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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2022–0349; Special Conditions No. 25–820–SC]

Special Conditions: Airbus Model A321neo XLR Airplane; Flight-Envelope Protection Functions—General

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

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Airbus Model A321neo XLR airplanes. These airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. This design feature is an electronic flight-control system that provides flight-envelope protections. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Effective March 29, 2023.

FOR FURTHER INFORMATION CONTACT: Troy Brown, Performance and Environment Section, AIR–625, Technical Innovation Policy Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 1801 S Airport Rd., Wichita, KS 67209–2190; telephone and fax 405–666–1050; email *troy.a.brown@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On September 16, 2019, Airbus applied for an amendment to Type Certificate No. A28NM to include the new Model A321neo XLR airplane. These airplanes are twin-engine, transport-category airplanes with seating for 244 passengers and a maximum takeoff weight of 222,000 pounds.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Airbus must show that the Model A321neo XLR airplanes meet the applicable provisions of the regulations listed in Type Certificate No. A28NM, or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*e.g.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Airbus Model A321neo XLR airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Airbus Model A321neo XLR airplanes must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in § 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

The Airbus Model A321neo XLR airplanes will incorporate the following novel or unusual design feature:

An electronic flight-control system that provides flight envelope protections.

Discussion

Many new transport-category airplanes use advanced electronic flight-control systems (EFCS), which incorporate flight-envelope protection (limiting) designed to prevent the pilot from inadvertently or intentionally exceeding any number of flight-envelope parameters. Depending on a particular EFCS design, these limiting features may or may not be active in all normal and alternate flight-control modes, and may or may not be capable of being overridden by the pilot.

The FAA currently applies 14 CFR 25.143 to airplanes incorporating EFCS. The purpose of § 25.143 is to verify that operational maneuvers conducted within the operational envelope can be accomplished smoothly with average piloting skill, and without encountering a stall warning or other characteristics that might interfere with normal maneuvering, or without exceeding structural limits. The airplane response to control input should be predictable to the pilot. However, § 25.143 does not adequately ensure that airplanes incorporating EFCS with flight-envelope protections will have a level of safety equivalent to that of existing standards.

Envelope-protection functions are intended to reduce the likelihood of excursions, either commanded or uncommanded, to unintended or potentially hazardous airplane operating states. As a consequence of preventing excursions, these functions can also restrict aircraft maneuverability, and may introduce non-traditional behavior. The special conditions will ensure that flight-envelope protection functions support safe operation, and do not interfere with required maneuvering in normal and emergency operations, and in forseeable atmospheric conditions.

The FAA previously issued separate special conditions for general limiting, normal load-factor limiting, high-speed limiting, and pitch and roll limiting for airplanes incorporating flight-envelope protection features. However, the FAA tasked the Aviation Rulemaking Advisory Committee (ARAC) in April 2014 (79 FR 20295) to develop recommended standards for fly-by-wire flight controls for general flight-envelope protection (limiting) similar to those provided for conventional control functions in 14 CFR 25.143. The ARAC recommended,[2] among other things,

[2] FAA Aviation Rulemaking Advisory Committee, FTHWG Topic 1 Envelope Protection, Recommendation Report—Rev. A, March, 2017,

Continued

performance-based requirements that would encompass general limiting, normal load-factor limiting, high-speed limiting, and pitch and roll limiting which the FAA previously issued as separate special conditions. These proposed special conditions are based on that ARAC recommendation.

These special conditions provide the same level of safety as the prescriptive, design-specific special conditions the FAA has issued in the past for general limiting, normal load-factor limiting, high-speed limiting, and pitch and roll limiting, thus the FAA need not issue separate special conditions to address each of these areas.

These special conditions are in addition to the requirements of § 25.143.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Discussion of Comments

The FAA issued notice of proposed Special Conditions No. 25–22–05–SC for the Airbus Model A321neo XLR airplane, which was published in the **Federal Register** on November 17, 2022 (87 FR 68942).

The FAA received one response from the Air Line Pilots Association supporting the special conditions. The special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions apply to Airbus Model A321neo XLR airplanes. Should Airbus apply later for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model series of airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Airbus Model A321neo XLR airplanes equipped with EFCS.

In addition to § 25.143, the following requirements apply:

(a) Envelope protection functions must not unduly limit the maneuvering capability of the airplane, nor interfere with its ability to perform maneuvers required for normal and emergency operations.

