significant,'' thereby requiring supplementation of the 2017 PEIS.

For this proposed action, NMFS has reevaluated its findings related to the MMPA negligible impact standard and the least practicable adverse impact standard governing its regulations in light of the corrected take estimates and other relevant new information. Based on that evaluation, NMFS preliminarily reaffirms its negligible impact determinations and preliminarily finds that the corrected and additional data do not result in the need for revised mitigation and monitoring measures under the least practicable adverse impact standard.

NMFS also considered whether there are any significant new circumstances or information that are relevant to environmental concerns and have a bearing on this proposed action or its impacts. For our consideration of new circumstances and information, we consulted scientific publications from 2021–22, data that were collected by the agency and other entities after the PEIS was completed, field reports, and other sources (*e.g.,* updated NMFS Stock Assessment Reports (SAR), reports produced under the BOEM-funded Gulf of Mexico Marine Assessment Program for Protected Species (GoMMAPPS) project (see *www.boem.gov/gommapps*)). The new circumstances and information are related to updated information on Rice's whales in the action area (population abundance, mortality and sources of mortality, distribution and occurrence) and any new data, analysis, or information on the effects of geophysical survey activity on marine mammals and relating to the effectiveness and practicability of measures to reduce the risk associated with impacts of such survey activity. Based on this review, NMFS has preliminarily determined that supplementation of the 2017 PEIS is not warranted.

Summary of the Proposed Action

This proposed rule provides analysis of the same activities and activity levels considered for the 2021 final rule for the same original five-year period of time and utilizes the same modeling methodology described in the 2021 final rule. We incorporate the best available information, including consideration of specific new information that has become available since the 2021 rule was published and updates to currently available marine mammal density information. This proposed rule also incorporates expanded modeling results that estimate take utilizing the existing methodology but also consider the effects of using smaller (relative to the proxy source originally defined by BOEM) airgun arrays currently prevalent, as evidenced by LOA applications received by NMFS to date (see *www.fisheries.noaa.gov/issued-letters-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico*).

There are no changes to the nature or level of the specified activities within or across years or to the geographic scope of the activity. Based on our preliminary assessment of the specified activity in light of the revised take estimates and other new information, we have determined that the 2021 regulations at 50 CFR 217.180, including the required mitigation and associated monitoring measures, satisfy the MMPA requirement to prescribe the means of effecting the least practicable adverse impact on the affected species or stocks and their habitat, and therefore, do not propose to change those regulations, nor do we propose to change the requirements pertaining to monitoring and reporting. This rulemaking supplements the information supporting the 2021 incidental take rule. This proposed rule would not change the existing expiration date of the 2021 regulations (April 19, 2026). In addition, NMFS' demarcation of ''years'' under the 2021 final rule for purposes of accounting for authorized take (*e.g.,* Year 1 under the rule extended from April 19, 2021, through April 18, 2022) would remain unchanged under this proposed rule.

As to the negligible impact findings, the revised take numbers remain within those previously analyzed for most species. (Take numbers increased compared with the 2021 final rule for four species: Rice's whale, Fraser's dolphin, rough-toothed dolphin, and striped dolphin. See Tables 5 and 6. Because of the new category of blackfish, there is uncertainty on any change in the take numbers for the individual species that comprise that category, though collectively the take numbers for all species in the blackfish category remain within the levels previously analyzed.) However, we revisited the risk assessment framework used in the 2021 analyses for all species, as elements of the framework are dependent on information related to stock abundance, which has been updated. For most species, we provide updated negligible impact analyses and determinations. For those species for which take numbers decreased and associated evaluated risk remained static or declined, we incorporate (by either repeating, summarizing, or referencing) applicable information and analyses in the prior rulemaking and supporting documents. For those species, there is no other new information suggesting that the effect of the anticipated take might exceed what was considered in the 2021 final rule. Therefore, the analyses and findings included in the documents provided and produced in support of the 2021 final rule remain current and applicable. Please see the Negligible Impact Analysis and Determinations section for further information. As to the small numbers standard, we do not propose to change the interpretation and implementation as laid out in the 2021 final rule.

Description of the Specified Activity

Overview

The specified activity for this proposed action is unchanged from the specified activity considered for the 2021 ITR, consisting of geophysical surveys conducted for a variety of reasons. BOEM's 2016 petition described a 10-year period of geophysical survey activity and provided estimates of the amount of effort by survey type and location. BOEM's 2020 update to the scope of activity included revisions to these level-of-effort projections, including limiting the projections to 5 years and removing activity assumed to occur within the areas removed from the

scope of activity. Actual total amounts of effort (including by survey type and location) are not known in advance of receiving LOA requests, but take in excess of what is analyzed in this rule would not be authorized. Applicants seeking authorization for take of marine mammals incidental to survey activities outside the geographic scope of the rule (*i.e.,* within the former GOMESA moratorium area) would need to pursue a separate MMPA incidental take authorization. See Figures 1 and 2.

Geophysical surveys in the GOM are typically conducted in support of hydrocarbon exploration, development, and production by companies that provide such services to the oil and gas industry. Broadly, these surveys include deep penetration surveys using large airgun arrays as the acoustic source; shallow penetration surveys using a small airgun array, single airgun, or other systems that may achieve similar objectives (here considered broadly as including boomers and sparkers) as the acoustic source; or high-resolution surveys, which may use a variety of acoustic sources. Geophysical surveys and associated acoustic sources were described in detail in NMFS' 2018 notice of proposed rulemaking and in the notice of issuance for the 2021 final rule. Please see those notices for detailed discussion of geophysical survey operations, associated acoustic sources, and the specific sources and survey types that were the subject of acoustic exposure modeling. Information provided therein remains accurate and relevant and is not repeated here. The use of these acoustic sources produces underwater sound at levels that have the potential to result in harassment of marine mammals. Marine mammal species with the potential to be present in the GOM are described below (see Table 2).

Generally speaking, survey activity projected by BOEM may occur within Federal territorial waters and waters of the U.S. Exclusive Economic Zone (EEZ) (*i.e.,* to 200 nautical miles (nmi)) within the GOM, and/or corresponding with BOEM's GOM Outer Continental Shelf planning areas (*i.e.,* Western Planning Area (WPA), Central Planning Area (CPA), Eastern Planning Area (EPA)).

Dates and Duration

The dates and duration of the specified activities considered for this proposed rule are unchanged from the dates and duration for the 2021 final rule, which may occur at any time during the period of validity of the regulations (April 19, 2021, through April 18, 2026).

Specified Geographical Region

The specified geographical region for this proposed action is unchanged from the one considered for the 2021 final rule. The OCS planning areas are depicted in Figure 1, and the overlap of the former GOMESA moratorium area, which is now withdrawn from leasing consideration, with the geographical region (as well as with the modeling zones) is depicted in Figure 2. NMFS provided a detailed discussion of the specified geographical region in the 2018 notice of proposed rulemaking.

BILLING CODE 3510–22–P

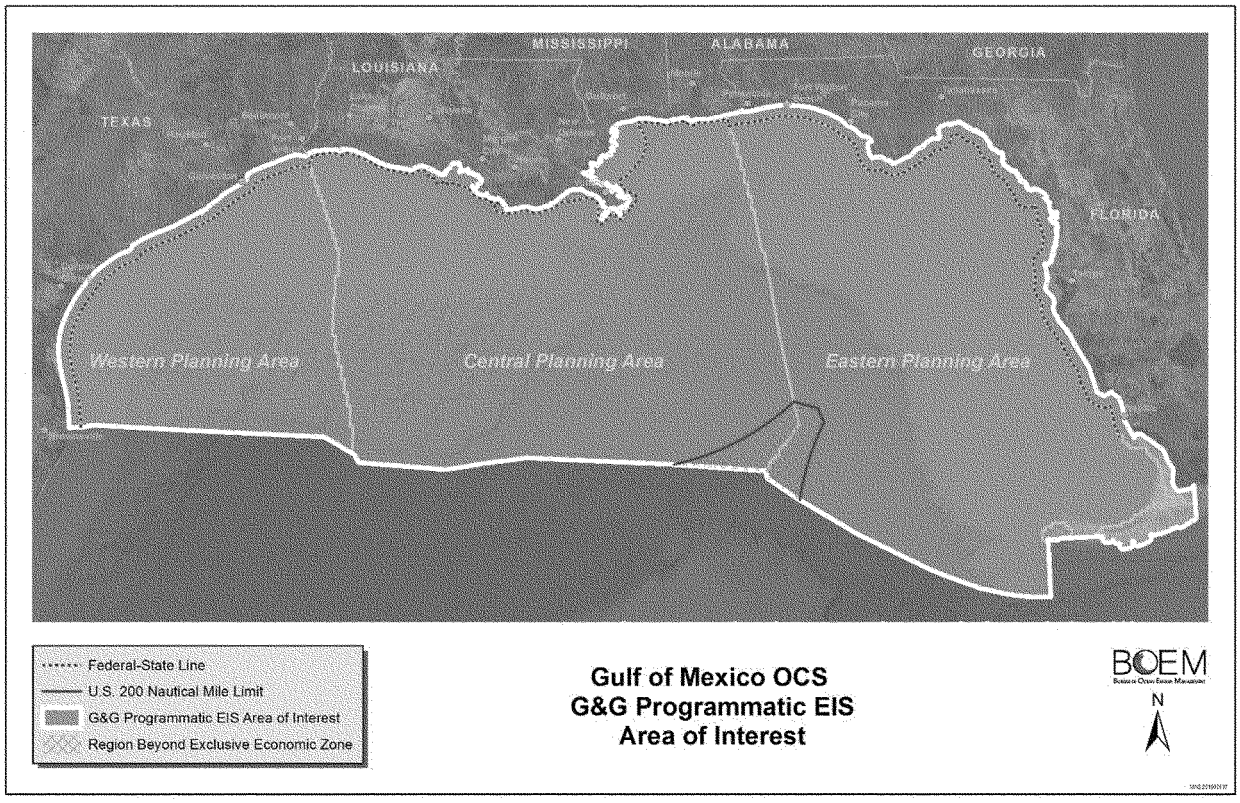


Figure 1 -- BOEM Planning Areas

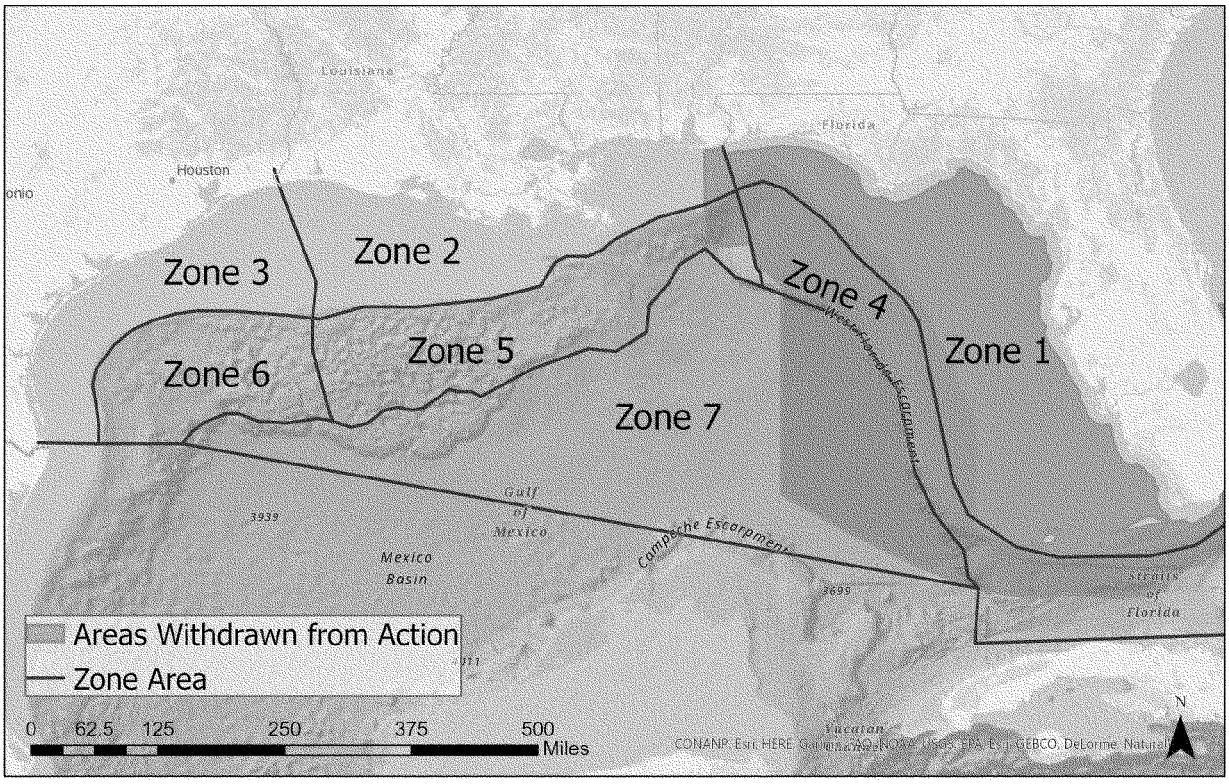


Figure 2 -- Specified Geographical Region

BILLING CODE 3510–22–C

Summary of Representative Sound Sources

The 2021 final rule allows for the authorization of take, through LOAs, incidental to airguns of different sizes and configurations. The supporting modeling considered two specific airgun array sizes/configurations (as well as a single airgun). For this proposed rule, modeling of a third representative airgun size is also specifically considered. Acoustic exposure modeling performed in support of the 2021 rule was described in detail in ''Acoustic Propagation and Marine Mammal Exposure Modeling of Geological and Geophysical Sources in the Gulf of Mexico'' and ''Addendum to Acoustic Propagation and Marine Mammal Exposure Modeling of Geological and Geophysical Sources in the Gulf of Mexico'' (Zeddies *et al.,* 2015, 2017a), as well as in ''Gulf of Mexico Acoustic Exposure Model Variable Analysis'' (Zeddies *et al.,* 2017b), which evaluated a smaller, alternative airgun array. Modeling of a smaller, more representative, airgun array considered in this proposed rule is described in a 2022 memorandum (Weirathmueller *et al.,* 2022). These reports provide full detail regarding the modeled acoustic sources and survey types and are available online at: *www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico.*

Representative sources for the modeling include three different airgun arrays, a single airgun, and an acoustic source package including a CHIRP sub-bottom profiler in combination with multibeam echosounder and side-scan sonar. Two major survey types were considered: large-area (including 2D, 3D narrow azimuth (NAZ), 3D wide azimuth (WAZ), and coil surveys) and small-area (including single airgun surveys and high-resolution surveys; the single airgun was used as a conservative proxy for surveys using a boomer or sparker). The nominal airgun sources used for analysis of the specified activity include a single airgun (90-in^3 airgun) and a large airgun array (8,000 in^3). In addition, the Model Variable Analysis (Zeddies *et al.,* 2017b) provides analysis of an alternative 4,130-in^3 array, and the most recent modeling effort using the same methodology provides analysis of a 5,110-in^3 array (Weirathmueller *et al.,* 2022), with specifications defined by NMFS in consultation with industry operators to provide exposure modeling results more relevant to arrays commonly in use (see Letters of Authorization section). Additional discussion is provided in the Estimated Take section.

While it was necessary to identify representative sources for the purposes of modeling take estimates for the analysis for the 2021 rule, the analysis is intended to be, and is appropriately, applicable to takes resulting from the use of other sizes or configurations of airguns (*e.g.,* the smaller, 5,110-in^3 airgun array currently prevalent in GOM survey effort and described in Weirathmueller *et al.* (2022), and the alternative 4,130-in^3 array initially modeled by Zeddies *et al.* (2017b)). Although the analysis herein is based on the worst-case modeling results (for most species, those resulting from use of the 8,000-in^3 array), actual take numbers for authorization through LOAs are generated based on the results most applicable to the array planned for use.

While these descriptions reflect existing technologies and current practice, new technologies and/or uses of existing technologies may come into practice during the remaining period of validity of these regulations. As stated in the 2021 final rule, NMFS will evaluate any such developments on a case-specific basis to determine whether

expected impacts on marine mammals are consistent with those described or referenced in this document and, therefore, whether any anticipated take incidental to use of those new technologies or practices may appropriately be authorized under the existing regulatory framework. See Letters of Authorization for additional information.

Estimated Levels of Effort

As noted above, estimated levels of effort are unchanged from those considered in the 2021 final rule. Please see the 2021 final rule notice for additional detailed discussion of those estimates and of the approach to delineating modeling zones (shown in Figure 2).

In support of its 2020 revision of the scope of the rule, BOEM provided NMFS with revised 5-year level of effort predictions and associated acoustic exposure estimates. Table 1 provides those effort projections for the 5-year period, which are unchanged.

TABLE 1—PROJECTED LEVELS OF EFFORT IN 24-HR SURVEY DAYS FOR FIVE YEARS, BY ZONE AND SURVEY TYPE [1]

Year	Zone [2]	2D [3]	3D NAZ [3]	3D WAZ [3]	Coil [3]	VSP [3]	Total (deep) [3]	Shallow hazards [4]	Boomer [4]	HRG [4]	Total (shallow) [4]
1	1	0	0	0	0	0	0	0	0	0	0
	2	0	236	0	0	0	236	2	0	18	20
	3	0	30	0	0	0	30	0	0	4	4
	4	0	0	0	0	0	0	0	0	0	0
	5	54	373	184	79	2	692	0	0	25	25
	6	0	186	49	21	0	256	0	0	10	10
	7	46	346	166	71	1	630	0	0	23	23
Total		100	1,171	399	171	3	1,844	2	0	80	82
2	1	0	0	0	0	0	0	0	0	0	0
	2	0	354	42	19	0	415	2	0	18	20
	3	0	0	0	0	0	0	0	0	4	4
	4	6	0	0	0	0	6	0	0	0	0
	5	0	373	184	79	2	638	0	0	25	25
	6	0	99	0	0	0	99	0	0	11	11
	7	20	336	162	69	1	588	0	0	23	23
Total		26	1,162	388	167	3	1,746	2	0	81	83
3	1	0	0	0	0	0	0	0	0	0	0
	2	0	236	0	0	0	236	2	0	18	20
	3	0	0	0	0	0	0	0	0	4	4
	4	0	0	0	0	0	0	0	0	0	0
	5	0	328	154	66	2	550	0	0	26	26
	6	0	186	49	21	0	256	0	0	12	12
	7	0	306	139	60	1	506	0	0	24	24
Total		0	1,056	342	147	3	1,548	2	0	84	86
4	1	0	0	0	0	0	0	0	0	0	0
	2	0	354	42	19	0	415	2	1	16	19
	3	0	30	0	0	0	30	0	0	3	3
	4	12	11	0	0	0	23	0	0	0	0
	5	27	237	92	40	2	398	0	0	26	26
	6	0	99	0	0	0	99	0	0	12	12
	7	63	255	94	40	1	453	0	0	24	24
Total		102	986	228	99	3	1,418	2	1	81	84
5	1	0	0	0	0	0	0	0	0	0	0
	2	0	236	0	0	0	236	0	0	19	19
	3	0	0	0	0	0	0	0	0	3	3
	4	0	17	0	0	0	17	0	0	0	0
	5	0	283	184	79	2	548	2	1	24	27
	6	0	99	0	0	0	99	0	0	13	13
	7	0	313	162	69	2	546	2	1	23	26
Total		0	948	346	148	4	1,446	4	2	82	88

[1] Projected levels of effort in 24-hr survey days. This table corrects Table 2 in NMFS' notice of issuance of the 2021 ITR, which erroneously presented the difference in activity levels between the 2018 proposed ITR and the revised levels after GOMESA removal. The correct information was concurrently made available to the public via BOEM's 2020 notice to NMFS of its updated scope.

[2] Zones follow the zones depicted in Figure 2.

[3] Deep penetration survey types include 2D, which uses one source vessel with one source array; 3D NAZ, which uses two source vessels using one source array each; 3D WAZ and coil, each of which uses four source vessels using one source array each (but with differing survey design); and VSP, which uses one source vessel with one source array. ''Deep'' refers to survey type, not to water depth. Assumptions related to modeled source and survey types were made by BOEM in its petition for rulemaking.

[4] Shallow penetration/HRG survey types include shallow hazards surveys, assumed to use a single 90-in^3 airgun or boomer, and high-resolution surveys using the multibeam echosounder, side-scan sonar, and CHIRP sub-bottom profiler systems concurrently. ''Shallow'' refers to survey type, not to water depth.

The preceding description of the specified activity is a summary of critical information. The interested reader should refer to the 2018 notice of proposed rulemaking (83 FR 29212, June 22, 2018), as well as BOEM's petition (with recent addenda) and PEIS, for additional detail regarding these activities and the region. Required mitigation, monitoring, and reporting measures are described later in this document (see Proposed Mitigation and Proposed Monitoring and Reporting).