(b) Onset characteristics of each flight-envelope protection function must be appropriate to the phase of flight and type of maneuver, and must not conflict with the ability of the pilot to satisfactorily control the airplane flight path, speed, and attitude.

(c) Excursions of a limited flight parameter beyond its nominal design-limit value due to dynamic maneuvering, airframe and system tolerances, and non-steady atmospheric conditions must not result in unsafe flight characteristics or conditions.

(d) Operation of flight-envelope protection functions must not adversely affect aircraft control during expected levels of atmospheric disturbances, nor impede the application of recovery procedures in case of wind shear.

(e) Simultaneous action of flight-envelope protection functions must not result in adverse coupling or adverse priority.

(f) In case of abnormal attitude or excursion of flight parameters outside the protected boundaries, operation of flight-envelope protection functions must not hinder airplane recovery.

Issued in Kansas City, Missouri, on February 22, 2023.

Patrick R. Mullen,

Manager, Technical Innovation Policy Branch, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2023–03980 Filed 2–24–23; 8:45 am]

BILLING CODE 4910–13–P

https://www.faa.gov/regulations_policies/rulemaking/committees/documents/media/09%20-%20FTHWG_Final_Report_Phase_2_RevA__Apr_2017.pdf.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2022–0126; Special Conditions No. 25–809–SC]

Special Conditions: Dassault Aviation Model Falcon 6X Airplane; Operation Without Normal Electrical Power

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

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Dassault Aviation (Dassault) Model Falcon 6X airplane. This airplane will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. This design feature is an electronic flight-control system installation that establishes the criticality of the electrical power generation and distribution systems, such that the loss of all electrical power may be catastrophic to the airplane. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on Dassault on February 27, 2023. Send comments on or before April 13, 2023.

ADDRESSES: Send comments identified by Docket No. FAA–2022–0126 using any of the following methods:

- *Federal eRegulations Portal:* Go to *https://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: Except for Confidential Business Information (CBI) as described in the following paragraph, and other

information as described in title 14, Code of Federal Regulations (14 CFR) 11.35, the FAA will post all comments received without change to *https://www.regulations.gov/,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact received about these special conditions.

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 these special conditions contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to these special conditions, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and the indicated comments will not be placed in the public docket of these special conditions. Send submissions containing CBI to the Information Contact below. Comments the FAA receives, which are not specifically designated as CBI, will be placed in the public docket for these special conditions.

Docket: Background documents or comments received may be read at *https://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dan Poblete, Aircraft Systems, AIR–623, Technical Innovation Policy Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 3960 Paramount Boulevard, Suite 100, Lakewood, California 90712; telephone 562–627–5335, fax 562–627–5210; email *daniel.d.poblete@faa.gov.*

SUPPLEMENTARY INFORMATION: The substance of these special conditions has been published in the **Federal Register** for public comment in several prior instances with no substantive comments received. Therefore, the FAA finds that, pursuant to § 11.38(b), new comments are unlikely, and notice and comment prior to this publication are unnecessary.

Comments Invited

The FAA invites interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

The FAA will consider all comments received by the closing date for comments. The FAA may change these special conditions based on the comments received.

Background

On July 1, 2012, Dassault Aviation applied for a type certificate for its new Model Falcon 5X airplane. However, Dassault has decided not to release an airplane under the model designation Falcon 5X, instead choosing to change that model designation to Falcon 6X.

In February of 2018, due to engine supplier issues, Dassault extended the type certificate application date for its Model Falcon 5X airplane under new Model Falcon 6X. This airplane is a twin-engine business jet with seating for 19 passengers, and has a maximum takeoff weight of 77,460 pounds.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Dassault must show that the Model Falcon 6X airplane meets the applicable provisions of part 25, as amended by amendments 25–1 through 25–146.

If the Administrator finds that the applicable airworthiness regulations (*e.g.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Dassault Model Falcon 6X airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Dassault Model Falcon 6X airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The Dassault Model Falcon 6X airplane will incorporate the following novel or unusual design features:

An electronic flight-control system installation that establishes the criticality of the electrical power generation and distribution systems, such that the loss of all electrical power may be catastrophic to the airplane.