Description of Marine Mammals in the Area of the Specified Activities

Table 2 lists all species with expected potential for occurrence in the GOM and summarizes information related to the population or stock, including potential biological removal (PBR). PBR, defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population, is considered in concert with known sources of ongoing anthropogenic mortality (as described in NMFS' SARs). For status of species, we provide information regarding U.S. regulatory status under the MMPA and Endangered Species Act (ESA). The affected species and stocks have not changed from those described in the notice of issuance of the 2021 rule. We incorporate information newly available since that rule, including updated information from NMFS' SARs, but do not otherwise repeat discussion provided in either the 2018 notice of proposed rulemaking or 2021 notice of issuance of the final rule.

In some cases, species are treated as guilds (as was the case for the analysis conducted in support of the 2021 ITR). In general ecological terms, a guild is a group of species that have similar requirements and play a similar role within a community. However, for purposes of stock assessment or abundance prediction, certain species may be treated together as a guild because they are difficult to distinguish visually and many observations are ambiguous. For example, NMFS' GOM SARs assess stocks of *Mesoplodon* spp. and *Kogia* spp. as guilds. As was the case for the 2021 rule, we consider beaked whales and *Kogia* spp. as guilds. In this proposed rule, reference to ''beaked whales'' includes the Cuvier's, Blainville's, and Gervais beaked whales, and reference to ''*Kogia* spp.'' includes both the dwarf and pygmy sperm whale.

The use of guilds in the 2021 final rule followed the best available density information at the time (*i.e.,* Roberts *et al.,* 2016). Subsequently, updated density information became available for all species except for Fraser's dolphin and rough-toothed dolphin (Garrison *et al.,* 2022). The updated density models retain the treatment of beaked whales and *Kogia* spp. as guilds and have additionally consolidated four species into an undifferentiated ''blackfish'' guild. These species include the melon-headed whale, false killer whale, pygmy killer whale, and killer whale. The model authors determined that, for this group of species, there were insufficient sightings of any individual species to generate a species-specific model. Therefore, reference to ''blackfish'' hereafter includes the melon-headed whale, false killer whale, pygmy killer whale, and killer whale.[3] NMFS requests comment regarding whether there is additional data that it should consider in this rulemaking related to the aforementioned species, in light of NMFS' preliminary determination that Garrison *et al.* (2022) reflects the best available scientific information.

Twenty-one species (with 24 managed stocks) have the potential to co-occur with the prospective survey activities. For detailed discussion of these species, please see the 2018 notice of proposed rulemaking. In addition, the West Indian manatee (*Trichechus manatus latirostris*) may be found in coastal waters of the GOM. However, manatees are managed by the U.S. Fish and Wildlife Service and are not considered further in this document. All managed stocks in this region are assessed in NMFS' U.S. Atlantic SARs.

All values presented in Table 2 are the most recent available at the time the analyses for this notice were completed, including information presented in NMFS' 2021 SARs (the most recent SARs available at the time of publication) (Hayes *et al.,* 2022).

TABLE 2—MARINE MAMMALS POTENTIALLY PRESENT IN THE SPECIFIED GEOGRAPHICAL REGION

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [1]	NMFS stock abundance (CV, N_{min}, most recent abundance survey) [2]	Predicted mean (CV)/maximum abundance [3]	PBR	Annual M/SI [4]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)							
Family Balaenopteridae (rorquals):							
Rice's whale [5]	*Balaenoptera ricei*	Gulf of Mexico	E/D; Y	51 (0.50; 34; 2017–18).	37 (0.52)	0.1	0.5
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)							
Family Physeteridae:							
Sperm whale	*Physeter macrocephalus*	GOM	E/D; Y	1,180 (0.22; 983; 2017–18).	3,007 (0.15)	2.0	9.6
Family Kogiidae:							
Pygmy sperm whale	*Kogia breviceps*	GOM	-; N	336 (0.35; 253; 2017–18) [6 7].	980 (0.16)	2.5	31
Dwarf sperm whale	*K. sima*	GOM	-; N				
Family Ziphiidae (beaked whales):							
Cuvier's beaked whale	*Ziphius cavirostris*	GOM	-; N	See Footnotes 7–8	803 (0.18)	0.1	5.2
Gervais beaked whale	*Mesoplodon europaeus*	GOM	-; N				

[3] NMFS' 2021 final rule provided take estimates separately for the melon-headed whale, false killer whale, pygmy killer whale, and killer whale. This proposed rule provides a single take estimate for those four species grouped together as the ''blackfish.'' This change in approach reflects the best available scientific information, *i.e.,* updated density information (Garrison *et al.,* 2022). These species are encountered only occasionally during any given vessel survey, and these relatively infrequent encounters make it difficult to fit species-specific detection and habitat models. Roberts *et al.* (2016) fit species-specific models based on survey data from 1992–2009, including 29, 19, 27, and 16 sightings, respectively, of these species. For each of these models, the authors detail analyses and decisions relevant to model development, as well as notes of caution regarding use of the models given the associated uncertainty resulting from development of a model based on few sightings. The Garrison *et al.* (2022) models are based on survey data from 2003–2018. Notably, surveys conducted after 2009 were conducted in ''passing'' mode, where the ship did not deviate from the trackline to approach and verify species identifications for detected marine mammal groups, resulting in an increase in observed marine mammal groups that could not be identified to species. As a result of these factors, the model authors determined it appropriate to develop a single spatial model based on sightings of unidentified blackfish, in addition to the relatively few sightings where species identification could be confirmed.

TABLE 2—MARINE MAMMALS POTENTIALLY PRESENT IN THE SPECIFIED GEOGRAPHICAL REGION—Continued

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [1]	NMFS stock abundance (CV, N_{min}, most recent abundance survey) [2]	Predicted mean (CV)/maximum abundance [3]	PBR	Annual M/SI [4]
Blainville's beaked whale.	*M. densirostris*	GOM	-; N			0.7	
Family Delphinidae:							
Rough-toothed dolphin	*Steno bredanensis*	GOM	-; N	3,509 (0.67; Unk.; 2009).	4,853 (0.19)	Undet.	39
Common bottlenose dolphin [7].	*Tursiops truncatus truncatus.*	GOM Oceanic	-; N	7,462 (0.31; 5,769; 2017–18).	155,453 (0.13) (Shelf) 9,672 (0.15) (Oceanic).	58	32
		GOM Continental Shelf.	-; N	63,280 (0.11; 57,917; 2017–18).		556	65
		GOM Coastal, Northern.	-; N	11,543 (0.19; 9,881; 2017–18).		89	28
		GOM Coastal, Western.	-; N	20,759 (0.13; 18,585; 2017–18).		167	36
Clymene dolphin	*Stenella clymene*	GOM	-; N	513 (1.03; 250; 2017–18).	4,619 (0.35)	2.5	8.4
Atlantic spotted dolphin	*S. frontalis*	GOM	-; N	21,506 (0.26; 17,339; 2017–18).	6,187 (0.33) (Shelf) 1,782 (0.19) (Oceanic).	166	36
Pantropical spotted dolphin.	*S. attenuata attenuata*	GOM	-; N	37,195 (0.24; 30,377; 2017–18).	67,225 (0.27)	304	241
Spinner dolphin	*S. longirostris longirostris*	GOM	-; N	2,991 (0.54; 1,954; 2017–18).	5,548 (0.40)	20	113
Striped dolphin	*S. coeruleoalba*	GOM	-; N	1,817 (0.56; 1,172; 2017–18).	5,634 (0.18)	12	13
Fraser's dolphin	*Lagenodelphis hosei*	GOM	-; N	213 (1.03; 104; 2017–18).	1,665 (0.73)	1	Unk.
Risso's dolphin	*Grampus griseus*	GOM	-; N	1,974 (0.46; 1,368; 2017–18).	1,501 (0.27)	14	5.3
Melon-headed whale	*Peponocephala electra*	GOM	-; N	1,749 (0.68; 1,039; 2017–18).	6,113 (0.20)	10	9.5
Pygmy killer whale	*Feresa attenuata*	GOM	-; N	613 (1.15; 283; 2017–18).		2.8	1.6
False killer whale	*Pseudorca crassidens*	GOM	-; N	494 (0.79; 276; 2017–18).		2.8	2.2
Killer whale	*Orcinus orca*	GOM	-; N	267 (0.75; 152; 2017–18).		1.5	Unk.
Short-finned pilot whale	*Globicephala macrorhynchus.*	GOM	-; N	1,321 (0.43; 934; 2017–18).	2,741 (0.18)	7.5	3.9

[1] ESA status: Endangered (E)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance.

[3] This information represents species- or guild-specific abundance predicted by habitat-based cetacean density models (Roberts *et al.,* 2016; Garrison *et al.,* 2022). These models provide the best available scientific information regarding predicted density patterns of cetaceans in the U.S. Gulf of Mexico, and we provide the corresponding abundance predictions as a point of reference. Total abundance estimates were produced by computing the mean density of all pixels in the modeled area and multiplying by its area. Abundance predictions for Fraser's dolphin and rough-toothed dolphin from Roberts *et al.* (2016); abundance predictions for other taxa represent the maximum predicted abundance from Garrison *et al.* (2022).

[4] These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). These values are generally considered minimums because, among other reasons, not all fisheries that could interact with a particular stock are observed and/or observer coverage is very low, and, for some stocks (such as the Atlantic spotted dolphin and continental shelf stock of bottlenose dolphin), no estimate for injury due to the *Deepwater Horizon* oil spill has been included. See SARs for further discussion.

[5] The 2021 final rule refers to the GOM Bryde's whale (*Balaenoptera edeni*). These whales were subsequently described as a new species, Rice's whale (*Balaenoptera ricei*) (Rosel *et al.,* 2021).

[6] NMFS' 2020 SARs state that the abundance estimate provided for *Kogia* spp. is likely a severe underestimate because it was not corrected for the probability of detection on the trackline, and because *Kogia* spp. are often difficult to see, present little of themselves at the surface, do not fluke when they dive, and have long dive times. In addition, they exhibit avoidance behavior towards ships and changes in behavior towards approaching survey aircraft. See Hayes *et al.* (2021).

[7] Abundance estimates are in some cases reported for a guild or group of species when those species are difficult to differentiate at sea. Similarly, habitat-based cetacean density models are based in part on available observational data which, in some cases, is limited to genus or guild in terms of taxonomic definition. NMFS' SARs present pooled abundance estimates for *Kogia* spp. and *Mesoplodon* spp., while Garrison *et al.* (2022) produced density models to genus level for *Kogia* spp. and as a guild for beaked whales (*Ziphius cavirostris* and *Mesoplodon* spp.) and ''blackfish'' (pygmy killer whale, false killer whale, melon-headed whale, and killer whale). Finally, Garrison *et al.* (2022) produced density models for bottlenose dolphins that do not differentiate between stocks, but between oceanic and shelf dolphins.

[8] NMFS' 2020 SARs provide various abundance estimates for beaked whales: Cuvier's beaked whale, 18 (CV = 0.75); Gervais' beaked whale, 20 (CV=0.98); unidentified Mesoplodont species, 98 (CV = 0.46); and unidentified Ziphiids, 181 (CV = 0.31). The SARs state that these estimates likely represent severe underestimates, as they were not corrected for the probability of detection on the trackline, and due to the long dive times of these species. See Hayes *et al.* (2021).

In Table 2 above, we report two sets of abundance estimates: those from NMFS' SARs and those predicted by habitat-based cetacean density models. Please see footnote 3 of Table 2 for more detail. NMFS' SAR estimates are typically generated from the most recent shipboard and/or aerial surveys conducted. GOM oceanography is dynamic, and the spatial scale of the GOM is small relative to the ability of most cetacean species to travel. U.S. waters only comprise about 40 percent of the entire GOM, and 65 percent of GOM oceanic waters are south of the U.S. EEZ. Studies based on abundance and distribution surveys restricted to U.S. waters are unable to detect temporal shifts in distribution beyond U.S. waters that might account for any changes in abundance within U.S. waters. NMFS' SAR estimates also in some cases do not incorporate correction for detection bias. Therefore,

for cryptic or long-diving species (*e.g.,* beaked whales, *Kogia* spp., sperm whales), they should generally be considered underestimates (see footnotes 6 and 8 of Table 2).

The model-based abundance estimates represent the output of predictive models derived from multi-year observations and associated environmental parameters and which incorporate corrections for detection bias (the same models and data from which the density estimates are derived). Incorporating more data over multiple years of observation can yield different results in either direction, as the result is not as readily influenced by fine-scale shifts in species habitat preferences or by the absence of a species in the study area during a given year. NMFS' SAR abundance estimates show substantial year-to-year variability in some cases. Incorporation of correction for detection bias should systematically result in greater abundance predictions. For these reasons, the model-based estimates are generally more realistic and, for these purposes, represent the best available information. Specifically, for assessing estimated exposures relative to abundance—used in this case to understand the scale of the predicted takes compared to the population—NMFS generally believes that the model-based abundance predictions are most appropriate because they were used to generate the exposure estimates and therefore, provide the most relevant comparison.

As discussed in footnote 3 of Table 2, NMFS' 2021 final rule provided take estimates separately for the melon-headed whale, false killer whale, pygmy killer whale, and killer whale. This proposed rule provides a single take estimate for those four species grouped together as the ''blackfish.'' This approach was dictated by the best available science. The model authors determined it necessary to aggregate the few sightings data available for each of the four species with sightings data that could not be resolved to the species level in order to develop a density model, as there were not sufficient confirmed sightings of individual species to create individual spatial models. Further, the model authors advised that any attempt to parse the results to species would be fraught with complicated assumptions and limited data, and that there is no readily available way to do so in a scientifically defensible manner. Previous estimates (Roberts *et al.,* 2016) were based on older data (data range 1992–2009 versus 2003–2018), and the updated models notably include post-*Deepwater Horizon* (DWH) oil spill survey data and, for the first time, winter survey data. Nonetheless, interested members of the public may review the 2018 proposed rule and supporting documentation, which assumed slightly greater activity levels and larger take numbers, and still found a negligible impact on all four blackfish species.

NMFS does not have sufficient information to support apportioning those blackfish takes to species, but we note that the sum of annual average evaluated take for the four species in the 2021 final rule is 64,742, while the new annual average take estimate for blackfish (using the updated density information) is 55,441. While some may speculate that estimated take of killer whales (as part of the blackfish group) has increased relative to that evaluated in the 2021 final rule (annual average take of 52), NMFS has no specific information to support such an assumption.

NMFS' ability to issue LOAs under the 2021 rule to date has been limited specifically with regard to killer whales, because BOEM's error most severely affected killer whale take numbers. (Evaluated Rice's whale takes were similarly affected, but were generally not implicated in LOA requests based on the location of planned surveys.) Effects to killer whales from the specified activity have not presented serious concern in a negligible impact context, even considering the original take numbers evaluated in NMFS' 2018 proposed rule (annual average take of 1,160) which produced overall scenario-specific risk ratings of low to moderate. Evaluated risk is similar across the 2018 proposed rule and this proposed rule.

Further, we note that we make a conservative assumption in this rule in the application of the risk assessment framework to blackfish. Risk is a product of severity and vulnerability. While severity is based on density and abundance and is, therefore, reflective of the new density information, vulnerability is based on species-specific factors and is different for the four species. We applied the highest vulnerability score of the four to combine with the severity to get the overall risk rating for the group. Please see Negligible Impact Analysis and Determinations for additional discussion.

As part of our evaluation of the environmental baseline, which is considered as part of the negligible impact analysis, we consider any known areas of importance as marine mammal habitat (*e.g.,* recognized Biologically Important Areas (BIA)). We also consider other relevant events, such as unusual mortality events (UME) and the 2010 DWH oil spill. The 2018 notice of proposed rulemaking provided detailed discussion of important marine mammal habitat, relevant UMEs, and of the DWH oil spill. The 2021 notice of issuance of the final rule updated those discussions as necessary. That information is incorporated by reference here and updated where necessary. There have been no new UMEs, or new information regarding the UMEs discussed in the prior notices. Similarly, there is no new information regarding the DWH oil spill that impacts our consideration of that event as part of the environmental baseline. We do note that estimates of annual mortality for many stocks over the period 2014–2018 now include mortality attributed to the effects of the DWH oil spill (see Table 2).

Areas of important marine mammal habitat may include designated critical habitat for ESA-listed species (as defined by section 3 of the ESA) or other known areas not formally designated pursuant to any statute or other law. Important areas may include areas of known importance for reproduction, feeding, or migration, or areas where small and resident populations are known to occur.

As noted above in Table 2, the former GOM Bryde's whale has been described as a new species, Rice's whale (Rosel *et al.,* 2021). No critical habitat has yet been designated for the species. However, a Rice's whale BIA is recognized (LaBrecque *et al.,* 2015). This year-round BIA was discussed in the aforementioned notices, and we do not repeat the description of the 2015 BIA.

NOAA conducted a status review of the former GOM Bryde's whale (Rosel *et al.,* 2016). The review expanded the BIA description by stating that, due to the depth of some sightings, the area is more appropriately defined to the 400-m isobath and westward to Mobile Bay, Alabama, in order to provide some buffer around the deeper sightings and to include all sightings in the northeastern GOM. Following the description provided by Rosel *et al.* (2016), the 2018 proposed rulemaking considered a Rice's whale ''core habitat area'' that was designated as between the 100- and 400-m isobaths, from 87.5° W to 27.5° N (83 FR 29212, August 21, 2018), in order to appropriately encompass Rice's whale sightings at the time. In addition, the area largely covered the home range (*i.e.,* 95 percent of predicted abundance) predicted by Roberts *et al.* (2016).

NMFS subsequently developed an updated description of a ''core distribution area''

(*www.fisheries.noaa.gov/resource/map/rices-whale-core-distribution-area-map-gis-data*), which we refer to herein (Figure 3) while retaining the previous terminology for continuity with the 2021 rule (''core habitat area''). The updated description is based on visual sightings and tag data, and does not imply knowledge of habitat preferences. The map was created by first drawing a convex hull polygon around all recorded Rice's whale sighting locations (including those recorded as Bryde's whale, Bryde's/sei, and Bryde's/sei/fin) from NMFS surveys in the northeast GOM, telemetry tag locations from a single whale tagged in 2010 (Soldevilla *et al.,* 2017), and acousonde tag locations for one whale tagged in 2015 (Soldevilla *et al.,* 2017), comprising a total of 212 data points collected between 1989 and 2018. It should be noted that, other than the positions obtained from the two individually tagged whales, it is unknown how many individual whales these sightings represent as individuals may have been sighted more than once during a cruise or across years. The polygon was trimmed on the western side to the 410 m isobath, based on the deepest known sighting (408 m).

In context of the sparse data from which to accurately define the distribution and because many of the sightings fall on the boundary of the convex hull polygon, a buffer was added to avoid underestimating the potential range of the species. A 10-km buffer was applied to the polygon to capture the uncertainty in position and the strip width of the visual surveys. This buffer ensures that no sightings are on a boundary of the area. An additional 20-km buffer was added to account for the possible movement whales could make in any one direction from an observed sighting. This buffer was identified by examining the daily movement data from a whale tagged for 33 days in 2010 with a satellite-linked telemetry tag. Two alternative methods were used to identify the best indicator of possible daily distance traveled by a whale. First, a ''daily range'' of movement was estimated by calculating swim speeds (km/hr) based upon the distances (and times) between successive satellite-tag returns and multiplying that by 24 hr. These daily ranges were highly skewed, with most in the 10–30 km range when the whale remained in a relatively small area and a few large ranges when the whale was traveling northeast to southeast through the habitat. The mean of this daily range was 46 km and the median was 21 km. To reduce the influence of differences in the number of satellite positions returned on any given day, the total distance moved within each 24-hr period was summed using all satellite positions in that day. The median of this daily range was 17 km and the mean was 30 km. As the median is a better measure of central tendency than the mean of highly skewed distributions such as those seen here, 20 km was chosen as the most likely distance a given observed whale could move within a day of the detection. In combination with the 10-km buffer to account for uncertainty in whale location during the sighting, this results in the placement of a total of a 30-km buffer around the convex hull polygon based on sighting locations, producing the area depicted in Figure 3 (see Proposed Mitigation).

Potential Effects of the Specified Activities on Marine Mammals and Their Habitat

In NMFS' 2018 notice of proposed rulemaking (83 FR 29212, June 22, 2018), this section included a comprehensive summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat, including general background information on sound and specific discussion of potential effects to marine mammals from noise produced through use of airgun arrays. NMFS provided a description of the ways marine mammals may be affected by the same activities considered herein, including sensory impairment (permanent and temporary threshold shifts and acoustic masking), physiological responses (particularly stress responses), behavioral disturbance, or habitat effects, as well as of the potential for serious injury or mortality. The notice of issuance for the final rule (86 FR 5322, January 19, 2021) provided updates to the discussion of potential impacts, as well as significantly expanded discussion of certain issues (*e.g.,* potential effects to habitat, including prey, and the potential for stranding events to occur) in the ''Comments and Responses'' section of that notice. These prior notices also provided discussion of marine mammal hearing and detailed background discussion of active acoustic sources and related acoustic terminology used herein. We have reviewed new information available since the 2021 rule was issued. Having considered this information, we have determined that there is no new information that substantively affects our analysis of potential impacts on marine mammals and their habitat that appeared in the 2018 proposed and 2021 final rules, all of which remains applicable and valid for our assessment of the effects of the specified activities during the original 5-year period that is the subject of this rule. We incorporate by reference that information and do not repeat the information here, instead referring the reader to the 2018 notice of proposed rulemaking and 2021 notice of issuance of the final rule.

The Estimated Take section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by the specified activity. The Negligible Impact Analysis and Determinations section includes an analysis of how these activities will impact marine mammals and considers the content of this section, the Estimated Take section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and from that on the affected marine mammal populations.

Estimated Take

This section provides an estimate of the numbers and type of incidental takes that may be expected to occur under the specified activity, which informs NMFS' preliminary negligible impact determinations. Realized incidental takes would be determined by the actual levels of activity at specific times and places that occur under any issued LOAs and by the actual acoustic source used. While the methodology and modeling for estimating take remains identical to that originally described in the 2018 proposed and 2021 final rules, updated species density values have been used, and take estimates are available for three different airgun array configurations. The highest modeled value for each species is analyzed for the negligible impact analysis.

Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment). As with the 2021 final rule, harassment is the only type of take expected to result from these activities. It is unlikely that lethal takes would occur even in the absence of the mitigation and monitoring measures, and no such takes are anticipated or will be authorized.

Anticipated takes would primarily be by Level B harassment, as use of the described acoustic sources, particularly airgun arrays, is likely to disrupt behavioral patterns of marine mammals upon exposure to sound at certain levels. There is also some potential for auditory injury (Level A harassment) to result for low- and high-frequency species due to the size of the predicted auditory injury zones for those species, though none is predicted to occur for Rice's whales (the only low-frequency cetacean in the GOM). NMFS does not expect auditory injury to occur for mid-frequency species. See discussion provided in the 2018 notice of proposed rulemaking (83 FR 29212, June 22, 2018) and in responses to public comments provided in the notice of issuance for the 2021 final rule (86 FR 5322, January 19, 2021).

Below, we summarize how the take that may be authorized was estimated using acoustic thresholds, sound field modeling, and marine mammal density data. Detailed discussion of all facets of the take estimation process was provided in the 2018 notice of proposed rulemaking (83 FR 29212, June 22, 2018), which is incorporated by reference here, as it was into the 2021 final rule, as most aspects of the modeling have not changed; any aspects of the modeling that have changed are noted below and in Weirathmueller *et al.* (2022). Please see that notice, and associated companion documents available online, for additional detail. A summary overview of the take estimation process, as well as full discussion of new information related to the development of estimated take numbers, is provided below.

Acoustic Thresholds

NMFS uses acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals generally would be reasonably expected to exhibit disruption of behavioral patterns (Level B harassment) or to incur permanent threshold shift (PTS) of some degree (Level A harassment). Acoustic criteria used herein were described in detail in the preceding notices associated with this ITR; that discussion is not repeated as no changes have been made to the relevant acoustic criteria. See Tables 3 and 4.

TABLE 3—BEHAVIORAL EXPOSURE CRITERIA

Group	Probability of response to frequency-weighted rms SPL			
	120 (%)	140 (%)	160 (%)	180 (%)
Beaked whales	50	90	n/a	n/a
All other species	n/a	10	50	90

TABLE 4—EXPOSURE CRITERIA FOR AUDITORY INJURY

Hearing group	Peak pressure [1] (dB)	Cumulative sound exposure level [2]	
		Impulsive (dB)	Non-impulsive (dB)
Low-frequency cetaceans	219	183	199
Mid-frequency cetaceans	230	185	198
High-frequency cetaceans	202	155	173

[1] Referenced to 1 μPa; unweighted within generalized hearing range.
[2] Referenced to 1 μPa^2-s; weighted according to appropriate auditory weighting function. Airguns and the boomer are treated as impulsive sources; other HRG sources are treated as non-impulsive.

Acoustic Exposure Modeling

Zeddies *et al.* (2015, 2017a) provided estimates of the annual marine mammal acoustic exposure caused by sounds from geophysical survey activity in the GOM for 10 years of notional activity levels, as well as full detail regarding the original acoustic exposure modeling conducted in support of BOEM's 2016 petition and NMFS' subsequent analysis in support of the 2021 final ITR. Zeddies *et al.* (2017b) provided information regarding source and propagation modeling related to the 4,130-in^3 airgun array, and Weirathmueller *et al.* (2022) provide detail regarding the new modeling performed for the 5,110-in^3 airgun array. Detailed discussion of the original modeling effort was provided in the notice of proposed rulemaking (83 FR 29212, June 22, 2018), and through responses to public comments provided in the notice of issuance for the final rule (86 FR 5322, January 19, 2021). For full details of the modeling effort, the interested reader should see the reports (available online at: *www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico*) and review discussion provided in prior **Federal Register** notices.

All acoustic exposure modeling, including source and propagation modeling, was redone in support of the action described herein for the reasons described below. However, all aspects of the modeling (including source, propagation, and animal movement modeling) are the same as described in Zeddies *et al.* (2015, 2017a, 2017b) and discussed in previous **Federal Register** notices associated with the ITR. We do not repeat discussion of those aspects of the modeling, but refer the reader to those documents.

Differences from the modeling and modeling products described in previous notices associated with this ITR are limited to source and propagation modeling of the new 5,110-in^3 array configuration, which was performed using the same procedures as were used for the previous 8,000- and 4,130-in^3 array configurations, and two new data inputs: (1) updated marine mammal density information (Garrison *et al.,* 2022) and (2) revised species definition files. The latter information consists of behavioral parameters (*e.g.,* depth, travel rate, dive profile) for each species that govern simulated animal (animat) movement within the movement model (Weirathmueller *et al.,*

2022). These files are reviewed at the start of all new and reopened modeling efforts, and are updated as necessary according to the most recent literature. NMFS previously evaluated full acoustic exposure modeling results only for the 8,000-in ^{3} airgun array (only demonstration results for six species were provided in Zeddies *et al.* (2017b) for the 4,130-in ^{3} array configuration), but is now able to evaluate full results for all three array configurations; thereby, providing for greater flexibility and utility in representing actual acoustic sources planned for use during consideration of LOA requests.

Marine Mammal Density Information—Since the 2021 final rule went into effect, new habitat-based cetacean density models have been produced by NMFS' Southeast Fisheries Science Center (Garrison *et al.,* 2022). These models incorporate newer survey data from 2017–18 including, notably, data from survey effort conducted during winter. Inclusion of winter data allows for increased temporal resolution of model predictions. These are the first density models that incorporate survey data collected after the DWH oil spill. New models were produced for all taxa other than Fraser's dolphin and rough-toothed dolphin, as the model authors determined that there were too few detections of these species to support model development. Therefore, we continue to rely on the Roberts *et al.* (2016) models for these two species.

For species occurring in oceanic waters, the updated density models are based upon data collected during vessel surveys conducted in 2003–04, 2009, and 2017–18. Survey effort was generally conducted in a survey region bounded by the shelf break (approximately the 200-m isobath) to the north and the boundary of the U.S. EEZ to the south. Separate models were created for species occurring in shelf waters (Atlantic spotted dolphin and bottlenose dolphin) based on seasonal aerial surveys conducted in 2011–12 and 2017–18. Based on water depth, the shelf models were used to predict acoustic exposures for these two species in Zones 2 and 3, and the oceanic models were used to predict exposures in Zones 4–7.

As discussed above, the updated density modeling effort retains the previous approach of treating beaked whales and *Kogia* spp. as guilds, as sightings of these species are typically difficult to resolve to the species level. In addition, the model authors determined there to be too few sightings and/or too few sightings resolved to species level for the melon-headed whale, false killer whale, pygmy killer whale, and killer whale to produce individual species models. Instead, a single ''blackfish'' model was developed to produce guild-level predictions for these species (Garrison *et al.,* 2022).

Take Estimates

Exposure estimates above Level A and Level B harassment criteria, originally developed by Zeddies *et al.* (2015, 2017a, 2017b) and updated by Weirathmueller *et al.* (2022) in association with the activity projections for the various annual effort scenarios, were generated based on the specific modeling scenarios (including source and survey geometry), *i.e.,* 2D survey (1 × source array), 3D NAZ survey (2 × source array), 3D WAZ survey (4 × source array), coil survey (4 × source array).

Level A Harassment—Here, we summarize acoustic exposure modeling results related to Level A harassment. For more detailed discussion, please see the 2018 **Federal Register** notice for the proposed rule and responses to public comment provided in the 2021 **Federal Register** notice for the final rule. Overall, there is a low likelihood of take by Level A harassment for any species, though the degree of this low likelihood is primarily influenced by the specific hearing group. For mid- and high-frequency cetaceans, potential auditory injury would be expected to occur on the basis of instantaneous exposure to peak pressure output from an airgun array while for low-frequency cetaceans, potential auditory injury would occur on the basis of the accumulation of energy output over time by an airgun array. For additional discussion, please see NMFS (2018) and discussion provided in the 2018 notice of proposed rulemaking (83 FR 29212, June 22, 2018) and in the notice of issuance for the 2021 final rule (86 FR 5322; January 19, 2021), *e.g.,* 83 FR 29262; 86 FR 5354; 86 FR 5397. Importantly, the modeled exposure estimates do not account for either aversion or the beneficial impacts of the required mitigation measures.

Of even greater import for mid-frequency cetaceans is that the small calculated Level A harassment zone size in conjunction with the properties of sound fields produced by arrays in the near field versus far field leads to a logical conclusion that Level A harassment is so unlikely for species in this hearing group as to be discountable. For all mid-frequency cetaceans, following evaluation of the available scientific literature regarding the auditory sensitivity of mid-frequency cetaceans and the properties of airgun array sound fields, NMFS does not expect any reasonable potential for Level A harassment to occur. This issue was addressed in detail in the response to public comments provided in NMFS' notice of issuance for the rule (86 FR 5322, January 19, 2021; see 86 FR 5354). NMFS expects the potential for Level A harassment of mid-frequency cetaceans to be discountable, even before the likely moderating effects of aversion and mitigation are considered, and NMFS does not believe that Level A harassment is a likely outcome for any mid-frequency cetacean. Therefore, the updated modeling results provided by Weirathmueller *et al.* (2022) account for this by assuming that any estimated exposures above Level A harassment thresholds for mid-frequency cetaceans resulted instead in Level B harassment (as reflected in Table 6).

As discussed in greater detail in the 2018 notice of proposed rulemaking (83 FR 29212, June 22, 2018), NMFS considered the possibility of incorporating quantitative adjustments within the modeling process to account for the effects of mitigation and/or aversion, as these factors would lead to a reduction in likely injurious exposure. However, these factors were ultimately not quantified in the modeling. In summary, there is too much inherent uncertainty regarding the effectiveness of detection-based mitigation to support any reasonable quantification of its effect in reducing injurious exposure, and there is too little information regarding the likely level of onset and degree of aversion to quantify this behavior in the modeling process. This does not mean that mitigation is not effective (to some degree) in avoiding incidents of Level A harassment, nor does it mean that aversion is not a meaningful real-world effect of noise exposure that should be expected to reduce the number of incidents of Level A harassment. As discussed in greater detail in responses to public comments provided in the 2021 notice of issuance for the final rule (86 FR 5322, January 19, 2021; see 86 FR 5353), there is ample evidence in the literature that aversion is one of the most common responses to noise exposure across varied species, though the onset and degree may be expected to vary across individuals and in different contexts. Therefore, NMFS incorporated a reasonable adjustment to modeled Level A harassment exposure estimates to account for aversion for low- and high-frequency species. That approach, which is retained here, assumes that an 80 percent reduction in modeled exposure estimates for Level A harassment for low- and high-frequency cetaceans is reasonable (Ellison *et al.,*

2016) and likely conservative in terms of the overall numbers of actual incidents of Level A harassment for these species, as the adjustment does not explicitly account for the effects of mitigation. This adjustment was incorporated into the updated modeling results provided by Weirathmueller *et al.* (2022) and reflected in Table 6.

Take Estimation Error—As discussed previously, in 2020 BOEM provided an update to the scope of their proposed action through removal of the area subject to leasing moratorium under GOMESA from consideration in the rule. In support of this revision, BOEM provided revised 5-year level of effort predictions and associated acoustic exposure estimates. BOEM's process for developing this information, described in detail in ''Revised Modeled Exposure Estimates,'' available online, was straightforward. Rather than using the PEIS's 10-year period, BOEM provided revised levels of effort for a 5-year period, using Years 1–5 of the original level of effort projections. BOEM stated that the first 5 years were selected to be carried forward ''because they were contiguous, they included the three years with the most activity, and they were the best understood in relation to the historical data upon which they are based.'' Levels of effort, shown in Table 1, were revised based on the basic assumption that if portions of areas are removed from consideration, then the corresponding effort previously presumed to occur in those areas also is removed from consideration. Projected levels of effort were reduced in each zone by the same proportion as was removed from each zone when BOEM reduced the scope of its proposed action, *i.e.,* the levels of effort were reduced by the same zone-specific proportions shown in Table 1 in the notice of issuance for the final rule (86 FR 5322, January 19, 2021). Associated revised take estimates were provided by BOEM and evaluated in the final rule.

While processing requests for individual LOAs under the rule using the methodology for developing LOA-specific take numbers presented in the rule, NMFS discovered discrepancies between the revised total take numbers provided by BOEM when addressing its revision to the scope of activity through removal of the GOMESA area and the underlying modeling results. (Note that the underlying modeling results are in the form of 24-hr exposure estimates, specific to each species, zone, survey type, and season. These 24-hr exposure estimates can then be scaled to generate take numbers appropriate to the specific activity or, in the case of BOEM's petition for rulemaking, to the total levels of activity projected to occur across a number of years.)

NMFS contacted BOEM regarding the issue in June 2021. Following an initial discussion, BOEM determined that when it reduced its scope of specified activity by removing the GOMESA moratorium area from the proposed action, it underestimated the level of take by inadvertently factoring species density estimates into its revised exposure estimates twice. Generally, this miscalculation caused BOEM to underestimate the total predicted exposures of species from all survey activities in its revision to the incidental take rule application, most pronouncedly for those species with the lowest densities. The practical effect of this miscalculation is that the full amount of activity for which BOEM sought incidental take coverage in its application cannot be authorized under the existing incidental take rule.

In September 2021, BOEM provided corrected exposure estimates. These are available in BOEM's September 2021 ''Corrected Exposure Estimates'' letter, available online at: *www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico.* Following receipt of BOEM's letter containing corrected exposure estimates, NMFS requested additional information from BOEM, including a detailed written description of the process involved in producing the revised take numbers submitted in 2020, the error(s) in that process, and the process involved in correcting those numbers. BOEM provided the requested information in October 2021, including the following explanation.

When calculating estimated takes for the 2020 revision to the scope of activity, BOEM multiplied the modeled number of animals above threshold per day of survey ($N_{z,s,t}$),[4] for each type of survey in each zone, by the habitat-based density of the species in each zone ($\rho_{z,t}$) [5] and the number of days of effort for each survey and zone by year ($LoE_{z,s,y}$) [6]. However, the species' habitat-based density had already been included in the modeled number of animals above threshold ($N_{z,s,t}$). The species' habitat-based density had therefore been factored in twice.

$$N_{z,s,t} \times LoE_{z,s,y} \times \rho_{z,t} \qquad \text{Eq 1}$$

Observing that the resultant numbers did not make sense, BOEM attempted to rectify the issue, by applying approximated species-specific scaling factors (C_t).

$$N_{z,s,t} \times LoE_{z,s,y} \times \rho_{z,t}/C_t \qquad \text{Eq 2}$$

The result of this approach was that errors of varying degrees were introduced to the BOEM-derived take numbers evaluated in the final rule. Although NMFS was unable to replicate the derivation of the species-specific scaling factors, or to adequately compare the erroneous BOEM-derived values to the values evaluated in NMFS' 2018 proposed rule or to other published values, it remained clear that the take estimates were significantly underestimated for multiple species. Because of this, recalculation of appropriate take numbers was necessary.

New Modeling—Once it became clear that NMFS would need to recalculate the take numbers in order to support the necessary correction and reanalysis under the rule, we recognized that two other primary pieces of new information should be considered.

[4] $N_{z,s,t}$ is the number of individuals of a species, *t,* expected above threshold for a given survey, *s,* in each zone, *z.* The number of individuals already includes the species' habitat-based density (*z,t*) for each species and zone.

[5] *z,t* is the habitat-based density for each species or taxonomic group, *t,* in each zone, *z.*

[6] $LoE_{z,s,y}$ is the level of effort in days per year, *y,* for each survey type, *s,* in each zone, *z.*

As discussed previously, through NMFS' experience in implementing the 2021 final rule, it has become evident that operators are not currently using airgun arrays as large as the proxy array specified by BOEM for the original exposure modeling effort, and that the use of that 72-element, 8,000-in^3 array as the proxy for generating LOA-specific take estimates is unnecessarily conservative. As a result, operators applying 8,000-in^3 modeled results to operations conducted with smaller airgun arrays have been inappropriately limited in the number of planned days of data acquisition when NMFS' small numbers limit has been reached. Therefore, independently of and prior to the above-described discovery and evaluation of BOEM's error, NMFS had already determined that it would be useful and appropriate to produce new modeling results associated with a more representative airgun array. In consultation with industry operators, NMFS identified specifications associated with a 32-element, 5,110 in^3 array and contracted with the same modelers that produced the original acoustic exposure modeling (JASCO Applied Sciences) to conduct new modeling following the same approach and methodologies described in detail in Zeddies *et al.* (2015, 2017a) and provided for public review through NMFS' proposed rule (83 FR 29212, June 22, 2018). Specifically, JASCO has now produced new comprehensive modeling results for all evaluated survey types for the three different arrays described previously: (1) 4,130-in^3 array, described in detail in Zeddies *et al.* (2017b) (acoustic exposure results were provided for only six species in Zeddies *et al.* (2017b); full results are now available); (2) 5,110-in^3 array specified by NMFS and described in Weirathmueller *et al.* (2022); and (3) 8,000-in^3 array described in detail by Zeddies *et al.* (2015, 2017a).

Since the time of the original acoustic exposure modeling, JASCO has reviewed all species definition files and applied extensive updates for many species. These files define the species-specific parameters that control animat behavior during animal movement modeling. In particular, changes in the minimum and maximum depth preferences affected the coverage area for several species, which resulted in significant changes to some estimated exposures for some species.

In addition, at the time NMFS determined it would conduct a rulemaking to address the corrected take estimates, NMFS was aware that new cetacean density modeling (including incorporation of new Rice's whale data) was nearing completion, in association with the BOEM-funded GoMMAPPS effort (see: *www.boem.gov/gommapps*). As a result, NMFS determined that this new information (updated acoustic exposure modeling and new cetacean density models) should be used in revising the 2021 final rule and is the basis for the analysis conducted herein. For purposes of the negligible impact analyses, NMFS uses the ''worst-case'' (*i.e.,* the maximum of the estimates from the three airgun array configurations/sizes) species-specific exposure modeling results. Specifically, for all species other than Rice's whale, these results are associated with the 8,000-in^3 array. For the Rice's whale, modeling associated with the 5,110-in^3 array produced larger exposure estimates (discussed below).

Estimated instances of take, *i.e.,* scenario-specific acoustic exposure estimates incorporating the adjustments to Level A harassment exposure estimates discussed here, are shown in Table 6. For comparison, Table 5 shows the estimated instances of take evaluated in the 2021 final rule. This information regarding total number of takes (with Level A harassment takes based on assumptions relating to mid-frequency cetaceans in general as well as aversion), on an annual basis for 5 years, provides the bounds within which incidental take authorizations—LOAs—may be issued in association with this regulatory framework. Importantly, modeled results showed increases in total take estimates for four species, while the others decreased from those analyzed in the final rule.[7]

Typically, and especially in cases where PTS is predicted, NMFS anticipates that some number of individuals may incur temporary threshold shift (TTS). However, it is not necessary to separately quantify those takes, as it is unlikely that an individual marine mammal would be exposed at the levels and duration necessary to incur TTS without also being exposed to the levels associated with behavioral disruption. As such, NMFS expects any potential TTS takes to be captured by the estimated takes by behavioral disruption (discussed below).