Discussion

The Dassault Aviation Model Falcon 6X airplane will have a fly-by-wire control system that requires a continuous source of electrical power to maintain an operable flight-control system. Section 25.1351(d), ''Operation without normal electrical power,'' requires safe operation for at least five minutes, in visual flight rules (VFR), with normal power inoperative. This rule was structured around a traditional design, with mechanical control cables for flight control, while flightcrew considered the electrical failures, attempted to start engines(s) if necessary, and attempted to re-establish some of the electrical-power-generation capability.

Changes in technology have produced advanced electrical and electronic airplane systems that requires a continuous source of electrical power to maintain an operable flight-control system. The Dassault Model Falcon 6X airplane design must not be time-limited in its operation, including being without the normal source of electrical power generated from engine generators or auxiliary power unit (APU), to maintain the same level of safety associated with traditional designs.

Airplane service experience has shown that the loss of all electrical power, as generated by the airplane's engine generators or APU, is not extremely improbable. Therefore, the applicant must demonstrate that the airplane maintains safe flight and landing, including steering and braking on the ground with the use of airplane emergency electrical-power systems. These emergency electrical-power systems must be able to provide power to loads required for continued safe flight and landing.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to the Dassault Model Falcon 6X airplane. Should Dassault apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only a certain novel or unusual design feature on one model of airplane. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Dassault Aviation Model Falcon 6X airplanes.

In lieu of the requirements of 14 CFR 25.1351(d), the following special conditions apply:

(a) The applicant must show, by test or a combination of test and analysis, that the airplane is capable of continued safe flight and landing with all normal electrical power sources inoperative, as prescribed by paragraphs (b)(1) and (b)(2) below. For purposes of this special condition, normal sources of electrical-power generation do not include alternate power sources such as a battery, ram-air turbine, or independent power systems such as a flight-control permanent-magnet generating system.

(b) The airplane is demonstrated to be capable of continued safe flight and landing by ensuring the performance of the systems capability, effects on crew workload and operating conditions, and the physiological needs of the flightcrew and passengers meet the requirements for the longest diversion time for which approval is sought.

(1) Common-cause failures, cascading failures, and zonal physical threats must be considered in showing compliance with this requirement.

(2) The ability to restore operation of portions of the electrical-power generation and distribution system may be considered if it can be shown that unrecoverable loss of those portions of the system is extremely improbable. An alternative source of electrical power must be provided for the time required to restore the minimum electrical-power-generation capability required for safe flight and landing. Unrecoverable loss of all engines may be excluded when showing that unrecoverable loss of critical portions of the electrical system is extremely improbable. Unrecoverable loss of all engines is covered in special condition (c), below, and thus may be excluded when showing compliance with this requirement.

(c) Regardless of any electrical-generation and distribution-system recovery capability shown under special condition (a), above, sufficient electrical-system capability must be provided to:

(1) Allow time to descend, with all engines inoperative, at the speed that provides the best glide distance, from the maximum operating altitude to the altitude at the top of the engine restart envelope, and

(2) Subsequently allow multiple start attempts of the engines and APU. This capability must be provided in addition to the electrical capability required by existing part 25 requirements related to operation with all engines inoperative.

(d) The airplane emergency electrical-power system must be designed to supply electrical power required for:

(1) Immediate safety, which must continue to operate without the need for flightcrew action following the loss of the normal electrical power, for a duration sufficient to allow reconfiguration to provide a non-time-limited source of electrical power.

(2) Continued safe flight and landing for the maximum diversion time.

(e) If APU-generated electrical power is used in satisfying the requirements of these special conditions, and if reaching a suitable runway upon which to land is beyond the capacity of the battery systems, then the APU must be able to be started under any foreseeable flight condition prior to the depletion of the battery or the restoration of normal electrical power, which ever occurs first. Flight tests must demonstrate this capability at the most critical condition.

(1) The applicant must show that the APU will provide adequate electrical power for continued safe flight and landing.

(2) The Airplane Flight Manual (AFM) must incorporate non-normal procedures that direct the pilot to take appropriate actions to activate the APU after loss of normal engine-generated electrical power.

(f) As a part of showing compliance with these special conditions, the tests by which loss of all normal electrical power is demonstrated must also take into account the following:

(1) The failure condition should be assumed to occur during night instrument meteorological conditions (IMC), at the most critical phase of the flight, relative to the worst possible electrical-power distribution and equipment-loads-demand condition.

(2) After the un-restorable loss of normal engine-generated electrical power, the airplane-engine-restart capability must be provided and operations continued in IMC.

(3) The applicant must demonstrate that the aircraft is capable of continued safe flight and landing. The length of time must be computed based on the maximum diversion-time capability for which the airplane is being certified. Consideration for airspeed reductions resulting from the associated failure or failures must be made.

(4) The airplane must provide adequate indication of loss of normal electrical power to direct the pilot to the non-normal procedures, and the AFM must incorporate non-normal procedures that will direct the pilot to take appropriate actions.

Issued in Kansas City, Missouri, on February 22, 2023.

Patrick R. Mullen,

Manager, Technical Innovation Policy Branch, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2023–03981 Filed 2–24–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1485; Project Identifier MCAI–2022–00522–T; Amendment 39–22333; AD 2023–03–08]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bombardier, Inc., Model BD–700–2A12 airplanes. This AD was prompted by a report that certain fasteners attaching the fuselage skin to a certain stringer may be missing. This AD requires inspecting for missing fasteners and

damage, including cracking, of the affected area, and repair or installation of fasteners if necessary. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective April 3, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 3, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1485; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For service information identified in this final rule, contact Bombardier Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–2999; email *ac.yul@aero.bombardier.com;* website *bombardier.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* under Docket No. FAA–2022–1485.

FOR FURTHER INFORMATION CONTACT: Jiwan Karunatilake, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc., Model BD–700–2A12 airplanes. The NPRM published in the **Federal Register** on November 25, 2022 (87 FR 72419). The NPRM was prompted by AD CF–2022–17, dated April 13, 2022, issued by Transport Canada, which is the aviation authority for Canada (referred to after this as the MCAI). The MCAI states that certain fasteners attaching the fuselage skin to stringer 19 between fuselage station (FS) FS945.75 and FS961.45 may be missing. The affected area of the fuselage is a build-up of skin, stringers, and frames, and is identified as a principal structural element for which missing fasteners could significantly reduce safety margins.

In the NPRM, the FAA proposed to require inspecting for missing fasteners and damage, including cracking, of the affected area, and repair or installation of fasteners if necessary. The FAA is issuing this AD to address missing fasteners, which may subject the skin to inter-rivet buckling under compressive load. The unsafe condition, if not addressed, could create a hazard of permanent deformation and/or cracking of the skin.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1485.

Discussion of Final Airworthiness Directive

Comments

The FAA received no comments on the NPRM or on the determination of the cost to the public.

Additional Changes Made to This AD

The FAA has revised paragraph (g) of this AD to clarify that, if any damage or missing fasteners are found, the damage must be repaired or the fasteners installed before further flight. In the NPRM, the FAA inadvertently left out the compliance time for this action. However, as stated in the NPRM, the affected area is identified as a principal structural element for which missing fasteners could significantly reduce safety margins. Further, missing fasteners may create a hazard of permanent deformation and/or cracking of the skin. Therefore, damage needs to be repaired and missing fasteners need to be installed before further flight to address the identified unsafe condition.

Conclusion

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed Bombardier Service Bulletin 700–53–7547, dated July 21, 2021. This service information specifies procedures for inspecting the affected area of the fuselage skin attached to stringer 19 between FS945.75 and FS961.45 for missing fasteners and associated damage, and for installing missing fasteners and repairing any damage. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 11 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
5 work-hours × $85 per hour = $425	$0	$425	$4,675

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
27 work-hours × $85 per hour = $2,295	$5,792	$8,087

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected operators.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2023–03–08 Bombardier, Inc.: Amendment 39–22333; Docket No. FAA–2022–1485; Project Identifier MCAI–2022–00522–T.

(a) Effective Date

This airworthiness directive (AD) is effective April 3, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., Model BD–700–2A12 airplanes, certificated in any category, serial numbers 70020 through 70039 inclusive, 70041, 70046, and 70047.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by a report that certain fasteners attaching the fuselage skin to a certain stringer may be missing. The FAA is issuing this AD to address missing fasteners, which may subject the skin to inter-rivet buckling under compressive load. The unsafe condition, if not addressed, could create a hazard of permanent deformation and/or cracking of the skin.

(f) Compliance

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

(g) Required Actions

Within 32 months from the effective date of this AD: Do a detailed visual inspection for missing fasteners and damage, including cracking, in the fuselage skin attached to stringer 19 between fuselage station (FS) FS945.75 and FS961.45. If any damage or missing fasteners are found: Before further flight, repair any damage found, and install fasteners where missing, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 700–53–7547, dated July 21, 2021.