TABLE 5—SCENARIO-SPECIFIC INSTANCES OF TAKE (BY LEVEL A AND LEVEL B HARASSMENT) AND MEAN ANNUAL TAKE LEVELS EVALUATED IN THE 2021 FINAL RULE [1]

Species	Year 1		Year 2		Year 3		Year 4		Year 5		Mean annual take	
	A	B	A	B	A	B	A	B	A	B	A	B
Rice's whale	0	10	0	8	0	8	0	6	0	7	0	8
Sperm whale	0	16,405	0	14,205	0	13,603	0	9,496	0	12,388	0	13,219
Kogia spp [2]	371	10,383	337	9,313	310	8,542	209	6,238	314	8,318	308	8,559
Beaked whale [2]	0	191,566	0	162,301	0	158,328	0	111,415	0	142,929	0	153,308
Rough-toothed dolphin	0	30,640	0	27,024	0	25,880	0	19,620	0	23,219	0	25,277
Bottlenose dolphin	0	603,649	0	973,371	0	567,962	0	1,001,256	0	567,446	0	742,737
Clymene dolphin	0	85,828	0	67,915	0	73,522	0	47,332	0	60,379	0	66,995
Atlantic spotted dolphin	0	128,299	0	183,717	0	112,120	0	191,495	0	111,305	0	145,387
Pantropical spotted dolphin	0	478,490	0	436,047	0	391,363	0	311,316	0	395,987	0	402,641
Spinner dolphin	0	75,953	0	71,873	0	61,098	0	48,775	0	64,357	0	64,411
Striped dolphin	0	33,573	0	29,275	0	27,837	0	20,136	0	26,056	0	27,375
Fraser's dolphin	0	4,522	0	3,843	0	3,792	0	2,726	0	3,455	0	3,668
Risso's dolphin	0	21,859	0	18,767	0	18,218	0	12,738	0	16,634	0	17,643
Melon-headed whale (Blackfish)	0	55,813	0	47,784	0	46,584	0	32,581	0	42,224	0	44,997
Pygmy killer whale (Blackfish)	0	8,079	0	6,964	0	6,764	0	4,970	0	6,277	0	6,611
False killer whale (Blackfish)	0	16,165	0	13,710	0	13,604	0	9,664	0	12,269	0	13,082
Killer whale (Blackfish)	0	60	0	56	0	50	0	42	0	52	0	52
Blackfish totals	0	80,117	0	68,514	0	67,002	0	47,257	0	60,822	0	64,742

[7] Note that because of the new category of blackfish, there is uncertainty on any change in the take numbers for the individual species that comprise that category, though collectively the take numbers for all the blackfish remain within the levels previously analyzed.

TABLE 5—SCENARIO-SPECIFIC INSTANCES OF TAKE (BY LEVEL A AND LEVEL B HARASSMENT) AND MEAN ANNUAL TAKE LEVELS EVALUATED IN THE 2021 FINAL RULE [1]—Continued

Species	Year 1		Year 2		Year 3		Year 4		Year 5		Mean annual take	
	A	B	A	B	A	B	A	B	A	B	A	B
Short-finned pilot whale	0	15,045	0	9,824	0	13,645	0	7,459	0	8,959	0	10,986

[1] A and B refer to expected instances of take by Level A and Level B harassment, respectively, for Years 1–5. For *Kogia* spp., expected takes by Level A harassment represent modeled exposures adjusted to account for aversion. For the Rice's whale, no takes by Level A harassment are predicted to occur. Therefore, no adjustment to modeled exposures to account for aversion was necessary. For *Kogia* spp., exposures above Level A harassment criteria were predicted by the peak sound pressure level (SPL) metric. For the Rice's whale, the cumulative sound exposure level (SEL) metric is used to evaluate the potential for Level A harassment.
[2] *Kogia* spp. includes dwarf and pygmy sperm whales. Beaked whales include Blainville's, Gervais', and Cuvier's beaked whales.

TABLE 6—UPDATED SCENARIO-SPECIFIC INSTANCES OF TAKE (BY LEVEL A AND LEVEL B HARASSMENT) AND MEAN ANNUAL TAKE LEVELS [1]

Species	Year 1		Year 2		Year 3		Year 4		Year 5		Mean annual take	
	A	B	A	B	A	B	A	B	A	B	A	B
Rice's whale	0	27	0	26	0	23	0	25	0	30	0	26
Sperm whale	0	13,198	0	11,208	0	11,063	0	8,126	0	10,127	0	10,744
Kogia spp [2]	192	7,272	172	6,301	165	6,104	118	4,581	164	5,776	162	6,007
Beaked whale [2]	0	29,415	0	26,955	0	23,551	0	17,307	0	23,060	0	24,058
Rough-toothed dolphin	0	38,535	0	33,878	0	32,241	0	25,290	0	29,373	0	31,863
Bottlenose dolphin	0	284,366	0	418,676	0	251,807	0	439,366	0	248,863	0	328,616
Clymene dolphin	0	29,919	0	23,248	0	25,893	0	17,378	0	21,209	0	23,529
Atlantic spotted dolphin	0	37,080	0	34,140	0	33,126	0	34,343	0	23,906	0	32,519
Pantropical spotted dolphin	0	293,390	0	259,831	0	243,888	0	189,147	0	236,651	0	244,581
Spinner dolphin	0	4,618	0	4,456	0	3,704	0	3,147	0	4,101	0	4,006
Striped dolphin	0	56,797	0	51,623	0	46,820	0	37,449	0	47,084	0	47,955
Fraser's dolphin	0	14,499	0	12,343	0	12,181	0	8,833	0	11,118	0	11,795
Risso's dolphin	0	8,146	0	6,939	0	6,787	0	4,834	0	6,176	0	6,576
Blackfish [2]	0	67,509	0	57,010	0	56,860	0	40,787	0	51,138	0	54,661
Short-finned pilot whale	0	14,330	0	9,694	0	12,836	0	7,232	0	8,734	0	10,565

[1] A and B refer to expected instances of take by Level A and Level B harassment, respectively, for Years 1–5. Expected takes by Level A harassment represent modeled exposures adjusted to account for aversion. For the Rice's whale, this adjustment means that no takes by Level A harassment are predicted to occur. For *Kogia* spp., exposures above Level A harassment criteria were predicted by the peak SPL metric. For the Rice's whale, the cumulative SEL metric is used to evaluate the potential for Level A harassment.
[2] *Kogia* spp. includes dwarf and pygmy sperm whales. Beaked whales include Blainville's, Gervais', and Cuvier's beaked whales. Blackfish includes melon-headed whale, false killer whale, pygmy killer whale, and killer whale.

Discussion of Estimated Take

Differences between the estimated instances of take evaluated in the 2021 final rule (Table 5) and those evaluated herein (Table 6) may be attributed to multiple factors. Due to the confounding nature of these factors, it is challenging to attribute species-specific differences by degree to any particular factor. These factors include: (1) BOEM errors in calculating estimated take in support of its revision of scope for the 2021 final rule, which are related to species-specific density values by zone, as well as to species-specific ''correction factors'' developed by BOEM; (2) JASCO revisions to species definition files governing animat behavior during animal movement modeling; and (3) new density information for all species other than Fraser's dolphin and rough-toothed dolphin. In addition, for the Rice's whale, propagation modeling of a new array specification produced the greatest values for estimated instances of take. While it is difficult to attribute species-specific changes to specific factors, we do know that the correction of the BOEM error could only result in take number increases from the 2021 final rule, while density changes and species definition file changes could result in either increases or decreases in take estimates. NMFS has addressed BOEM's error to the extent possible in the discussion provided previously (see *Take Estimation Error,* wherein we relate BOEM's explanation of that error).

Regarding the species characteristics used in the new modeling, as discussed above, all species behavior files were reviewed by JASCO prior to the new modeling, and many had extensive updates. In particular, changes in the minimum and maximum depth preferences affected the coverage area for several species, which resulted in changes to some species exposures.

New modeling for the smaller, 5,110-in^3 array illustrated that the larger array is not necessarily always more impactful. Free-field beam patterns are different for the arrays as are the tow depths. The 5,110-in^3 array was specified as being towed at 12 m depth (following typical usage observed by NMFS through review of LOA applications), while the other arrays are assumed to use an 8-m tow depth (assumptions regarding source specifications were made by BOEM as part of its original petition for rulemaking). The depth at which a source is placed influences the interference pattern caused by the direct and sea-surface reflected paths (the ''Lloyd's mirror'' effect). The destructive interference from the sea-surface reflection is generally greater for shallow tow depths compared to deeper tow depths. In addition, interactions between source depth, beam pattern geometry, source frequency content, the environment (*e.g.,* bathymetry and sound velocity profile), and different seeding depths and behaviors can give unexpected results. For example, while the larger array may have the longest range for a particular isopleth (sound contour), the overall sound field coverage area was found to have greater asymmetry as a result of the above-mentioned interactions.

While the larger array did produce greater predicted exposures for all species, with the exception of Rice's whales, the differences between predicted exposure estimates for the two larger arrays was not as great as may have been expected on the basis of total

array volume alone. The 5,110- and 8,000-in^3 arrays were often similar in terms of predicted exposures, although the beam patterns were quite different. For arrays of airgun sources, the chamber volume or the total array volume is not the only meaningful variable. Although it is true that a source with a larger volume is generally louder, in practice this only applies largely to single sources or small arrays of sources and was not the case for the considered arrays. As discussed above, array configuration, tow depth, and bathymetry were significant factors. For example, the 8,000-in^3 array generally had a more directional beam pattern than the 4,130- or 5,110-in^3 arrays. The vertical structure of the sound field combined with different species' dive depth and surface intervals was important as well. Differences in estimated take numbers for the 2021 final rule and this proposed rule, *i.e.,* differences between Tables 5 and 6, are shown in Table 7.

TABLE 7—DIFFERENCES IN ESTIMATED TAKE NUMBERS, 2021 FINAL RULE TO 2022 PROPOSED RULE [1]

Species	Year 1	Year 2	Year 3	Year 4	Year 5	Mean annual take
Rice's whale	17	18	15	19	23	18
Sperm whale	(3,207)	(2,997)	(2,540)	(1,370)	(2,261)	(2,475)
Kogia spp.[2] (Level A)	(179)	(165)	(145)	(91)	(150)	(146)
Kogia spp. (Level B)	(3,111)	(3,012)	(2,438)	(1,657)	(2,542)	(2,552)
Beaked whale	(162,151)	(135,346)	(134,777)	(94,108)	(119,869)	(129,250)
Rough-toothed dolphin	7,895	6,854	6,361	5,670	6,154	6,586
Bottlenose dolphin	(319,283)	(554,695)	(316,155)	(561,890)	(318,583)	(414,121)
Clymene dolphin	(55,909)	(44,667)	(47,629)	(29,954)	(39,170)	(43,466)
Atlantic spotted dolphin	(91,219)	(149,577)	(78,994)	(157,152)	(87,399)	(112,868)
Pantropical spotted dolphin	(185,100)	(176,216)	(147,475)	(122,169)	(159,336)	(158,060)
Spinner dolphin	(71,335)	(67,417)	(57,394)	(45,628)	(60,256)	(60,405)
Striped dolphin	23,224	22,348	18,983	17,313	21,028	20,580
Fraser's dolphin	9,977	8,500	8,389	6,107	7,663	8,127
Risso's dolphin	(13,713)	(11,828)	(11,431)	(7,904)	(10,458)	(11,067)
Blackfish[3]	(12,608)	(11,504)	(10,142)	(6,470)	(9,684)	(10,081)
Short-finned pilot whale	(715)	(130)	(809)	(227)	(225)	(421

[1] Parentheses indicate negative values.
[2] Level A harassment is not predicted to occur for any species other than the *Kogia* spp.
[3] Values presented for blackfish represent the difference between the estimated take number presented in this rule for this group generically and the sum of the species-specific values evaluated in the 2021 final rule.

NMFS cautions against interpretation of the changes presented in Table 7 at face value for a variety of reasons. First, reasons for the differences are difficult to interpret, as discussed in detail in the foregoing. Second, the meaning of the differences in terms of impacts to the affected species or stocks is similarly not as straightforward as may be indicated by the magnitude and direction of the differences. Differences in estimated take are, in part, the result of the introduction of new density data, which also provides new model-predicted abundance estimates. Our evaluation under the MMPA of the expected impacts of the predicted take events is substantially reliant on comparisons of the expected take to the predicted abundance. See discussion of our evaluation of severity of impact (one prong of analysis) in Negligible Impact Analysis and Determinations. The severity of the predicted taking is understood through the estimates' relationship to predicted zone-specific abundance values, and so the absolute differences presented in Table 7 are not alone informative in that regard.

Overall, NMFS has determined, to the extent possible, that aside from the confounding effect of BOEM's calculation errors, differences between the current and prior results for the 8,000-in^3 array are primarily attributable to differences in species density along with changes in the species behavior files, in particular minimum and maximum animat seeding depths.

Level B Harassment

NMFS has determined the values shown in Table 6 are a reasonable estimate of the maximum potential instances of take that may occur in each year of the regulations (more specifically, each of these ''takes'' representing a day in which one individual is exposed above the Level B harassment criteria, even if only for minutes). However, these take numbers do not represent the number of individuals expected to be taken, as they do not consider the fact that certain individuals may be exposed above harassment thresholds on multiple days. Accordingly, as described in the 2018 notice of proposed rulemaking, NMFS developed an approach to inform two important parts of the analyses, both better understanding a closer approximation of the number of individuals of each species or stock that may be taken within a survey, and understanding the degree to which individuals of each species or stock may be more likely to be repeatedly taken across multiple days within a year.

In summary, comparing the results of modeling simulations that more closely match longer survey durations (30 days) to the results of 24-hour take estimates scaled up to 30 days (as the instances of take in Table 6 were calculated) provides the comparative ratios of the numbers of individuals taken/calculated (within a 30-day survey) to instances of take, in order to better understand the comparative distribution of exposures across individuals of different species. These products are used to inform a better understanding of the nature in which individuals are taken across the multiple days of a longer duration survey given the different behaviors that are represented in the animat modeling and may appropriately be used in combination with the calculated instances of take to predict the number of individuals taken for surveys of similar duration, in order to support evaluation of take estimates in requests for Letters of Authorization under the ''small numbers'' standard, which is based on the number of individuals taken. A detailed discussion of this approach was provided in the 2018 notice of proposed rulemaking. As NMFS retains without change this ''scalar ratio'' approach to approximating the number of individuals taken, both here (see

Negligible Impact Analysis and Determinations) and in support of the necessary small numbers determination on an LOA-specific basis, we do not repeat the discussion but refer the reader to previous **Federal Register** notices. Application of the re-scaling method reduced the overall magnitude of modeled takes for all species by a range of slightly more than double up to ten-fold (Table 8).

These adjusted take numbers, representing a closer approximation of the number of individuals taken (shown in Table 8), provide a more realistic basis upon which to evaluate severity of the expected taking. Please see the Negligible Impact Analysis and Determinations section, later in this document, for additional detail. It is important to recognize that while these scaled numbers better reflect the number of individuals likely to be taken within a single 30-day survey than the number of instances in Table 6, they will still overestimate the number of individuals taken across the aggregated GOM activities, because they do not correct for (*i.e.,* further reduce take to account for) individuals exposed to multiple surveys or fully correct for individuals exposed to surveys significantly longer than 30 days.

As noted in the beginning of this section and in the Small Numbers section, using modeled instances of take (Table 6) and the method used here to scale those numbers allows one to more accurately predict the number of individuals that will be taken as a result of exposure to one survey and, therefore, these scaled predictions should be considered in requests for LOAs to assess whether a resulting LOA would meet the small numbers standard. However, for the purposes of ensuring that the take authorized pursuant to all issued LOAs is within the scope of the analysis conducted to support the negligible impact finding in this rule, authorized instances of take (which are the building blocks of the analysis) also must be assessed. Specifically, reflecting Table 6 and what has been analyzed, the total take authorized for any given species or stock over the course of the five years covered under these regulations should not exceed the sum of the five years of take indicated for the five years in that table. Additionally, in any given year, the take of any species should not exceed the highest annual take listed for any of the five years.

TABLE 8—EXPECTED TOTAL TAKE NUMBERS, SCALED [1]

Species	Year 1	Year 2	Year 3	Year 4	Year 5
Rice's whale	5	5	4	5	6
Sperm whale	5,583	4,741	4,679	3,437	4,284
Kogia spp	2,334	2,022	1,959	1,470	1,854
Beaked whale	2,971	2,722	2,379	1,748	2,329
Rough-toothed dolphin	11,060	9,723	9,253	7,258	8,430
Bottlenose dolphin	81,613	120,160	72,269	126,098	71,424
Clymene dolphin	8,587	6,672	7,431	4,987	6,087
Atlantic spotted dolphin	10,642	9,798	9,507	9,856	6,861
Pantropical spotted dolphin	84,203	74,571	69,996	54,285	67,919
Spinner dolphin	1,325	1,279	1,063	903	1,177
Striped dolphin	16,301	14,816	13,437	10,748	13,513
Fraser's dolphin	4,161	3,543	3,496	2,535	3,191
Risso's dolphin	2,403	2,047	2,002	1,426	1,822
Blackfish	19,915	16,818	16,774	12,032	15,086
Short-finned pilot whale	4,227	2,860	3,787	2,134	2,576

[1] Scalar ratios were applied to values in Table 6 as described in the 2018 notice of proposed rulemaking to derive scaled take numbers shown here.

Proposed Mitigation

''Least Practicable Adverse Impact'' Standard

Under section 101(a)(5)(A) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for subsistence uses (hereinafter referred to as ''LPAI'' or ''least practicable adverse impact''). NMFS does not have a regulatory definition for least practicable adverse impact. However, NMFS' implementing regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)). We note that in some cases, certain mitigation may be necessary in order to make a ''negligible impact'' finding for an affected species or stock, which is a fundamental requirement of issuing an authorization—in these cases, consideration of practicability may be a lower priority for decision-making if impacts to marine mammal species or stocks would not be negligible in the measure's absence. In the Mitigation section of the 2021 final rule, NMFS included a detailed description of our interpretation of the LPAI standard and how it should be applied, and we refer readers to that discussion.

In summary, in evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, implementation of the potential measure(s) is expected to reduce adverse impacts to marine mammal species or stocks, their habitat, and their availability for subsistence uses (where relevant). This analysis considers such things as the nature of the potential adverse impact (such as likelihood, scope, and range), the likelihood that the measure will be effective if implemented, and the likelihood of successful implementation.

(2) The practicability of the measures for applicant implementation. Practicability of implementation may consider such things as cost, impact on

activities, personnel safety, and practicality of implementation.

Application of the Least Practicable Adverse Impact Standard in This Action

In carrying out the MMPA's mandate for this action, NMFS applies the previously described context-specific balance between the manner in which and the degree to which measures are expected to reduce impacts to the affected species or stocks and their habitat and practicability for operators. The effects of concern (*i.e.,* those with the potential to adversely impact species or stocks and their habitat), addressed previously in the Potential Effects of the Specified Activity on Marine Mammals and Their Habitat section of the 2018 notice of proposed rulemaking, include auditory injury, severe behavioral reactions, disruptions of critical behaviors, and to a lesser degree, masking and impacts on acoustic habitat (see discussion of this concept in the ''Anticipated Effects on Marine Mammal Habitat'' section in the 2018 notice of proposed rulemaking).

Our prior rulemaking for the 2021 final rule focused on measures with proven or reasonably presumed ability to avoid or reduce the intensity of acute exposures that have potential to result in these anticipated effects with an understanding of the drawbacks or costs of these requirements. In addition, we evaluated time-area restrictions that would avoid or reduce both acute and chronic impacts, including potential restrictions that were removed from consideration in the final rule as a result of BOEM's change to the scope of the action. To the extent of the information available to NMFS, we considered practicability concerns, as well as potential undesired consequences of the measures, *e.g.,* extended periods using the acoustic source due to the need to reshoot lines. NMFS also recognized that instantaneous protocols, such as shutdown requirements, are not capable of avoiding all acute effects, are not suitable for avoiding many cumulative or chronic effects, and do not provide targeted protection in areas of greatest importance for marine mammals. Therefore, in addition to a basic suite of seismic mitigation protocols, we also considered measures that may or may not be appropriate for other activities (*e.g.,* time-area restrictions specific to the surveys discussed herein).

In order to satisfy the MMPA's least practicable adverse impact standard, NMFS' 2021 rule evaluated a suite of basic mitigation protocols that are required regardless of the status of a stock. Additional or enhanced protections were required for species whose stocks are in particularly poor health and/or are subject to some significant additional stressor that lessens that stock's ability to weather the effects of the specified activities without worsening its status. NMFS' evaluation process was described in detail in the original proposed rule (83 FR 29212, June 22, 2018), and mitigation requirements included in the incidental take regulations were fully described in the notice of issuance for the final rule (86 FR 5322, January 19, 2021).

For this proposed rule, NMFS considered additional mitigation for this action in light of the updated take estimates. Based on that evaluation, we have preliminarily determined that the current regulations promulgated under the 2021 final rule satisfy the least practicable adverse impact standard, and therefore, we do not propose changes to those regulations. Because the proposed mitigation requirements for this action are the same as those described in the notice of issuance for the final rule (86 FR 5322, January 19, 2021), we do not repeat the description of the required mitigation.

Below, we include additional discussion supporting the least practical adverse impact finding as it relates to Rice's whales, given the increase in estimated take relative to the 2021 final rule and other new information. For other species, despite slight increases in estimated take (for three species) and increases in evaluated risk (for other species) since the 2021 final rule (see Negligible Impact Analysis and Determinations), there are no known specific areas of particular importance to consider for time-area restrictions, and no changes to our prior analysis for the sufficiency of the existing standard operational mitigation requirements to effect the least practicable adverse impact on the affected species or stocks and their habitat. (We also note that NMFS' 2018 proposed rule made this determination even in the context of significantly higher takes, as well as evaluated risk.)