(h) Additional AD Provisions

The following provisions also apply to this AD:

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

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

(i) Additional Information

(1) Refer to Transport Canada AD CF–2022–17, dated April 13, 2022, for related information. This Transport Canada AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2022–1485.

(2) For more information about this AD, contact Jiwan Karunatilake, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.*

(j) Material Incorporated by Reference

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

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

(i) Bombardier Service Bulletin 700–53–7547, dated July 21, 2021.

(ii) [Reserved]

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

(4) You may view this service information at the FAA, Airworthiness Products Section,

Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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

Issued on February 1, 2023.

Christina Underwood,

Acting Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–03692 Filed 2–24–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1245; Project Identifier MCAI–2022–00503–T; Amendment 39–22334; AD 2023–03–09]

RIN 2120–AA64

Airworthiness Directives; ATR—GIE Avions de Transport Régional Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2021–20–09, which applied to certain ATR—GIE Avions de Transport Régional Model ATR72 airplanes. AD 2021–20–09 required revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. This AD was prompted by a determination that new or more restrictive tasks and airworthiness limitations are necessary. This AD continues to require the actions in AD 2021–20–09 and requires revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive tasks and airworthiness limitations, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective April 3, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 3, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of December 27, 2021 (86 FR 64805, November 19, 2021).

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1245; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For material incorporated by reference in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.*
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *regulations.gov* under Docket No. FAA–2022–1245.

FOR FURTHER INFORMATION CONTACT: Shahram Daneshmandi, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3220; email *shahram.daneshmandi@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2021–20–09, Amendment 39–21747 (86 FR 64805, November 19, 2021) (AD 2021–20–09). AD 2021–20–09 applied to certain ATR—GIE Avions de Transport Régional Model ATR72–101, –102, –201, –202, –211, –212, and –212A airplanes. AD 2021–20–09 required revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA issued AD 2021–20–09 to address reduced structural integrity of the airplane.

The NPRM published in the **Federal Register** on December 6, 2022 (87 FR 74538). The NPRM was prompted by AD 2022–0201, dated September 26, 2022, issued by EASA (EASA AD 2022–0201) (referred to after this as the MCAI). The MCAI states that the manufacturer updated the time limits document to introduce new or more restrictive tasks and limitations.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1245.

In the NPRM, the FAA proposed to continue to require the actions in AD 2021–20–09 and require revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive tasks and airworthiness limitations, as specified in EASA AD 2022–0201. The FAA is issuing this AD to address fatigue cracking and damage in principal structural elements, which could result in reduced structural integrity of the airplane.

Discussion of Final Airworthiness Directive

Comments

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

Explanation of Revised Applicability

The FAA revised paragraph (c) of this AD to apply to airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before September 21, 2022 (the issuance date of the service information referenced in EASA AD 2022–0201). Airplanes with an original airworthiness certificate or original export certificate of airworthiness issued after September 21, 2022, must comply with the airworthiness limitations specified as part of the approved type design and referenced on the type certificate data sheet; this AD therefore does not include those airplanes in the applicability. In the NPRM, the FAA inadvertently specified a date of February 3, 2022, which is the issuance date of a prior revision of the service information referenced in EASA AD 2022–0201. The FAA has confirmed no affected airplanes were added to the U.S. Registry between February 3, 2022 and September 21, 2022.

Conclusion

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described

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

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0201 describes new or more restrictive tasks, airworthiness limitations for airplane structures, and safe life limits.

This AD also requires EASA AD 2021–0020, dated January 15, 2021 (EASA AD 2021–0020), which the Director of the Federal Register approved for incorporation by reference as of December 27, 2021 (86 FR 64805, November 19, 2021).

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

Costs of Compliance

The FAA estimates that this AD affects 23 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

The FAA estimates the total cost per operator for the retained actions from AD 2021–20–09 to be $7,650 (90 workhours × $85 per work-hour).

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

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 2021–20–09, Amendment 39–21747 (86 FR 64805, November 19, 2021); and

■ b. Adding the following new airworthiness directive:

2023–03–09 ATR—GIE Avions de Transport Régional: Amendment 39–22334; Docket No. FAA–2022–1245; Project Identifier MCAI–2022–00503–T.