Rice's Whale—As discussed previously in this document, the Rice's whale ''core habitat area'' considered in the 2018 notice of proposed rulemaking was designated as between the 100- and 400-m isobaths, from 87.5° W to 27.5° N (Figure 3). That core habitat area was considered in the 2018 notice of proposed rulemaking as a potential restriction area, but because the area was entirely located in the GOMESA moratorium area removed from consideration for the rule, the core habitat area was no longer relevant for consideration as mitigation in the 2021 final rule.

As described previously, NMFS has developed an updated description of Rice's whale core habitat area (Figure 3). The updated process for describing ''core habitat'' incorporated a more precautionary approach to addressing uncertainty associated with both the location of observed whales as well as to account for the possible movement whales could make in any one direction from an observed sighting, *i.e.,* inclusion of the 30-km total buffer discussed previously. As a result of the addition of this buffer to the newly defined polygon encompassing all whale observations and tag locations in the core habitat region, the updated core habitat area now overlaps slightly within the area covered through the scope of the rule. Approximately 5 percent of the updated core habitat area now overlaps the geographic scope of the rule (as defined by the petitioner, BOEM). In addition, new information regarding potential Rice's whale occurrence outside of the core habitat area, based on passive acoustic detections (Soldevilla *et al.,* 2022), is now available. Information supporting the importance of a core habitat area for Rice's whales has not changed from the 2021 final rule. We provide discussion of this information in the following paragraphs.

BILLING CODE 3510–22–P

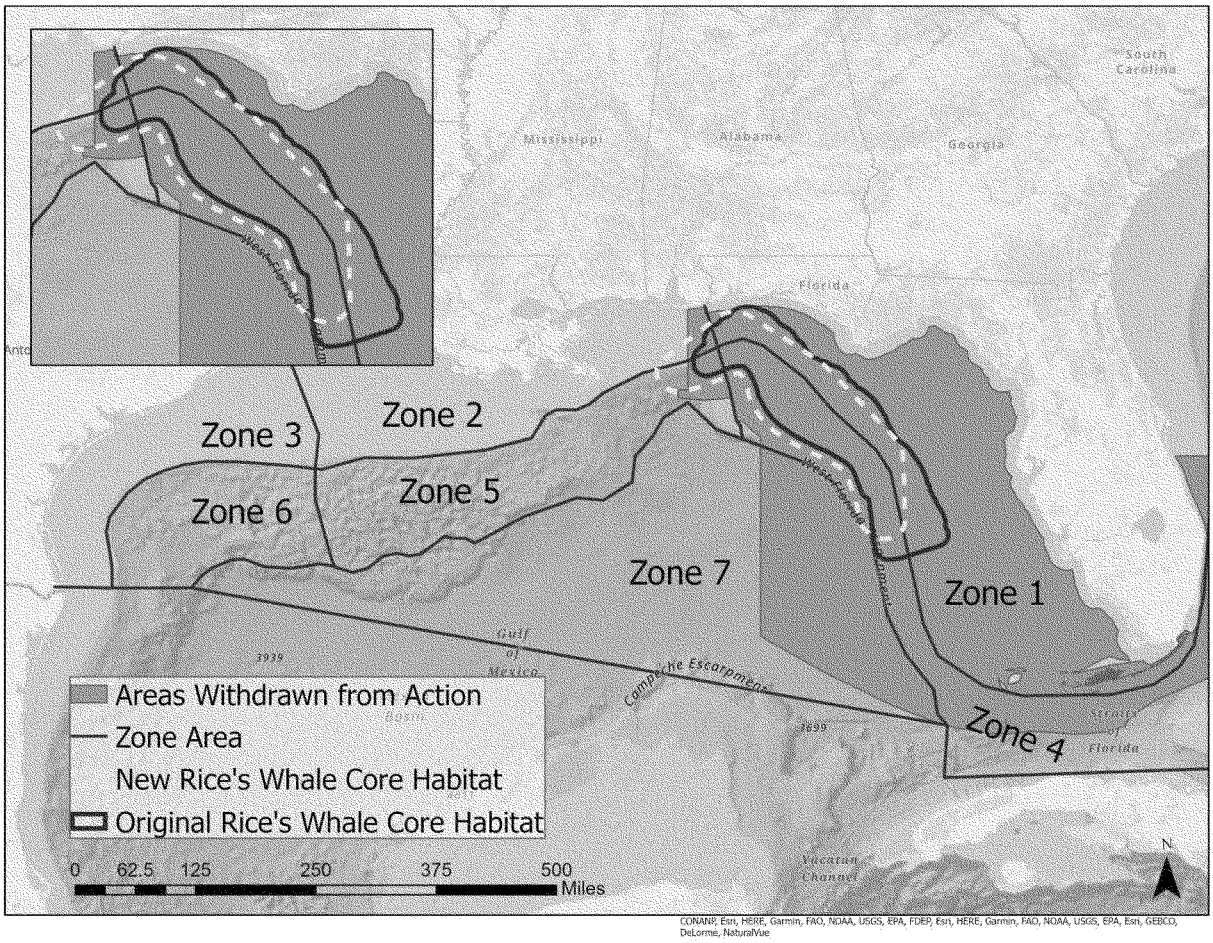


Figure 3 -- Rice's Whale Core Habitat Areas

BILLING CODE 3510–22–C

Rice's whales form a small and resident population in the northeastern GOM, with a highly restricted geographic range and a very small population abundance—determined by the status review team to be ''at or below the near-extinction population level'' (Rosel *et al.,* 2016). Aside from the restricted distribution and small population, the whales face a significant suite of anthropogenic threats, one of which is noise produced by airgun surveys.

While various population abundance estimates are available (*e.g.,* Garrison *et al.,* 2022; Hayes *et al.,* 2020; Roberts *et al.,* 2016; Dias and Garrison, 2016), the population abundance was almost certainly less than 100 prior to the DWH oil spill. NOAA estimated that, as a result of that event, 48 percent of the population may have been exposed to DWH oil, with 17 percent killed and 22 percent of females experiencing reproductive failure. The best estimate for maximum population reduction was 22 percent, with an estimated 69 years to recovery (to the precarious status prior to the DWH oil spill) (DWH MMIQT, 2015). It is considered likely that Rice's whale habitat previously extended to shelf and slope areas of the western and central GOM similar to where they are found now in the eastern GOM, and that anthropogenic activity—largely energy exploration and production—concentrated in those areas could have resulted in habitat abandonment (Reeves *et al.,* 2011; Rosel and Wilcox, 2014). Further, the population exhibits very low levels of genetic diversity, and based on significant genetic mitochondrial DNA divergence from Bryde's whales worldwide, the former GOM Bryde's whale was recognized as a separate species (Rosel and Wilcox, 2014; Rosel *et al.,* 2021).

The small population size, restricted range, and low genetic diversity alone place these whales at significant risk of extinction (IWC, 2017), which has been exacerbated by the effects of the DWH oil spill. Additionally, Rice's whale dive and foraging behavior places them at heightened risk of being struck by vessels and/or entangled in fishing gear (Soldevilla *et al.,* 2017). NMFS considered a restriction within core habitat (as previously defined) to protect Rice's whales because of their hearing sensitivity in the lower frequency range (which makes them generally more susceptible to incurring effects from airgun noise than other taxa in the GOM); the potential impacts to important behavioral functions such as feeding, breeding, and raising young; their dangerously low population size; and other issues discussed previously.

NMFS' 2018 proposed rule proposed a seasonal restriction on survey activity in the core habitat area considered therein, but also requested comment on a range of alternatives (including a year-round restriction). That proposal, and associated alternatives, were offered for public comment in context of the significantly greater predicted take numbers evaluated in the 2018 proposed rule and the complete overlap of the original project area with the core habitat area prior to the removal of the

GOMESA area. While the take numbers presented here are greater than those evaluated in the 2021 final rule, they are significantly lower in relation to those in the 2018 proposed rule. Predicted take numbers across the three analyses are shown in Table 9. In addition, the 2018 proposed rule analysis included up to several instances of Level A harassment per year, in the form of permanent threshold shift. In contrast, neither the 2021 final rule nor this proposed rule include predicted instances of Level A harassment.

TABLE 9—COMPARISON OF ANALYZED RICE'S WHALE TAKE

	2018 proposed rule	2021 final rule	2022 proposed rule
5-year total	2,310	39	132
Annual maximum	572	10	30

As noted above, the proposed restriction, and alternatives thereto, were no longer relevant due to the changed geographic scope of the 2021 final rule. We now consider the effectiveness and practicability of a potential restriction covering the approximately 5 percent of core habitat (updated) that overlaps with the geographic scope of this rule, as well as of other areas that could be considered important habitat for Rice's whales.

As discussed in the 2018 proposed rule, a restriction on (or absence of) survey activity in core habitat would be expected to protect Rice's whales and their habitat through the alleviation or minimization of a range of airgun effects, both acute and chronic, that could otherwise accrue to impact the reproduction or survival of individuals in the core habitat area. The absence of survey activity in the area would not only largely avoid Level B harassment of Rice's whales, but also very importantly minimize other acoustic effects such as masking and loss of communication space.

However, the significant concern that led NMFS to consider such a restriction through the 2018 proposed rule has largely been alleviated through the reduction in predicted take numbers. Although predicted take numbers have increased relative to the 2021 final rule (annual average Level B harassment events of 26 versus 8), expected takes remain significantly less than those considered in that 2018 analysis (annual average of 462, plus some expected potential for Level A harassment to occur)—an almost 18-fold reduction. Moreover, the functional absence of survey activity in the eastern GOM, and within Rice's whale core habitat, means that the anticipated protection afforded by the previously proposed restriction has been substantively achieved by virtue of the change in scope for the 2021 final rule (which is unchanged for this proposed action). Although the updated core habitat area now slightly overlaps with the geographic scope of the rule (5 percent of defined core habitat overlaps the area considered as part of this rule), we note that the update to the core habitat description is not the result of additional Rice's whale sightings necessitating the expanded description, but rather through the incorporation of additional precaution in defining the area within which existing Rice's whale sightings and tag locations suggest that whales could occur (*i.e.,* a 30-km buffer has been added, as discussed in the Description of Marine Mammals in the Area of the Specified Activities section). As a result of these considerations, NMFS has determined that a restriction on survey activity within the portion of the updated core habitat area that occurs within scope of the rule is not warranted. NMFS requests comment on this determination.

Although the core habitat area is largely no longer relevant under the updated geographic scope of the specified activity and this rule, the discussion above is still important to describe NMFS' work to identify appropriate mitigation in this rulemaking. In addition, we acknowledge that some whales are likely to be present at locations other than within the core habitat area, and we considered additional information in order to evaluate whether a different closure area may be warranted, including central and western GOM areas within the same general 100–400 m depth range known to be occupied by Rice's whales in the northeastern GOM.

Outside of the core habitat area, a NOAA survey reported observation of a Rice's whale in the western GOM in 2017 (NMFS, 2018). There had not previously been a verified sighting of a Rice's whale in the western GOM, and given the importance of this observation, additional survey effort was conducted in an attempt to increase effort in the area. However, no additional sightings were recorded. (Note that there were two sightings of unidentified large baleen whales in 1992 in the western GOM, recorded as *Balaenoptera* sp. or Bryde's/sei whale. Prior to the 2017 sighting, which was confirmed as a Rice's whale, it was considered unlikely that the 1992 sightings were of Rice's whales.) In addition, there are occasional sightings by protected species observers (PSOs) of baleen whales in the GOM. These sightings are typically of other, vagrant species, are in habitat considered unsuitable for Rice's whale (*e.g.,* deep water), and/or are unresolved taxonomically. Of 13 unconfirmed Bryde's-like whale PSO sightings that occurred along the northwestern GOM shelf-break from 2010–2014, Rosel *et al.* (2021) found that there were 4 potential Rice's whale observations (*i.e.,* that could neither be verified nor ruled out as Rice's whale sightings), all within the 200–400 m isobaths.

BILLING CODE 3510–22–P

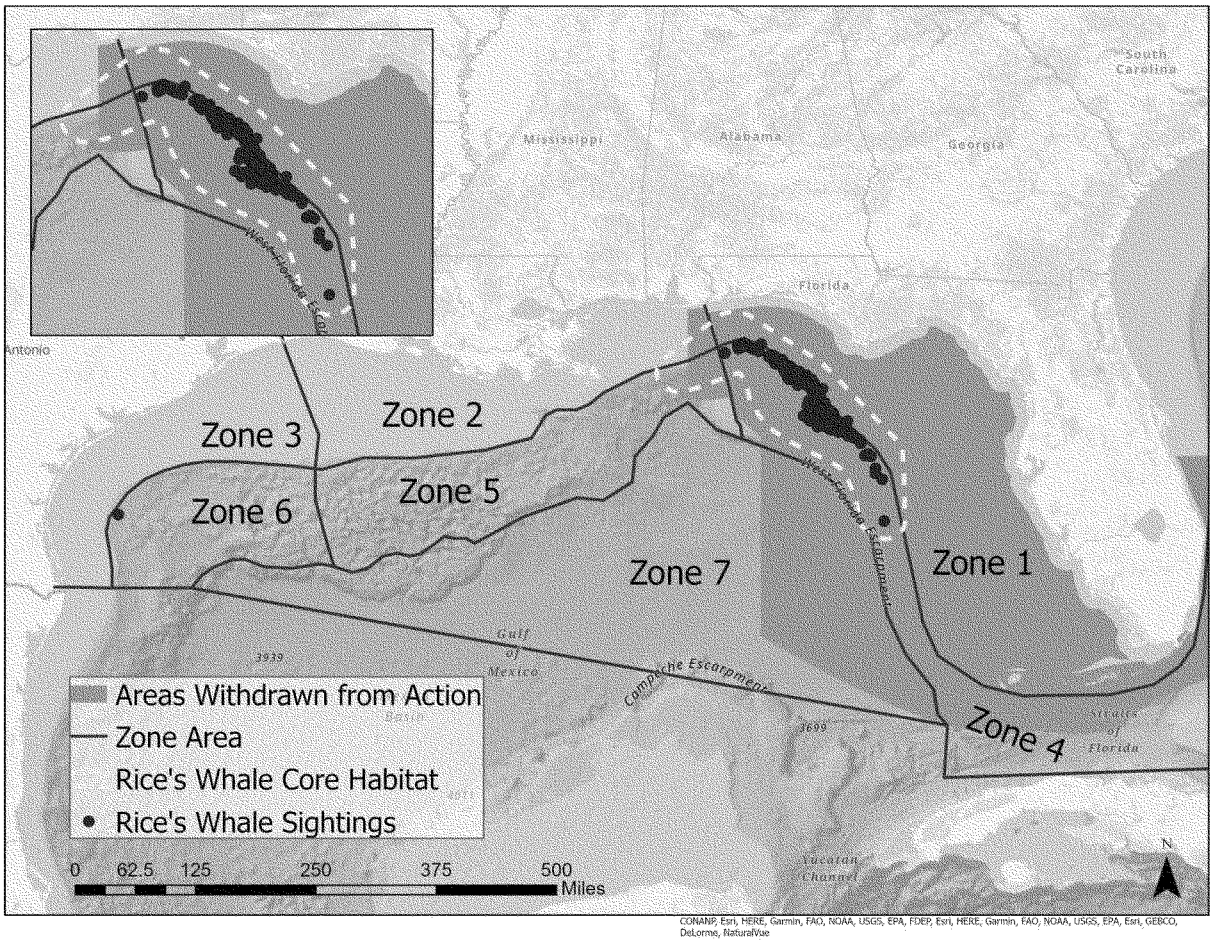


Figure 4 -- Confirmed Rice's Whale Sightings

BILLING CODE 3510–22–C

In addition, Soldevilla *et al.* (2022) deployed autonomous passive acoustic recorders at five sites along the northwestern GOM shelf break in predicted Rice's whale habitat (Roberts *et al.,* 2016) for 1 year (2016–2017) to (1) determine if Rice's whales occur in waters beyond the northeastern GOM and, if so, (2) evaluate their seasonal occurrence and site fidelity at the five northwestern GOM sites. Over the course of the 1-year study, sporadic, year-round recordings of calls assessed as belonging to Rice's whales were made south of Louisiana within approximately the same depth range (200–400 m), indicating that some Rice's whales occurred regularly in waters beyond their known core habitat in the northeastern GOM during the study period. Based on the detection range of the sonobuoys and acoustic monitors used in the study, actual occurrence could be in water depths up to 500 m (M. Soldevilla, pers. comm.) (though the deepest confirmed Rice's whale sighting was in 408 m water depth). Data were successfully collected at four of the five sites; of these four sites, Rice's whale calls were detected at three. Detection of calls ranged from 1 to 16 percent of total days at the three sites. Calls were present in all seasons at two sites, with no obvious seasonality, and it remains unknown whether animals are moving between the northwestern and northeastern sites or whether these represent different groups of animals (Soldevilla *et al.,* 2022). The rate of call detections throughout the year is considerably higher in the eastern GOM than at the western GOM site where calls were most commonly detected, with at least 8.3 calls/hour among four eastern GOM sites over 110 deployment days (Rice *et al.,* 2014) compared to 0.27 calls/hour over the 299-day deployment at the western GOM site where calls were detected most frequently. Approximately 2,000 total calls were detected at the site over 10 months, compared to more than 66,000 total detections at the eastern GOM deployment site over 11 months (approximately 30 times more calls detected at the eastern GOM site) (Soldevilla *et al.,* 2022). Although it should be noted that ambient noise conditions were higher at the western GOM site, influencing maximum detection range, this difference in conditions would be expected to result in only 4–8 times as many call detections if all other factors (including presence and number of whales) were consistent (versus 30 times as many detections). Overall, the study authors assess that there seem to be fewer whales or more sparsely spaced whales in the western GOM compared to the eastern GOM, with calls present on fewer days, lower call detection rates, and far fewer call detections in the western GOM.

The passive acoustic data discussed above provide evidence for the persistent occurrence of at least some individual Rice's whales over a broader distribution in the GOM than previously understood. However, overall, Rice's whale observations remain consistently located within the eastern GOM core habitat area, with few whales sighted

elsewhere despite a large amount of dedicated cetacean survey effort that covered both continental shelf and oceanic waters. Whales have been sighted in the core habitat area in all seasons, and all indications are that the whales inhabit this area year-round as a resident population. A tagged whale remained within the area for the entire time the tag was active (38 days). Therefore, while we expect that some individual Rice's whales occur outside the core habitat area and/or that whales from the eastern GOM occasionally travel outside the area, the currently available data support NMFS' determination that the area currently considered core habitat is an adequate representation.

NMFS produced a regulatory impact analysis (RIA) in support of the 2018 proposed rule, which evaluated potential costs associated with a range of area-based activity restrictions (available online at: *www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico*). Although that analysis did not directly evaluate a potential closure of the area that might be considered here as a Rice's whale protected area, *i.e.,* potentially suitable habitat in the central and western GOM outside of known Rice's whale core habitat, it provided a useful framework for considering practicability in an assessment of potential restrictions in the northeastern GOM. That analysis concluded that the direct compliance costs of the rule would represent a small increase in oil and gas development costs overall and, therefore, would be unlikely to result in materially reduced oil and gas activities in the GOM. However, the analysis suggested that the analyzed seasonal and year-round area closures would have the potential to generate reductions in leasing, exploration, and subsequent development activity. Although the report cautioned that its conclusions were subject to substantial uncertainty, it provided several factors that the likelihood of ultimate impacts to oil and gas production as a result of delays in data collection could be expected to depend upon: (1) oil and gas market conditions; (2) the relative importance of the closure area to oil and gas production; (3) the state of existing data covering the area; and (4) the duration of the closure. NMFS cannot predict factor (1) and does not have complete information regarding factor (3) (though the analysis provides that new surveys are expected to be required to facilitate efficient exploration and development decisions). We can, however, more adequately predict the effects of factors (2) and (4) on the impact of any closure.

Historical Rice's whale habitat, which is also generally modeled as being suitable habitat (Roberts *et al.,* 2016; Garrison *et al.* 2022), generally consists of the aforementioned strip of continental shelf waters within the 100–400 m isobaths. Salinity and surface water velocity are also likely predictive of potential Rice's whale occurrence (Garrison *et al.,* 2022), but these more dynamic variables are less useful in delineating a potential area of importance than the static depth variable. Within this GOM-wide depth range, we focus on the area where Soldevilla *et al.* (2022) recorded Rice's whale calls as being of interest for a potential restriction. This area lies within the central GOM, where the vast majority of survey effort during NMFS' experience in implementing this rule has occurred. The 2018 proposed rule RIA considered the economic impacts of a prospective closure area in deeper waters of the central GOM. The evaluated area was designed to be of benefit to sperm whales and beaked whales, which are found in deep water, and more activity is projected to occur in deep water than in the shelf-break waters where Rice's whales are expected to be found. As such, the RIA analysis likely overestimates the potential impacts of a central GOM closure within a portion of the shelf waters favored by Rice's whales in their known habitat. However, the analysis of deep-water closures in the central GOM suggested the possibility that the closure could affect the broader contribution of the GOM to U.S. oil and gas activity, with shifts in effort potentially reducing domestic oil and gas production, industry income, and employment, ultimately concluding that the economic impact on the regional economy could be significant. A key consideration in this finding relates to factor (4), as the analyzed closure was year-round. Similarly, there is no information to support a temporal component to design of a potential Rice's whale closure and, therefore, a closure would appropriately be year-round. As operators have no ability to plan around a year-round closure, this aspect exacerbates the potential for effects on oil and gas productivity in the GOM.