(a) Effective Date

This airworthiness directive (AD) is effective April 3, 2023.

(b) Affected ADs

This AD replaces AD 2021–20–09, Amendment 39–21747 (86 FR 64805, November 19, 2021) (AD 2021–20–09).

(c) Applicability

This AD applies to ATR—GIE Avions de Transport Régional Model ATR72–101, –102, –201, –202, –211, –212, and –212A airplanes, certificated in any category, with an original airworthiness certificate or original export certificate of airworthiness issued on or before September 21, 2022.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Unsafe Condition

This AD was prompted by a determination that new or more restrictive tasks and airworthiness limitations are necessary. The FAA is issuing this AD to address fatigue cracking and damage in principal structural elements, which could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Retained Revision of the Existing Maintenance or Inspection Program, With No Changes

This paragraph restates the requirements of paragraph (j) of AD 2021–20–09, with no changes. For ATR–GIE Avions de Transport Régional Model ATR72–101, –102, –201, –202, –211, –212, and –212A airplanes, with an original airworthiness certificate or original export certificate of airworthiness issued on or before October 9, 2020, Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0020, dated January 15, 2021 (EASA AD 2021–0020). Accomplishing the revision of the existing maintenance or inspection program required by paragraph (j) of this AD terminates the requirements of this paragraph.

(h) Retained Exceptions to EASA AD 2021–0020, With No Changes

This paragraph restates the requirements of paragraph (k) of AD 2021–20–09, with no changes.

(1) Where EASA AD 2021–0020 refers to its effective date, this AD requires using December 27, 2021 (the effective date of AD 2021–20–09).

(2) The requirements specified in paragraphs (1) and (2) of EASA AD 2021–0020 do not apply to this AD.

(3) Paragraph (3) of EASA AD 2021–0020 specifies revising ''the approved AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after December 27, 2021 (the effective date of AD 2021–20–09).

(4) Except as provided by Note 1 of EASA AD 2021–0020, the initial compliance time for doing the tasks specified in paragraph (3)

of EASA AD 2021–0020 is at the applicable ''thresholds'' as incorporated by the requirements of paragraph (3) of EASA AD 2021–0020, or within 90 days after December 27, 2021 (the effective date of AD 2021–20–09), whichever occurs later.

(5) The provisions specified in paragraphs (4) and (5) of EASA AD 2021–0020 do not apply to this AD.

(6) The ''Remarks'' section of EASA AD 2021–0020 does not apply to this AD.

(i) Retained Restrictions on Alternative Actions and Intervals, With a New Exception

This paragraph restates the requirements of paragraph (l) of AD 2021–20–09, with a new exception. Except as required by paragraph (j) of this AD, after the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) and intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2021–0020.

(j) New Revision of the Existing Maintenance or Inspection Program

Except as specified in paragraph (k) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2022–0201, dated September 26, 2022 (EASA AD 2022–0201). Accomplishing the revision of the existing maintenance or inspection program required by this paragraph terminates the requirements of paragraph (g) of this AD.

(k) Exceptions to EASA AD 2022–0201

(1) Where EASA AD 2022–0201 refers to its effective date, this AD requires using the effective date of this AD.

(2) The requirements specified in paragraphs (1) and (2) of EASA AD 2022–0201 do not apply to this AD.

(3) Paragraph (3) of EASA AD 2022–0201 specifies revising ''the approved AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(4) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2022–0201 is at the applicable ''limitations'' and ''associated thresholds'' as incorporated by the requirements of paragraph (3) of EASA AD 2022–0201, or within 90 days after the effective date of this AD, whichever occurs later.

(5) The provisions specified in paragraphs (4) and (5) of EASA AD 2022–0201 do not apply to this AD.

(6) The ''Remarks'' section of EASA AD 2022–0201 does not apply to this AD.

(l) New Provisions for Alternative Actions and Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (j) of this AD, no alternative actions (*e.g.,* inspections) and intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2022–0201.

(m) Additional FAA AD Provisions

The following provisions also apply to this AD:

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

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or EASA; or ATR–GIE Avions de Transport Régional's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(n) Additional Information

For more information about this AD, contact Shahram Daneshmandi, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3220; email *shahram.daneshmandi@faa.gov.*

(o) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on April 3, 2023.

(i) European Union Aviation Safety Agency (EASA) AD 2022–0201, dated September 26, 2022.

(ii) [Reserved]

(4) The following service information was approved for IBR December 27, 2021 (86 FR 64805, November 19, 2021).

(i) European Union Aviation Safety Agency (EASA) AD 2021–0020, dated January 15, 2021.

(ii) [Reserved]

(5) For EASA ADs 2022–0201 and 2021–0020, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find these EASA ADs on the EASA website at *ad.easa.europa.eu.*

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

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

Issued on February 1, 2023.

Christina Underwood,

Acting Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–03693 Filed 2–24–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1487; Project Identifier MCAI–2022–00688–T; Amendment 39–22332; AD 2023–03–07]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus SAS Model A350–941 airplanes. This AD was prompted by a report that an interference was detected between the installed nut and the foot radius of a section of a certain frame (FR) on the right-hand side. This AD requires removing the affected fasteners and inspecting the affected area for damage, and applicable corrective actions if necessary, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective April 3, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 3, 2023.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1487; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

• For material incorporated by reference in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.*

• You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *regulations.gov* under Docket No. FAA–2022–1487.

FOR FURTHER INFORMATION CONTACT: Dat Le, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 516–228–7317; email *dat.v.le@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus SAS Model A350–941 airplanes. The NPRM published in the **Federal Register** on November 25, 2022 (87 FR 72414). The NPRM was prompted by AD 2022–0093, dated May 25, 2022, issued by EASA, which is the Technical Agent for the Member States of the European Union (EASA AD 2022–0093) (also referred to as the MCAI). The MCAI states that an interference was detected between the installed nut and the foot radius of FR 96, between stringer 6 and stringer 7, on the right-hand side. Further investigation showed that the minimum distances for nut installation were not fulfilled, and some airplanes were damaged in the FR 96 foot radius area. Damage at the FR 96 foot radius area, if not addressed, may affect the structural integrity of the airplane.

In the NPRM, the FAA proposed to require removing the affected fasteners and inspecting the affected area for damage, and applicable corrective actions if necessary, as specified in EASA AD 2022–0093. The FAA is issuing this AD to address possible damage at the FR 96 foot radius area. This condition, if not addressed, may affect the structural integrity of the airplane.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1487.

Discussion of Final Airworthiness Directive

Comments

The FAA received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

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

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0093 specifies procedures for removing the affected fasteners and doing detailed, high frequency eddy current, and rototest inspections for damage (either superficial, limited to the paint, *e.g.,* discoloration to the paint or protective layer; or non-superficial, *e.g.,* dents, cracks, bends, nicks, and discoloration to the metal) of the fastener hole, fillet radius, and collar areas at FR96, stringers 6 and 7 on the right-hand side, and applicable corrective actions. Corrective actions include installing new fasteners and nuts with adapted aluminum washers and repair. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 5 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
3 work-hours × $85 per hour = $255	$0	$255	$1,275

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
3 work-hours × $85 per hour = $255	$240	$495

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

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2023–03–07 Airbus SAS: Amendment 39–22332; Docket No. FAA–2022–1487; Project Identifier MCAI–2022–00688–T.

(a) Effective Date

This airworthiness directive (AD) is effective April 3, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model A350–941 airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2022–0093, dated May 25, 2022 (EASA AD 2022–0093).

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by a report that an interference was detected between the installed nut and the foot radius of frame (FR) 96, between stringer 6 and stringer 7, on the right-hand side. The FAA is issuing this AD to address possible damage at the FR 96 foot radius area. This condition, if not addressed, may affect the structural integrity of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2022–0093.

(h) Exceptions to EASA AD 2022–0093

(1) Where EASA AD 2022–0093 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where the definitions of ''Affected part'' and ''Affected area'' in EASA AD 2022–0093 specify ''the SB,'' for this AD, replace the text ''the SB'' with ''the inspection SB.''

(3) The ''Remarks'' section of EASA AD 2022–0093 does not apply to this AD.

(i) Additional AD Provisions

The following provisions also apply to this AD:

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

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraph (i)(2) of this AD, if any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Additional Information

For more information about this AD, contact Dat Le, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 516–228–7317; email *dat.v.le@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0093, dated May 25, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0093, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

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

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

Issued on February 1, 2023.