In summary, the foregoing preliminarily supports (1) that there is no clearly defined important habitat with known occupation and usage patterns outside the existing core habitat area that would appropriately be subject to a restriction on survey activity; and (2) the potential that a central GOM closure would have significant economic impacts. During implementation of the existing rule, NMFS has issued three LOAs in association with surveys occurring roughly within this area of the central GOM (87 FR 55790, October 1, 2022; 87 FR 43243, July 20, 2022; 87 FR 42999, July 19, 2022). Based on these surveys, there is a possibility that the closure could affect the broader contribution of the GOM to future U.S. oil and gas activity. Given the relatively low level of take predicted to occur for Rice's whales in context of the de facto protection afforded through the circumscribed scope of the rule (*i.e.,* the rule does not cover the bulk of Rice's whale core habitat, where whales are generally anticipated to occur, and no survey activity is expected to occur in the eastern GOM), NMFS has preliminarily determined that no additional mitigation is necessary or appropriate in order to effect the least practicable adverse impact on the species.

NMFS has reevaluated the suite of mitigation measures required through the 2021 final regulations and considered other measures in light of the new information considered in this proposed rule. Based on our evaluation of these measures, we have preliminarily affirmed that the required mitigation measures contained in the current regulations provide the means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an LOA for an activity, section 101(a)(5)(A) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of the authorized taking. NMFS' MMPA implementing regulations further describe the information that an applicant should provide when requesting an authorization (50 CFR 216.104(a)(13)), including the means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and the level of taking or impacts on populations of marine mammals. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

We do not propose changes to the current LOA reporting requirements, which have been sufficient to date. Accordingly, the monitoring and

reporting requirements for this proposed rule remain identical to the 2021 final rule and ITR, and we refer readers back to that document (86 FR 5322, January 19, 2021) for the discussion.

Negligible Impact Analysis and Determinations

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base a negligible impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' by mortality, serious injury, and Level A or Level B harassment, we consider other factors, such as the type of take, the likely nature of any behavioral responses (*e.g.,* intensity, duration), the context of any such responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into these analyses via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality).

For each potential activity-related stressor, NMFS considers the potential effects to marine mammals and the likely significance of those effects to the species or stock as a whole. Potential risk due to vessel collision and related mitigation measures, as well as potential risk due to entanglement and contaminant spills, was addressed in the Proposed Mitigation and Potential Effects of the Specified Activity on Marine Mammals sections of the 2018 and 2021 notices of proposed and final rulemaking and are not discussed further, as there are minimal risks expected from these potential stressors.

The ''specified activity'' for this proposed rule continues to be a broad program of geophysical survey activity that could occur at any time of year in U.S. waters of the GOM, within the same specified geographical region as the 2021 final rule (*i.e.,* updated from the 2018 proposed rule to exclude the former GOMESA leasing moratorium area) and for the same 5-year period. The acoustic exposure modeling used for the 2021 rulemaking and for this proposed rule provides marine mammal noise exposure estimates based on BOEM-provided projections of future survey effort and best available modeling of sound propagation, animal distribution, and animal movement. This provides a conservative but reasonable best estimate of potential acute noise exposure events that may result from the described suite of activities.

In recognition of the broad geographic and temporal scale of this activity, in support of the issuance of the 2021 rule, we applied an explicit, systematic risk assessment framework (discussed in detail in the 2018 notice of proposed rulemaking) to evaluate potential effects of aggregated discrete acoustic exposure events (*i.e.,* proposed geophysical survey activities) on marine mammals. This risk assessment framework, which is one component of the overall negligible impact analysis, was described by Southall *et al.* (2017) (available online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-oil-and-gas*), and discussed in detail in the 2018 notice of proposed rulemaking. That framework, which was subsequently refined in response to public comment and in consideration of the updated scope of the activity (as discussed in the notice of issuance of the 2021 final rule), has not changed and is not described in detail in this notice. Please review the 2018 proposed and 2021 final rule notices, as well as Southall *et al.* (2017), for further detail. This framework continues to represent the best available methodology for assessing relative risk, and we incorporate the framework and its results into this analysis.

In summary, the systematic risk assessment framework uses the modeling results to put into biologically-relevant context the level of potential risk of injury and/or disturbance to marine mammals. The framework considers both the aggregation of acute effects and the broad temporal and spatial scales over which chronic effects may occur. Generally, this approach is a relativistic risk assessment that provides an interpretation of the exposure estimates within the context of key biological and population parameters (*e.g.,* population size, life history factors, compensatory ability of the species, animal behavioral state, aversion), as well as other biological, environmental, and anthropogenic factors. This analysis was performed on a species-specific basis within each modeling zone (Figure 2), and the end result provides an indication of the biological significance of the evaluated exposure numbers for each affected marine mammal stock (*i.e.,* yielding the severity of impact and vulnerability of stock/population information), and forecasts the likelihood of any such impact. This result is expressed as relative impact ratings of overall risk that couple potential severity of effect on a stock and likely vulnerability of the population to the consequences of those effects, given biologically relevant information (*e.g.,* compensatory ability).

Spectral, temporal, and spatial overlaps between survey activities and animal distribution are the primary factors that drive the type, magnitude, and severity of potential effects on marine mammals, and these considerations are integrated into both the severity and vulnerability assessments. The framework utilizes a strategic approach to balance the weight of these considerations between the two assessments, specifying and clarifying where and how the interactions between potential disturbance and species within these dimensions are evaluated. Overall ratings are then considered in conjunction with the required mitigation (and any additional relevant contextual information) to ultimately inform our determinations. Elements of this approach are subjective and relative within the context of this program of projected actions and, overall, the analysis necessarily requires the application of professional judgment.

As shown in Tables 5 and 6, estimated take numbers for most species have decreased relative to those evaluated in the notice of issuance for the 2021 final rule. We note that this includes the ''blackfish'' guild (consisting of the false killer whale, pygmy killer whale, melon-headed whale, and killer whale), for which species-specific take information is not available. Both the annual maximum and 5-year total take numbers for the group have decreased relative to the sum of the previous species-specific values (annual maxima and 5-year totals) evaluated in the 2021 final rule.

As elements of the risk assessment framework are dependent on information related to stock abundance, we have revisited the risk assessment methodology for all species, and present updated information below. Specifically, as discussed below, severity ratings are the product of

comparison between estimated take numbers and modeled population abundance, on a zone-specific basis. As the zone-specific modeled population abundance values have been updated through new density modeling (Garrison *et al.,* 2022), we revisit all severity ratings. The vulnerability assessment component is less directly dependent on population abundance information, but does incorporate certain species population information, including a trend rating and population size, as well as a factor related to species habitat use. With publication of new SARs information for all species, we revisit the former components of the vulnerability assessment, whereas the aforementioned updated density modeling effort provides new zone-specific abundance values that inform the assessment of habitat use in each zone (*i.e.,* proportion of GOM-wide estimated population in each zone).

Estimated take numbers increased (relative to the 2021 final rule) for only four species: Rice's whale, Fraser's dolphin, rough-toothed dolphin, and striped dolphin (though it should be noted that overall relative risk ratings remained static for Rice's whale and Fraser's dolphin). Whether estimated take numbers increased for each of the four species within the ''blackfish'' category is unknown under NMFS' proposed approach to estimating take numbers. However, overall relative risk ratings increased slightly for most species. Of the species for which evaluated take decreased, relative risk ratings remained static (or declined) for the sperm whale, beaked whales, bottlenose dolphin, and spinner dolphin. No new information is available for these four taxa that would suggest that the existing negligible impact analyses should be revisited. Therefore, we rely on the existing negligible impact analyses for the sperm whale, all beaked whale species, bottlenose dolphin, and spinner dolphin. Please see the notice of issuance for the current rule (86 FR 5322, January 19, 2021) for analysis related to these species, which we incorporate by reference to this proposed rule. We revisit here the negligible impact analyses for those species for which evaluated take numbers increased and/or for which the assessed relative risk rating increased.

The risk assessment framework comprehensively considers the aggregate impacts to marine mammal populations from the specified activities in the context of both the severity of the impacts and the vulnerability of the affected species. However, it does not consider the effects of the mitigation required through these regulations in identifying risk ratings for the affected species. In addition, while the risk assessment framework comprehensively considers the spatial and temporal overlay of the activities and the marine mammals in the GOM, as well as the number of predicted takes, there are details about the nature of any ''take'' anticipated to result from these activities that were not considered directly in the framework analysis that warrant explicit consideration in the negligible impact determination. Accordingly, following the description of the framework analysis presented below, NMFS highlights a few factors regarding the nature of the predicted ''takes'' and then brings together the results of implementation of the framework, these additional factors, and the anticipated effects of the mitigation to summarize the negligible impact analysis for each of the species considered here. The risk assessment analysis below is performed for 2 representative years, with Year 1 representing a relatively high-effort scenario and Year 4 representing a moderate-effort scenario. Please see Table 2 for details regarding BOEM's level of effort projections.

Severity of Effect

As described above in Estimated Take, a significant model assumption was that populations of animals were reset for each 24-hr period. Exposure estimates for the 24-hr period were then aggregated across all assumed survey days as completely independent events, assuming populations turn over completely within each large zone on a daily basis. In order to evaluate modeled daily exposures and determine more realistic exposure probabilities for individuals across multiple days, we used information on species-typical movement behavior to determine a species-typical offset of modeled daily exposures, summarized under Estimated Take (and discussed in further detail in the 2021 notice of issuance for the final rule). Given that many of the evaluated survey activities occur for 30-day or longer periods, particularly some of the larger surveys for which the majority of the modeled exposures occur, using such a scaling process is appropriate in order to evaluate the likely severity of the predicted exposures and to estimate take for the purposes of LOA applications and predicting the number of individual marine mammals taken during the course of a single survey (although, for surveys significantly longer than 30 days, the take numbers with this scaling applied would still be expected to overestimate the number of individuals, given the greater degree of repeat exposures that would be expected the longer the survey goes on). This output was used in a severity assessment. This approach is also discussed in more detail in the Southall *et al.* (2017) report.

The scaled Level B harassment takes were then rated through a population-dependent binning system, used to evaluate risk associated with behavioral disruption across species—a simple, logical means of evaluating relative risk across species and areas. See the notice of issuance for the 2021 final rule for more detail regarding the definition of relative risk ratings. Results of the reassessed severity ratings are shown in Table 10.

Level A harassment (including PTS) is not expected to occur for any of the species evaluated here, with the exception of *Kogia* spp. Estimated takes by Level A harassment for *Kogia* spp., which are discussed in further detail below, declined relative to what was evaluated in the 2021 final rule. See Tables 5 and 6.

TABLE 10—SEVERITY ASSESSMENT

Species	Zone 1 [1]		Zone 2		Zone 3		Zone 4 [1]		Zone 5		Zone 6		Zone 7	
	H	M	H	M	H	M	H	M	H	M	H	M	H	M
Rice's whale	VL	VL	VL	VL	VL	VL	VL	VL	VL	VL	VL	VL	n/a	n/a
Sperm whale	n/a	n/a	n/a	n/a	n/a	n/a	VL	VL	H	H	M	L	L	L
Kogia spp	n/a	n/a	n/a	n/a	n/a	n/a	VL	VL	H	M	M	L	L	VL
Beaked whales	n/a	n/a	n/a	n/a	n/a	n/a	VL	VL	VH	VH	VL	VL	VL	VL
Rough-toothed dolphin	VL	VL	L	M	VL	VL	VL	VL	H	H	M	L	L	L
Bottlenose dolphin	VL	VL	L	M	VL	VL	VL	VL	M	M	L	VL	n/a	n/a
Clymene dolphin	n/a	n/a	n/a	n/a	n/a	n/a	VL	VL	H	H	M	L	L	VL
Atlantic spotted dolphin	VL	VL	M	H	VL	VL	VL	VL	H	M	M	L	n/a	n/a

TABLE 10—SEVERITY ASSESSMENT—Continued

Species	Zone 1 [1]		Zone 2		Zone 3		Zone 4 [1]		Zone 5		Zone 6		Zone 7	
	H	M	H	M	H	M	H	M	H	M	H	M	H	M
Pantropical spotted dolphin.	n/a	n/a	n/a	n/a	n/a	n/a	VL	VL	H	H	M	L	L	VL
Spinner dolphin	n/a	n/a	n/a	n/a	n/a	n/a	VL	VL	H	H	n/a	n/a	VL	VL
Striped dolphin	n/a	n/a	n/a	n/a	n/a	n/a	VL	VL	H	H	M	L	L	VL
Fraser's dolphin	VL	VL	VL	VL	VL	VL	VL	VL	H	H	M	L	L	L
Risso's dolphin	n/a	n/a	VL	VL	n/a	n/a	VL	VL	H	M	M	L	L	VL
Short-finned pilot whale	n/a	n/a	VL	VL	VL	VL	VL	VL	H	M	M	L	VL	VL
Blackfish	n/a	n/a	n/a	n/a	n/a	n/a	VL	VL	H	H	M	L	L	L

H = Year 1 (representative high effort scenario); M = Year 4 (representative moderate effort scenario).
n/a = less than 0.05 percent of GOM-wide population predicted in zone.
VL = very low; L = low; M = moderate; H = high; VH = very high.
[1] No activity would occur in Zone 1, and no activity is projected in Zone 4 under the high effort scenario. With no activity in a zone, severity is assumed to be very low.

Vulnerability of Affected Population

Vulnerability rating seeks to evaluate the relative risk of a predicted effect given species-typical and population-specific parameters (*e.g.,* species-specific life history, population factors) and other relevant interacting factors (*e.g.,* human or other environmental stressors). The assessment includes consideration of four categories within two overarching risk factors (species-specific biological and environmental risk factors). These values were selected to capture key aspects of the importance of spatial (geographic), spectral (frequency content of noise in relation to species-typical hearing and sound communications), and temporal relationships between sound and receivers. Explicit numerical criteria for identifying scores were specified where possible, but in some cases qualitative judgments based on a reasonable interpretation of given aspects of the proposed activity and how it relates to the species in question and the environment within the specified area were required. Factors considered in the vulnerability assessment were detailed in Southall *et al.* (2017) and discussed in further detail in the notice of issuance for the 2021 final rule. Please see that notice for further detail regarding these aspects of the framework and for definitions of vulnerability ratings. Note that the effects of the DWH oil spill are accounted for through a non-noise chronic anthropogenic risk factor, while the effects to acoustic habitat and on individual animal behavior via masking are accounted for through the masking and chronic anthropogenic noise risk factors. The results of reassessed species-specific vulnerability scoring are shown in Table 11. Note that, as there are certain species-specific elements of the vulnerability assessment, we evaluated and present results for each of the four species contained within the ''blackfish'' group. For purposes of evaluating relative risk, we assume that the greatest vulnerability (assessed for melon-headed whale) applies to the blackfish group as a whole.

TABLE 11—VULNERABILITY ASSESSMENT

Species	Zone						
	1	2	3	4	5	6	7
Rice's whale	H	H	M	H	H	H	n/a
Sperm whale	n/a	n/a	n/a	M	H	M	M
Kogia spp	n/a	n/a	n/a	L	L	L	L
Beaked whale	n/a	n/a	n/a	L	L	L	L
Rough-toothed dolphin	L	L	L	L	L	L	L
Bottlenose dolphin	L	L	L	VL	L	VL	n/a
Clymene dolphin	n/a	n/a	n/a	L	L	L	L
Atlantic spotted dolphin	M	M	L	L	L	L	n/a
Pantropical spotted dolphin	n/a	n/a	n/a	L	L	L	L
Spinner dolphin	n/a	n/a	n/a	L	L	n/a	L
Striped dolphin	n/a	n/a	n/a	L	L	L	L
Fraser's dolphin	L	L	VL	L	L	L	L
Risso's dolphin	n/a	L	n/a	M	M	M	L
Melon-headed whale	n/a	n/a	n/a	L	M	L	L
Pygmy killer whale	n/a	n/a	n/a	L	L	L	L
False killer whale	n/a	n/a	n/a	L	L	L	L
Killer whale	n/a	n/a	n/a	L	L	L	L
Short-finned pilot whale	n/a	M	L	M	M	M	L

n/a = less than 0.05% of GOM-wide population predicted in zone.
VL = very low; L = low; M = moderate; H = high; VH = very high.

Risk

In the final step of the framework, severity and vulnerability ratings are integrated to provide relative impact ratings of overall risk. Severity and vulnerability assessments each produce a numerical rating (1–5) corresponding with the qualitative rating (*i.e.,* very low, low, moderate, high, very high). A matrix is then used to integrate these two scores to provide an overall risk assessment. The matrix is shown in Table 2 of Southall *et al.* (2017).

Table 12 provides relative impact ratings by zone, and Table 13 provides GOM-wide relative impact ratings, for overall risk associated with predicted takes, for representative high and moderate effort scenarios.

TABLE 12—OVERALL EVALUATED RISK BY ZONE AND ACTIVITY SCENARIO

Species	Zone 1 [1]		Zone 2		Zone 3		Zone 4 [1]		Zone 5		Zone 6		Zone 7	
	H	M	H	M	H	M	H	M	H	M	H	M	H	M
Rice's whale	L	L	L	L	L	L	L	L	L	L	L	L	n/a	n/a
Sperm whale	n/a	n/a	n/a	n/a	n/a	n/a	L	L	VH	VH	M	L	L	L
Kogia spp	n/a	n/a	n/a	n/a	n/a	n/a	VL	VL	H	M	M	L	L	VL
Beaked whale	n/a	n/a	n/a	n/a	n/a	n/a	VL	VL	VH	VH	VL	VL	VL	VL
Rough-toothed dolphin	VL	VL	L	M	VL	VL	VL	VL	H	H	M	L	L	L
Bottlenose dolphin	VL	VL	L	M	VL	VL	VL	VL	H	M	M	VL	n/a	n/a
Clymene dolphin	n/a	n/a	n/a	n/a	n/a	n/a	VL	VL	H	H	M	L	L	VL
Atlantic spotted dolphin	L	L	M	H	VL	VL	VL	VL	H	M	M	L	n/a	n/a
Pantropical spotted dolphin.	n/a	n/a	n/a	n/a	n/a	n/a	VL	VL	H	H	M	L	L	VL
Spinner dolphin	n/a	n/a	n/a	n/a	n/a	n/a	VL	VL	H	H	n/a	n/a	VL	VL
Striped dolphin	n/a	n/a	n/a	n/a	n/a	n/a	VL	VL	H	H	M	L	L	L
Fraser's dolphin	VL	VL	VL	VL	VL	VL	VL	VL	H	H	M	L	L	L
Risso's dolphin	n/a	n/a	VL	VL	n/a	n/a	L	L	H	H	M	L	L	VL
Short-finned pilot whale	n/a	n/a	L	L	VL	VL	L	L	H	M	M	L	VL	VL
Blackfish	n/a	n/a	n/a	n/a	n/a	n/a	VL	VL	H	H	M	L	L	L

H = Year 1 (representative high effort scenario); M = Year 4 (representative moderate effort scenario).
n/a = less than 0.05 percent of GOM-wide population predicted in zone.
VL = very low; L = low; M = moderate; H = high; VH = very high.
[1] No activity would occur in Zone 1, and no activity is projected in Zone 4 under the high effort scenario. With no activity in a zone, severity is assumed to be very low.

TABLE 13—OVERALL EVALUATED RISK BY PROJECTED ACTIVITY SCENARIO, GOM-WIDE

Species	High effort scenario (year 1)	Moderate effort scenario (year 4)
Rice's whale	Low (0)	Low (0).
Sperm whale	Low/Moderate [1] (0)	Low (0).
Kogia spp	Low/Moderate [1] (+0.5)	Very Low/Low [1] (+0.5).
Beaked whales	Very Low (−2.5)	Very Low (−1.5).
Rough-toothed dolphin	Low (+1)	Low (+1).
Bottlenose dolphin (shelf/coastal)	Very low (0)	Very low (0).
Bottlenose dolphin (oceanic)	Very low (0)	Very low (0).
Clymene dolphin	Low/Moderate [1] (+0.5)	Very Low/Low [1] (0).
Atlantic spotted dolphin	Low/Moderate [1] (+0.5)	Low (0).
Pantropical spotted dolphin	Low/Moderate [1] (+0.5)	Very Low/Low [1] (+0.5).
Spinner dolphin	Very low (0)	Very low (0).
Striped dolphin	Low/Moderate [1] (+0.5)	Low (+1).
Fraser's dolphin	Very low (0)	Very low (0).
Risso's dolphin	Low (+1)	Low (+1).
Short-finned pilot whale	Low (0)	Low (+0.5).
Blackfish	Low/Moderate (+1.5)	Low (+1).

[1] For these ratings, the median value across zones for the scenario fell between two ratings.
[2] In the 2021 final rule, the four ''blackfish'' species were each independently evaluated as having ''very low'' relative risk.

In order to characterize the relative risk for each species across their entire range in the GOM, we used the median of the seven zone-specific risk ratings for each activity scenario (high and moderate effort), not counting those in which less than 0.05 percent of the GOM-wide abundance occurred (''n/a'' in Table 12), to describe a GOM-wide risk rating for each of the representative activity scenarios (Table 13).

As noted above, for sperm whale, beaked whales, bottlenose dolphin, and spinner dolphin, estimated take numbers decreased and relative risk ratings remained static (or decreased) compared with the 2021 final rule. Therefore, we rely on the analysis provided in the notice of issuance for the 2021 final rule for those species, which are not discussed further here.

Overall, the results of the risk assessment show that (as expected), risk is highly correlated with effort and density. Areas where little or no survey activity is predicted to occur or areas within which few or no animals of a particular species are believed to occur generally have very low or no potential risk of negatively affecting marine mammals, as seen across activity scenarios in Zones 1–4 (no activity will occur in Zone 1, which was entirely removed from scope of the rule, and less than 2 percent of Zone 4 remains within scope of the rule). Fewer species are expected to be present in Zones 1–3, where only bottlenose and Atlantic spotted dolphins occur in meaningful numbers. (Rice's whale core habitat largely overlaps Zone 1, which is not within scope of this rule.) Areas with consistently high levels of effort (Zones 5–7) are generally predicted to have higher overall evaluated risk across all species. In Zone 7, animals are expected to be subject to less other chronic noise and non-noise stressors, which is reflected in the vulnerability scoring for that zone. Therefore, despite consistently high levels of projected effort, overall rankings for that zone are lower than for Zones 5 and 6.

A ''high'' level of relative risk due to behavioral disturbance was identified in Zone 5 under both scenarios for most of the species evaluated further in the following (excepting Rice's whale (both scenarios) as well as *Kogia* spp., Atlantic spotted dolphin, and short-finned pilot whale (moderate effort scenario only)). ''High'' relative risk was not identified under either scenario in any other zone for any species (and ''very high'' relative risk was not identified under either

scenario in any zone for any of the species evaluated further in the following). Overall, the greatest relative risk across species is generally seen in Zone 5 (both scenarios) and in Zone 6 (under the high effort scenario).

Changes to relative risk ratings may be seen by comparing Table 13 above with Table 15 from the 2021 final rule, and changes (in numerical terms) are indicated in parentheses for each scenario. All increases to assessed relative risk represent minor changes, *i.e.,* if considered as a numerical scale (with ''very low'' = 1 and ''very high'' = 5), with one exception, there was no risk rating increase greater than one point. As noted above, despite increases in estimated take numbers, relative risk ratings for Rice's whale and Fraser's dolphin remained static. In the 2021 final rule, all four species comprising the ''blackfish'' group were individually assessed as having ''very low'' relative risk under both scenarios. In this analysis, the blackfish as a group are assessed as having relative risk between ''low'' and ''moderate'' under the high effort scenario (representing the lone example of a 1.5 point increase) and ''low'' under the moderate effort scenario.

Although the scores generated by the risk assessment framework and further aggregated across zones (as described above) are species-specific, additional stock-specific information is also considered in our analysis, where appropriate, as indicated in the Description of Marine Mammals in the Area of the Specified Activity, Potential Effects of the Specified Activity on Marine Mammals and Their Habitat, and Proposed Mitigation sections of the 2018 notice of proposed rulemaking, 2021 notice of issuance of the final rule, and this proposed action.

Duration of Level B Harassment Exposures

In order to more fully place the predicted amount of take into meaningful context, it is useful to understand the duration of exposure at or above a given level of received sound, as well as the likely number of repeated exposures across days. While a momentary exposure above the criteria for Level B harassment counts as an instance of take, that accounting does not make any distinction between fleeting exposures and more severe encounters in which an animal may be exposed to that received level of sound for a longer period of time. Yet, this information is meaningful to an understanding of the likely severity of the exposure, which is relevant to the negligible impact evaluation and not directly incorporated into the risk assessment framework described above. Each animat modeled has a record or time history of received levels of sound over the course of the modeled 24-hr period. For example, for the four ''blackfish'' species exposed to noise from 3D WAZ surveys, the 50th percentile of the cumulative distribution function indicates that the time spent exposed to levels of sound above 160 dB rms SPL (*i.e.,* the 50 percent midpoint for Level B harassment) would range from only 1.4 to 3.3 minutes—a minimal amount of exposure carrying little potential for significant disruption of behavioral activity. We provide summary information for the species evaluated here regarding the total average time in a 24-hr period that an animal would spend with received levels above 160 dB and between 140 and 160 dB in Table 14. This information considered is unchanged from the 2021 notice of issuance for the final rule.

Additionally, as we discussed in the Estimated Take section of the 2018 notice of proposed rulemaking for Test Scenario 1 (and summarized above), by comparing exposure estimates generated by multiplying 24-hr exposure estimates by the total number of survey days versus modeling for a full 30-day survey duration for six representative species, we were able to refine the exposure estimates to better reflect the number of individuals exposed above threshold within a single survey. Using this same comparison and scalar ratios described above, we are able to predict an average number of days each of the representative species modeled in the test scenario were exposed above the Level B harassment thresholds within a single survey. As with the duration of exposures discussed above, the number of repeated exposures is important to an understanding of the severity of effects. For example, the ratio for dolphins indicates that the 30-day modeling showed that approximately 29 percent as many individual dolphins (compared to the results produced by multiplying average 24-hr exposure results by the 30-day survey duration) could be expected to be exposed above harassment thresholds. However, the approach of scaling up the 24-hour exposure estimates appropriately reflects the instances of exposure above threshold (which cannot be more than 1 in 24 hours), so the inverse of the scalar ratio suggests the average number of days in the 30-day modeling period that dolphins are exposed above threshold is approximately 3.5. It is important to remember that this is an average and that it is more likely some individuals would be exposed on fewer days and some on more. Table 14 reflects the average days exposed above threshold for the indicated species having applied the scalar ratios described previously.

TABLE 14—TIME IN MINUTES (PER DAY) SPENT ABOVE THRESHOLDS (50TH PERCENTILE) AND AVERAGE NUMBER OF DAYS INDIVIDUALS TAKEN DURING 30-DAY SURVEY

Species	Survey type and time (min/day) above 160 dB rms (50% take)				Survey type and time (min/day) above 140 dB rms (10% take)				Average number of days ''taken'' during 30-day survey
	2D	3D NAZ	3D WAZ	Coil	2D	3D NAZ	3D WAZ	Coil	
Rice's whale	7.6	18.2	6.8	21.4	61.7	163.5	55.4	401.1	5.3
Sperm whale	5.2	10.3	4.0	20.7	12.0	31.8	10.7	25.2	2.4
Kogia spp	3.2	7.9	2.8	15.3	7.6	19.0	6.7	13.9	3.1
Beaked whale	6.0	12.4	4.4	24.0	16.2	39.7	14.1	31.1	9.9
Rough-toothed dolphin	3.0	6.3	2.5	11.4	11.2	27.6	10.2	20.9	3.5
Bottlenose dolphin	4.5	11.7	4.0	16.8	22.0	54.6	19.7	53.2	3.5
Clymene dolphin	1.8	3.9	1.6	8.7	8.0	21.1	7.2	20.4	3.5
Atlantic spotted dolphin	7.0	16.0	6.5	25.7	23.4	58.1	20.9	49.3	3.5
Pantropical spotted dolphin	1.8	4.1	1.6	8.7	8.1	21.0	7.1	22.2	3.5
Spinner dolphin	3.2	8.5	2.7	16.4	12.4	31.0	10.8	22.8	3.5
Striped dolphin	1.8	4.0	1.6	8.5	8.0	21.0	7.2	21.3	3.5
Fraser's dolphin	2.8	6.4	2.4	13.8	9.4	24.2	8.4	24.0	3.5
Risso's dolphin	3.4	8.4	2.9	15.3	13.8	37.7	12.2	31.5	3.5
Melon-headed whale	2.6	5.9	2.2	13.1	9.3	24.2	8.3	24.0	3.4

TABLE 14—TIME IN MINUTES (PER DAY) SPENT ABOVE THRESHOLDS (50TH PERCENTILE) AND AVERAGE NUMBER OF DAYS INDIVIDUALS TAKEN DURING 30-DAY SURVEY—Continued

Species	Survey type and time (min/day) above 160 dB rms (50% take)				Survey type and time (min/day) above 140 dB rms (10% take)				Average number of days "taken" during 30-day survey
	2D	3D NAZ	3D WAZ	Coil	2D	3D NAZ	3D WAZ	Coil	
Pygmy killer whale	1.8	3.6	1.4	7.1	7.3	18.5	6.6	17.3	3.4
False killer whale	2.4	4.9	1.9	9.3	8.8	22.0	8.0	17.8	3.4
Killer whale	2.7	6.1	3.3	12.0	16.8	46.1	14.9	73.6	3.4
Short-finned pilot whale	3.3	8.1	2.9	17.5	10.9	27.4	9.8	20.8	3.4

Loss of Hearing Sensitivity

In general, NMFS expects that noise-induced hearing loss as a result of airgun survey activity, whether temporary (temporary threshold shift, equivalent to Level B harassment) or permanent (PTS, equivalent to Level A harassment), is only possible for low-frequency and high-frequency cetaceans. The best available scientific information indicates that low-frequency cetacean species (*i.e.,* mysticete whales, including the Rice's whale) have heightened sensitivity to frequencies in the range output by airguns, as shown by their auditory weighting function, whereas high-frequency cetacean species (including *Kogia* spp.) have heightened sensitivity to noise in general (as shown by their lower threshold for the onset of PTS) (NMFS, 2018). However, no instances of Level A harassment are predicted to occur for Rice's whales, and none would be authorized under this rule.

Level A harassment is predicted to occur for *Kogia* spp. (as indicated in Table 6). However, the degree of injury (hearing impairment) is expected to be mild. If permanent hearing impairment occurs, it is most likely that the affected animal would lose a few dB in its hearing sensitivity, which in most cases would not be expected to affect its ability to survive and reproduce. Hearing impairment that occurs for these individual animals would be limited to at or slightly above the dominant frequency of the noise sources. In particular, the predicted PTS resulting from airgun exposure is not likely to affect their echolocation performance or communication, as *Kogia* spp. likely produce acoustic signals at frequencies above 100 kHz (Merkens *et al.,* 2018), well above the frequency range of airgun noise. Further, modeled exceedance of Level A harassment criteria typically resulted from being near an individual source once, rather than accumulating energy from multiple sources. Overall, the modeling indicated that exceeding the SEL threshold is a rare event, and having four vessels close to each other (350 m between tracks) did not cause appreciable accumulation of energy at the ranges relevant for injury exposures. Accumulation of energy from independent surveys is expected to be negligible. This is relevant for *Kogia* spp. because based on their expected sensitivity, we expect that aversion may play a stronger role in avoiding exposures above the peak pressure PTS threshold than for which we have accounted.

However, some subset of the individual marine mammals predicted to be taken by Level B harassment may incur some TTS. For Rice's whales, TTS may occur at frequencies important for communication. However, any TTS incurred would be expected to be of a relatively small degree and short duration. This is due to the low likelihood of sound source approaches of the proximity or duration necessary to cause more severe TTS, given the fact that both sound source and marine mammals are continuously moving, the anticipated effectiveness of shutdowns, and general avoidance by marine mammals of louder sources.

For these reasons, and in conjunction with the required mitigation, NMFS does not believe that Level A harassment (here, PTS) or Level B harassment in the form of TTS will play a meaningful role in the overall degree of impact experienced by marine mammal populations as a result of the projected survey activity. Further, the impacts of any TTS incurred are addressed through the broader analysis of Level B harassment.

Impacts to Habitat

Potential impacts to marine mammal habitat, including to marine mammal prey, were discussed in detail in the 2018 notice of proposed rulemaking as well as in the 2021 notice of issuance for the final rule, including in responses to comments concerning these issues. There is no new information that changes that assessment, and we rely on the assessment provided in those documents and reiterated below.

Regarding impacts to prey species such as fish and invertebrates, NMFS' review of the available information leads to a conclusion that the most likely impact of survey activity would be temporary avoidance of an area, with a rapid return to pre-survey distribution and behavior, and minimal impacts to recruitment or survival anticipated. Therefore, the specified activities are not likely to have more than short-term adverse effects on any prey habitat or populations of prey species. Further, any impacts to prey species are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on their populations.

Regarding potential impacts to acoustic habitat, NMFS provided a detailed analysis of potential cumulative and chronic effects to marine mammals (found in the Cumulative and Chronic Effects report, available online at *www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico*). That analysis focused on potential effects to sperm whales and Rice's whales. The analysis performed for sperm whales (which provides a useful proxy for other mid- and high-frequency cetaceans evaluated here) shows that the survey activities do not significantly contribute to the soundscape in the frequency band relevant for their lower-frequency slow-clicks and that there will be no significant change in communication space for sperm whales. Similar conclusions may be assumed for other mid- and high-frequency cetacean species.

Implications for acoustic masking and reduced communication space resulting from noise produced by airgun surveys in the GOM are expected to be particularly heightened for animals that actively produce low-frequency sounds or whose hearing is attuned to lower frequencies (*i.e.,* Rice's whales). The strength of the communication space approach used here is that it evaluates potential contractions in the availability

of a signal of documented importance to a population of animals of key management interest in the region. In this case, losses of communication space for Rice's whales were estimated to be higher in eastern and central GOM canyons and shelf break areas. In contrast, relative maintenance of listening area and communication space was seen within the Rice's whale core habitat area in the eastern GOM. The result was heavily influenced by the projected lack of survey activity in that region, which underscores the importance of maintaining this important habitat for the Rice's whale. Following BOEM's 2020 update to the scope of the specified activity, no survey activity will occur under this rule within the majority of Rice's whale core habitat (95 percent of the updated core habitat area lies outside the geographic scope of this rule, including all confirmed Rice's whale sightings within the area) or within the broader eastern GOM. See Figures 3–4. In areas where larger amounts of survey activity were projected, significant loss of low-frequency listening area and communication space for Rice's whale calls was estimated. However, these are areas where Rice's whales are unlikely to occur (*i.e.,* deeper waters of the central and western GOM).

Species-Specific Negligible Impact Analysis Summaries

In this section, for the species evaluated herein (*i.e.,* all but sperm whale, beaked whales, bottlenose dolphin, and spinner dolphin, for which, as described previously, we incorporate by reference the analysis conducted in the 2018 rule), we consider the relative impact ratings described above in conjunction with the required mitigation and other relevant contextual information in order to produce a final assessment of impact to the stock or species, *i.e.,* the negligible impact determinations. The effects of the DWH oil spill are accounted for through the vulnerability scoring (Table 11).

Although the Rice's whale core habitat area is not the subject of restrictions on survey activity, as the scope of the specified activity does not functionally include the area (95 percent of the updated core habitat area remains out of scope of the rule, with all confirmed sightings of Rice's whales within the core habitat area occurring in the portion outside the scope of this rule; see Figure 4), the beneficial effect for animals in the area described in the 2018 proposed rule remains the same. The absence of survey activity in the eastern GOM (see Figure 2) benefits GOM marine mammals by reducing the portion of a stock likely exposed to survey noise and avoiding impacts to certain species in areas of importance for them. Habitat areas of importance in the eastern GOM are discussed in detail in the Proposed Mitigation section of the 2018 notice of proposed rulemaking.

Rice's Whale

The risk assessment analysis, which evaluated the relative significance of the aggregated impacts of the survey activities across seven GOM zones in the context of the vulnerability of each species, concluded that the GOM-wide risk ratings for Rice's whales are low, regardless of activity scenario. We note that, although the evaluated severity of take for Rice's whales is very low in all zones where take could occur, vulnerability for the species is assessed as high in five of the six zones where the species occurs (vulnerability is assessed as moderate in Zone 3, where less than 1 percent of GOM-wide abundance is predicted to occur). When integrated through the risk framework described above, overall risk for the species is therefore assessed as low for both the high and moderate effort scenarios. The evaluated risk rating is the same as what was considered in the 2021 notice of issuance of the final rule, despite increased take numbers (see Tables 5–6). In the context of what remain relatively low predicted take numbers, the relative risk ratings for the species remain driven by the assessed vulnerability.

We further consider the likely severity of any predicted behavioral disruption of Rice's whales in the context of the likely duration of exposure above Level B harassment thresholds. Specifically, the average modeled time per day spent at received levels above 160 dB rms (where 50 percent of the exposed population is considered taken) ranges from 6.8–21.4 minutes for deep penetration survey types. The average time spent exposed to received levels between 140 and 160 dB rms (where 10 percent of the exposed population is considered taken) ranges from 55–164 minutes for 2D, 3D NAZ, and 3D WAZ surveys, and 401 minutes for coil surveys (which comprise approximately 10 percent of the total activity days).

Importantly, no survey activity will occur within the eastern GOM pursuant to this rule. Although there is new evidence of Rice's whale occurrence outside the eastern GOM from passive acoustic detections (Soldevilla *et al.,* 2022), all but one confirmed Rice's whale sighting are within the historically considered eastern GOM core area (see Figure 4). The nature of Rice's whale habitat use outside of the eastern GOM core area is poorly understood, including information about the number of individuals that may occur outside the eastern GOM. (Soldevilla *et al.* (2022) suggest that more than one individual was present on at least one occasion, as overlapping calls of different call subtypes were recorded in that instance, but also state that call production rates suggest that either multiple individuals are typically calling or that individual whales are producing calls at higher rates in the western GOM.)

This new information does not affect the prior conclusion that the absence of survey activity in the eastern GOM is expected to benefit Rice's whales and their habitat by minimizing a range of potential effects of airgun noise, both acute and chronic, that could otherwise accrue to impact the reproduction or survival of individuals in this area, and that the absence of survey activity in the eastern GOM will minimize disturbance of the species in the place most important to them for critical behaviors such as foraging and socialization. The Roberts *et al.* (2016) density model indicated that the core habitat area evaluated in the 2018 proposed rule encompassed approximately 92 percent of the predicted abundance of Rice's whales in the GOM. The updated Rice's whale density model (Garrison *et al.,* 2022), which incorporates newer survey data, as well as winter survey data for the first time, indicates that the updated core habitat area contains approximately 57 percent of predicted Rice's whale abundance.[8] As noted previously, intensive survey effort in the region has not resulted in any confirmed Rice's whale sightings outside the core habitat area (aside from a single anomalous sighting in the western GOM). Although it is possible that some surveys could occur within the small portion of the updated core habitat area within scope of the rule (approximately 5 percent; see Figures 3–4), or that some sound from airguns may still propagate into the Rice's whale core habitat area from surveys that may occur outside of the area, exposure of Rice's whales to sound

[8] The percent of abundance predicted to occur in the eastern GOM has declined as a result of expanded density predictions into the western GOM. The Roberts *et al.* (2016) model included a bivariate smooth of XY, with the effect that predicted density was concentrated where sightings were reported (*i.e.,* the eastern GOM; see Figure 4). The updated model does not include this and, importantly, is informed by the confirmed 2017 sighting of a Rice's whale in the western GOM. The result is an increase in predicted density within shelf break waters throughout the GOM that are within the depth ranges where Rice's whales have historically been observed within the eastern GOM.

levels that may be expected to result in Level B harassment will be eliminated or reduced for animals within the Rice's whale core area. (We note that, in NMFS' experience implementing the rule to date, no survey has occurred within the updated Rice's whale core habitat area, nor has any survey occurred at sufficiently close proximity to the core habitat area that sound reasonably expected to result in harassment would have entered.) The absence of survey activity in this area and significant reduction in associated exposure of Rice's whales to seismic airgun noise is expected to eliminate the likelihood of auditory injury of Rice's whales. Finally, the absence of survey activity in the eastern GOM will reduce chronic exposure of Rice's whales to higher levels of anthropogenic sound and the associated effects including masking, disruption of acoustic habitat, long-term changes in behavior such as vocalization, and stress.

As described in the preceding *Loss of Hearing Sensitivity* section, we have analyzed the likely impacts of potential temporary hearing impairment and do not expect that they would result in impacts on reproduction or survival of any individuals. The extended shutdown zone for Rice's whales (1,500 m)—to be implemented in the unlikely event that a Rice's whale is encountered outside of the core habitat area—is expected to further minimize the severity of any hearing impairment incurred as well as reducing the likelihood of more severe behavioral responses. Similarly, application of this extended distance shutdown requirement when calves are present will minimize the potential for and degree of disturbance during this sensitive life stage.

NMFS has corrected the take estimates in the 2021 final rule generated by BOEM's errors, which appear to have caused a particularly large reduction in estimated take for Rice's whale. As a result, and in consideration of updated density information and other factors, the estimated take numbers for Rice's whale are increased from those considered in the 2021 final rule (see Tables 5–6). Accordingly, NMFS has re-evaluated the relative risk rating for Rice's whale (Tables 12–13), and considered other relevant information for the species. The risk ratings did not change from those assessed in the 2021 final rule, and new information considered herein does not affect the determinations previously made in that analysis.

No mortality of Rice's whales is anticipated or authorized. It is possible that Rice's whale individuals, if encountered in areas not typically considered to be Rice's whale habitat, will be impacted briefly on one or more days during a year of activity by one type of survey or another and some subset of those exposures above thresholds may be of comparatively long duration within a day. However, the significant and critical protection afforded through the absence of survey activity in the core habitat area ensures that the impacts of the expected takes from these activities are not likely to adversely affect Rice's whales through impacts on annual rates of recruitment or survival. *Kogia* spp.

The risk assessment analysis, which evaluated the relative significance of the aggregated impacts of the survey activities across seven GOM zones in the context of the vulnerability of each species, concluded that the GOM-wide risk ratings for *Kogia* spp. were between low and moderate (for the high effort scenario) and between very low and low (for the moderate effort scenario). Evaluated risk is slightly increased from the 2021 final rule, with modeled decreases in zone-specific population abundance offsetting decreases in estimated take. We further consider the likely severity of any predicted behavioral disruption of *Kogia* spp. in the context of the likely duration of exposure above Level B harassment thresholds. Specifically, the average modeled time per day spent at received levels above 160 dB rms (where 50 percent of the exposed population is considered taken) ranges from 2.8–7.9 minutes for 2D, 3D NAZ, and 3D WAZ surveys and up to 15.3 minutes for coil surveys (which comprise less than 10 percent of the total projected activity days), and the average time spent between 140 and 160 dB rms (where 10 percent of the exposed population is considered taken) is 6.7–19 minutes.

Odontocetes echolocate to find prey, and while there are many different strategies for hunting, one common pattern, especially for deeper diving species, is to conduct multiple repeated deep dives within a feeding bout, and multiple bouts within a day, to find and catch prey. While exposures of the short durations noted above could potentially interrupt a dive or cause an individual to relocate to feed, such a short-duration interruption would be unlikely to have significant impacts on an individual's energy budget and, further, for these species and this open-ocean area, there are no specific known reasons (*i.e.,* these species range GOM-wide beyond the continental slope and there are no known biologically important areas) to expect that there would not be adequate alternate feeding areas relatively nearby, especially considering the anticipated absence of survey activity in the eastern GOM.

As described above, no survey activity is expected within the eastern GOM. Importantly, the absence of survey activity in the area will reduce disturbance of *Kogia* spp. in places of importance to them for critical behaviors such as foraging and socialization and, overall, help to reduce impacts to the stocks as a whole.

NMFS has analyzed the likely impacts of potential hearing impairment, including the estimated upper bounds of permanent threshold shift (Level A harassment) that could be authorized under the rule and do not expect that they would result in impacts on reproduction or survival of any individuals. As described in the previous section, the degree of injury for individuals would be expected to be mild, and the predicted PTS resulting from airgun exposure is not likely to affect echolocation performance or communication for *Kogia* spp. Additionally, the extended distance shutdown zone for *Kogia* spp. (1,500 m) is expected to further minimize the severity of any hearing impairment incurred and also to further reduce the likelihood of, and minimize the severity of, more severe behavioral responses.

Of note, due to their pelagic distribution, small size, and cryptic behavior, pygmy sperm whales and dwarf sperm whales are rarely sighted during at-sea surveys and difficult to distinguish between when visually observed in the field. Accordingly, abundance estimates in NMFS SARs are recorded for *Kogia* spp. only, density and take estimates in this rule are similarly lumped for the two species, and there is no additional information by which NMFS could appropriately apportion impacts other than equally/proportionally across the two species.

No mortality of *Kogia* spp. is anticipated or authorized. While it is likely that the majority of the individuals of these two species will be impacted briefly on one or more days during a year of activity by one type of survey or another, based on the nature of the individual exposures and takes, as well as the aggregated scale of the impacts across the GOM, and in consideration of the mitigation discussed here, the impacts of the expected takes from these activities are not likely to adversely impact the GOM stocks of dwarf or pygmy sperm whales through adverse impacts on annual rates of recruitment or survival.

Other Stocks

In consideration of the similarities in the nature and scale of impacts, we consider the GOM stocks of the following species together in this section: rough-toothed dolphin, Clymene dolphin, Atlantic spotted dolphin, pantropical spotted dolphin, striped dolphin, Fraser's dolphin, Risso's dolphin, melon-headed whale, pygmy killer whale, false killer whale, killer whale, and short-finned pilot whale. With the exception of Fraser's dolphin, rough-toothed dolphin, and striped dolphin, estimated (and allowable) take of these stocks (including both the maximum annual take and the total take over 5 years) has been reduced as compared to the 2021 final rule.

The risk assessment analysis, which evaluated the relative significance of the aggregated impacts of the survey activities across seven GOM zones in the context of the vulnerability of each species, concluded that the GOM-wide risk ratings for high and moderate effort scenarios ranged from very low to between low and moderate for these species. For the Fraser's dolphin, evaluated risk is the same as what was considered in the 2021 notice of issuance of the final rule, despite increased take numbers (see Tables 5–6).

We further considered the likely severity of any predicted behavioral disruption of the individuals of these species in the context of the likely duration of exposure above Level B harassment thresholds. Specifically, the average modeled time per day spent at received levels above 160 dB rms (where 50 percent of the exposed population is considered taken) ranges from 1.4–11.7 minutes for 2D, 3D NAZ, and 3D WAZ surveys and up to 25.7 minutes for coil surveys (which comprise less than 10 percent of the total projected activity days). The average time per day spent between 140 and 160 dB rms for individuals that are taken is from 8–58.1 minutes, with the one exception of killer whales exposed to noise from coil surveys, which average 73.6 minutes (though we note that the overall risk rating for the blackfish group, including killer whales, is low).

Odontocetes echolocate to find prey, and there are many different strategies for hunting. One common pattern for deeper-diving species is to conduct multiple repeated deep dives within a feeding bout, and multiple bouts within a day, to find and catch prey. While exposures of the shorter durations noted above could potentially interrupt a dive or cause an individual to relocate to feed, such a short-duration interruption would be unlikely to have significant impacts on an individual's energy budget and, further, for these species and this open-ocean area, there are no specific known reasons (*i.e.,* these species range GOM-wide beyond the continental slope and there are no known biologically important areas) to expect that there would not be adequate alternate feeding areas relatively nearby, especially considering the anticipated absence of survey activity in the eastern GOM. For those species that are more shallow feeding species, it is unlikely that the noise exposure considered herein would result in minimal significant disruption of foraging behavior and, therefore, the corresponding energetic effects would similarly be minimal.

Of note, the Atlantic spotted dolphin can be expected to benefit (via lessening of both number and severity of takes) from the coastal waters time-area restriction developed to benefit bottlenose dolphins and several additional species can be expected to benefit from the absence of survey activity in important eastern GOM habitat.

No mortality or Level A harassment of these species is anticipated or authorized. It is likely that the majority of the individuals of these species will be impacted briefly on one or more days during a year of activity by one type of survey or another. Based on the nature of the individual exposures and takes, as well as the very low to low aggregated scale of the impacts across the GOM and considering the mitigation discussed here, the impacts of the expected takes from these activities are not likely to adversely impact the GOM stocks of any of these 12 GOM stocks of these species through adverse impacts on annual rates of recruitment or survival.

Determination

Based on the analysis contained herein, and the analysis incorporated by reference from the 2021 final rule for the other species and stocks for which take is authorized (Table 6), of the likely effects of the specified activities on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the specified activities for the 5-year period of the regulations will have a negligible impact on all affected marine mammal species and stocks.

Small Numbers

Below for reference, we summarize how NMFS interprets and applies the small numbers standard, which is substantively unchanged from the full discussion provided in the 2018 notice of proposed rulemaking. Additional discussion was provided in the Comments and Responses section of the notice of issuance for the 2021 final rule to address specific comments, questions, or recommendations received from the public.

In summary, when quantitative take estimates of individual marine mammals are available or inferable through consideration of additional factors, and the number of animals taken is one-third or less of the best available abundance estimate for the species or stock, NMFS considers it to be of small numbers. For additional discussion, please see NMFS' notice of issuance for the 2021 final rule (86 FR 5322, January 19, 2021; see 86 FR 5363, 86 FR 5438). NMFS may also appropriately find that one or two predicted group encounters will result in small numbers of take relative to the range and distribution of a species, regardless of the estimated proportion of the abundance.

Further, our 2021 final rule also concluded that NMFS can appropriately elect to make a ''small numbers'' finding based on the estimated annual take in individual LOAs issued under the rule. This approach does not affect the negligible impact analysis for a rule, which is the biologically relevant inquiry and based on the total annual estimated taking for all activities the regulations will govern. NMFS determined this approach is a permissible interpretation of the relevant MMPA provisions. Making the small numbers finding based on the estimated annual take in individual LOAs allows NMFS to take advantage of the associated administrative and environmental benefits of utilizing section 101(a)(5)(A) that would be precluded in many cases if small numbers were required to be applied to the total annual taking under the regulations.

Regarding how small numbers will be evaluated under this rule, as in the 2021 final rule, up-to-date species information is available, and sophisticated models have been used to estimate take in a manner that will allow for quantitative comparison of the take of individuals versus the best available abundance estimates for the species or guilds. Specifically, while the modeling effort utilized in the rule enumerates the estimated instances of

takes that will occur across days as the result of the operation of certain survey types in certain areas, the modeling report also includes the evaluation of a test scenario that allows for a reasonable modification of those generalized take estimates to better estimate the number of individuals that will be taken within one survey (as discussed under Estimated Take). Use of modeling results from the rule allows one to reasonably estimate the number of marine mammal individuals taken in association with survey activities. The estimated take of marine mammals for each species or guild will then be compared against the best available abundance estimate as determined, and estimates that do not exceed one-third of that estimate will be considered small numbers.

Our 2021 final rule contained a fuller explanation of this interpretation and application of ''small numbers'' and explained how small numbers would be evaluated under the rule. We do not propose any changes to our treatment of the small numbers standard in this proposed rule, as the new information considered herein has no bearing on those discussions. See the ''Small Numbers'' section of the 2021 final rule at 86 FR 5438–5440 and responses to comments on small numbers at 86 FR 5363–5368 (January 19, 2021).

Adaptive Management

The regulations governing the take of marine mammals incidental to geophysical survey activities contain an adaptive management component. We do not propose any changes here. The comprehensive reporting requirements (see the Proposed Monitoring and Reporting section) are designed to provide NMFS with monitoring data from the previous year to allow consideration of whether any changes are appropriate. The use of adaptive management allows NMFS to consider new information from different sources to determine (with input from the LOA-holders regarding practicability) on a regular (*e.g.,* annual or biennial) basis if mitigation or monitoring measures should be modified (including additions or deletions). Mitigation measures could be modified if new data suggest that such modifications would have a reasonable likelihood of reducing adverse effects to marine mammal species or stocks or their habitat and if the measures are practicable. The adaptive management process and associated reporting requirements would serve as the basis for evaluating performance and compliance. As no changes to the existing adaptive management process are proposed, we do not repeat discussion provided in the notice of issuance of the final rule. Please see that document for further detail.

Under this rule, NMFS plans to implement an annual adaptive management process including BOEM, the Bureau of Safety and Environmental Enforcement (BSEE), industry operators (including geophysical companies as well as exploration and production companies), and others as appropriate. Industry operators may elect to be represented in this process by their respective trade associations. NMFS, BOEM, and BSEE (*i.e.,* the regulatory agencies) and industry operators who have conducted or contracted for survey operations in the GOM in the prior year (or their representatives) will provide an agreed-upon description of roles and responsibilities, as well as points of contact, in advance of each year's adaptive management process. The foundation of the adaptive management process will be the annual comprehensive reports produced by LOA-holders (or their representatives), as well as the results of any relevant research activities, including research supported voluntarily by the oil and gas industry and research supported by the Federal government.

All reporting requirements have been complied with under the rule to date. NMFS has received a report compiled by industry trade associations in order to comply with the comprehensive reporting requirements. The report, which considers LOA-specific reports received during the first year of implementation of the rule, is available online at: *www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico.*

Monitoring Contribution Through Other Research

NMFS' MMPA implementing regulations require that applicants for incidental take authorizations describe the suggested means of coordinating research opportunities, plans, and activities relating to reducing incidental taking and evaluating its effects (50 CFR 216.104(a)(14)). Such coordination can serve as an effective supplement to the monitoring and reporting required pursuant to issued LOAs and/or incidental take regulations. NMFS expects that relevant research efforts will inform the annual adaptive management process described above, and that levels and types of research efforts will change from year to year in response to identified needs and evolutions in knowledge, emerging trends in the economy and available funding, and available scientific and technological resources. In the 2018 notice of proposed rulemaking, NMFS described examples of relevant research efforts (83 FR 29300–29301, June 22, 2018). We do not repeat that information here, but refer the reader to that notice for more information. The described efforts may not be predictive of any future levels and types of research efforts. Research occurring in locations other than the GOM may be relevant to understanding the effects of geophysical surveys on marine mammals or marine mammal populations or the effectiveness of mitigation. NMFS also refers the reader to the industry Joint Industry Program (JIP) website (*www.soundandmarinelife.org*), which hosts a database of available products funded partially or fully through the JIP, and to BOEM's Environmental Studies Program (ESP), which develops, funds, and manages scientific research to inform policy decisions regarding outer continental shelf resource development (*www.boem.gov/studies).*

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by these actions. Therefore, as with the 2021 final rule, NMFS has determined that the total taking of affected species or stocks will not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

Section 7 of the ESA requires Federal agencies to insure that their actions are not likely to jeopardize the continued existence of endangered or threatened species or adversely modify or destroy their designated critical habitat. Federal agencies must consult with NMFS for actions that may affect such species under NMFS' jurisdiction or critical habitat designated for such species. At the conclusion of consultation, the consulting agency provides an opinion stating whether the Federal agency's action is likely to jeopardize the continued existence of ESA-listed species or destroy or adversely modify designated critical habitat.

On March 13, 2020, NMFS' Office of Protected Resources, ESA Interagency Cooperation Division, issued a Biological Opinion (BiOp) on federally regulated oil and gas program activities in the Gulf of Mexico, including NMFS' issuance of the ITR and subsequent LOAs (as well as all BOEM and Bureau of Safety and Environmental Enforcement approvals of activities

associated with the OCS oil and gas program in the GOM). The 2020 BiOp concluded that NMFS' proposed action was not likely to jeopardize the continued existence of sperm whales or Rice's whales. Of note, that BiOp evaluated the larger scope of survey activity originally contemplated for the rule, before BOEM revised the scope of its activity to remove the GOMESA area in the eastern GOM. The take estimates being considered for this proposed rule are, therefore, within the scope of take considered in the BiOp and do not reveal effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered. Thus, for this proposed rule to consider corrected take estimates and other newly available information, NMFS has preliminarily determined that re-initiation of consultation is not triggered under 50 CFR 402.16, although NMFS does anticipate amending the incidental take statement to reflect the corrected take estimates.

Letters of Authorization

Under the incidental take regulations in effect for this specified activity, industry operators may apply for LOAs (50 CFR 217.186). We do not propose any changes to the regulations for obtaining an LOA. LOAs may be issued for any time period that does not exceed the effective period of the regulations, provided that NMFS is able to make the relevant determinations (50 CFR 217.183). Because the specified activity does not provide actual specifics of the timing, location, and survey design for activities that would be the subject of issued LOAs, such requests must include, at minimum, the information described at 50 CFR 216.104(a)(1) and (2), and should include an affirmation of intent to adhere to the mitigation, monitoring, and reporting requirements described in the regulations. The level of effort proposed by an operator would be used to develop an LOA-specific take estimate based on the results of Weirathmueller *et al.* (2022). These results would be based on the appropriate source proxy (*i.e.,* either 90-in^3 single airgun or 4,130-, 5,110-, or 8,000-in^3 airgun array).

As is the case now under the 2021 ITR, if applicants do not use the modeling provided by the rule, NMFS may publish a notice in the **Federal Register** soliciting public comment, if the model or inputs differ substantively from those that have been reviewed by NMFS and the public previously. Additional public review is not needed unless the model or inputs differ substantively from those that have been reviewed by NMFS and the public previously.

Technologies continue to evolve to meet the technical, environmental, and economic challenges of oil and gas development. The use of ''new and unusual technologies'' (NUT), *i.e.,* technologies other than those described herein, will be evaluated on a case-by-case basis and may require public review. Some seemingly new technologies proposed for use by operators are often extended applications of existing technologies and interface with the environment in essentially the same way as well-known or conventional technologies. For such evaluations, NMFS will follow the existing NUT process described in the notice of issuance for the 2021 final rule. Please see that document for further detail.

Classification

Pursuant to the procedures established to implement Executive Order 12866, the Office of Management and Budget (OMB) determined that the 2021 final rule was economically significant. Accordingly, a regulatory impact analysis (RIA) was prepared and made available for review by the public. Following review of public comments, a final RIA was prepared and made available online at: *www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico.* Appendix B of the RIA provided a final regulatory flexibility analysis (FRFA, discussed below), while Appendix C addressed other compliance requirements. The RIA demonstrated that the rule would not be economically significant and, in fact, that the rule would provide cost benefits to the regulated industry when evaluated against the settlement baseline. Please see the RIA for additional detail.

OMB has determined that this proposed rule is significant under section 3(f)(1) of E.O. 12866.

NMFS prepared a FRFA, as required by section 603 of the Regulatory Flexibility Act (RFA), for the regulations issued under the 2021 final rule, which we do not propose to change in this proposed rule. The FRFA described the economic effects on small entities. A copy of the full FRFA is available as Appendix B to the RIA. No changes are proposed here that would affect the findings of the FRFA, which were summarized in the notice of issuance for the 2021 final rule (86 FR 5443, January 19, 2021).

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. As discussed above, no changes are proposed through this rule that would result in additional economic effects to small entities. Because of this certification, a regulatory flexibility analysis is not required, and none has been prepared.

This proposed rule does not contain a change to a collection of information requirement for purposes of the Paperwork Reduction Act of 1995. The existing collection of information requirements would continue to apply under the following OMB Control Number(s): 0648–0151.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 217

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

As described above, because NMFS does not find that new mitigation measures are required, this proposed rule would not amend the current applicable regulations at 50 CFR part 217 subpart S (§§ 217.180 through 217.189). Thus, no amendatory instructions are necessary.

Samuel D. Rauch, III,

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

[FR Doc. 2022–28208 Filed 1–4–23; 8:45 am]

BILLING CODE 3510–22–P

Reader Aids

Federal Register

Vol. 88, No. 3

Thursday, January 5, 2023

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids **202–741–6000**

Laws **741–6000**

Presidential Documents

Executive orders and proclamations **741–6000**

The United States Government Manual **741–6000**

Other Services

Electronic and on-line services (voice) **741–6020**

Privacy Act Compilation **741–6050**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.govinfo.gov.**

Federal Register information and research tools, including Public Inspection List and electronic text are located at: **www.federalregister.gov.**

E-mail

FEDREGTOC (Daily Federal Register Table of Contents Electronic Mailing List) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new**, enter your email address, then follow the instructions to join, leave, or manage your subscription.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html and select** *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, JANUARY

1–288 3
289–738 4
739–948 5

CFR PARTS AFFECTED DURING JANUARY

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
10510 739
10511 741
10512 743

7 CFR

Proposed Rules:
920 16
985 18

8 CFR

Proposed Rules:
103 402
106 402
204 402
212 402
214 402
240 402
244 402
245 402
245a 402
264 402
274a 402

10 CFR

Proposed Rules:
30 25
40 25
50 25
70 25
72 25
430 790

12 CFR

19 289
109 289
1083 1

14 CFR

Proposed Rules:
61 34
63 34
65 34

15 CFR

6 3

16 CFR

Proposed Rules:
456 248

17 CFR

Proposed Rules:
240 128
242 128

21 CFR

101 6
172 745
876 8
882 749
888 ..... 751, 753

24 CFR

Proposed Rules:
5 321
1006 328

26 CFR

301 ..... 755, 756

33 CFR

100 291
165 756

Proposed Rules:
165 35

39 CFR

111 758

40 CFR

52 ..... 291, 773
81 775

Proposed Rules:
63 805
180 38
721 41

42 CFR

405 297
410 297
411 297
412 297
413 297
416 297
419 297
424 297
485 297
489 297

45 CFR

Proposed Rules:
88 820

47 CFR

1 783
73 10

Proposed Rules:
73 42

49 CFR

1002 299
1011 700
1108 700
1111 299
1114 299
1115 299,700
1244 700

Proposed Rules:
386 830
387 830

50 CFR

218 604

635.....786
648.....11, 788
679.....789

Proposed Rules:
217.....916

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List January 4, 2023

Public Laws Electronic Notification Service (PENS)

PENS is a free email notification service of newly enacted public laws. To subscribe, go to *https://portalguard.gsa.gov/__*layouts/PG/register.aspx.

Note: This service is strictly for email notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.