Christina Underwood,

Acting Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–03694 Filed 2–24–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–0174; Project Identifier MCAI–2023–00063–T; Amendment 39–22359; AD 2023–04–12]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus SAS Model A350–941 and –1041 airplanes. This AD was prompted by a determination that longitudinal sealing tape in the forward and aft cargo compartments had migrated from its original position, which could affect the fire extinguishing system efficiency in the cargo compartments. This AD requires repetitive detailed inspection of the affected parts, and, depending on findings, accomplishment of applicable corrective action, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 14, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 14, 2023.

The FAA must receive comments on this AD by April 13, 2023.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–0174; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For material incorporated by reference in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* under Docket No. FAA–2023–0174.

FOR FURTHER INFORMATION CONTACT: Dat Le, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 516–228–7317; email *dat.v.le@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–0174; Project Identifier MCAI–2023–00063–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Dat Le, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 516–228–7317; email *dat.v.le@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2023–0011, dated January 17, 2023 (EASA AD 2023–0011) (also referred to as the MCAI), to correct an unsafe condition for all Airbus SAS Model A350–941 and –1041 airplanes. The MCAI states that longitudinal sealing tape in the forward and aft cargo compartments had migrated from its original position, possibly due to relative movement between the cargo floor panels and the cargo loading system, combined with compression of the tape. One function of the cargo floor panel sealing is as a contributor to the tightness of the lower cargo compartment floor panels, which provide an enclosed area to maintain halon concentration in the event of a fire. This condition, if not addressed, could affect the fire extinguishing system efficiency in the cargo compartments, possibly resulting in failure of the system to contain a cargo compartment fire or permanently extinguish the fire.

The FAA is issuing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–0174.

Related Service Information Under 1 CFR Part 51

EASA AD 2023–0011 specifies procedures for repetitive detailed inspections of the affected parts (*i.e.,* cargo sealing tapes installed between the cargo floor panels and the cargo loading system in longitudinal direction, in the forward and aft cargo compartment area) for complete or partial migration of the cargo sealing tape and to determine if there are any repairs on the tape; for partially migrated tape, measuring the maximum migration of the tape; for repaired tape, inspecting for incorrect seating/condition of the tape and incorrect sealant condition; and applicable corrective action if any discrepancies are found (*i.e.,* any cargo sealing tape that has migrated more than 11 millimeters, complete migration of the tape, incorrect seating/condition of the tape in repaired areas, and incorrect sealant condition in repaired areas). Corrective actions include repairing the tape and sealant. This material is reasonably available because the interested parties have access to it through their normal course of business

or by the means identified in the **ADDRESSES** section.

FAA's Determination

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI described above. The FAA is issuing this AD after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Requirements of This AD

This AD requires accomplishing the actions specified in EASA AD 2023–0011 described previously, except for any differences identified as exceptions in the regulatory text of this AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, EASA AD 2023–0011 is incorporated by reference in this AD. This AD requires compliance with EASA AD 2023–0011 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in EASA AD 2023–0011 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2023–0011. Service information required by EASA AD 2023–0011 for compliance will be available at *regulations.gov* under Docket No. FAA–2023–0174 after this AD is published.

Interim Action

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

FAA's Justification and Determination of the Effective Date

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

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies forgoing notice and comment prior to adoption of this rule because migration of the sealing tape can affect the tightness of the cargo compartment floor panels, which provide an enclosed area to maintain halon concentration in the event of a fire. Migration of the sealing tape in the forward and aft cargo compartments could affect the fire extinguishing system efficiency in the cargo compartments and possibly result in failure of the system to contain a cargo compartment fire or permanently extinguish the fire. In addition, the compliance time for the required action is shorter than the time necessary for the public to comment and for publication of the final rule. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

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

Regulatory Flexibility Act (RFA)

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

Costs of Compliance

The FAA estimates that this AD affects 31 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 1 work-hour × $85 per hour = $85	$0	Up to $85	Up to $2,635.

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
Up to 2 work-hours × $85 per hour = $170	Up to $10	Up to $180.

Authority for This Rulemaking

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

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA

with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2023–04–12 Airbus SAS: Amendment 39–22359; Docket No. FAA–2023–0174; Project Identifier MCAI–2023–00063–T.

(a) Effective Date

This airworthiness directive (AD) is effective March 14, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS Model A350–941 and –1041 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by a determination that longitudinal sealing tape in the forward and aft cargo compartments had migrated from its original position. The FAA is issuing this AD to address migration of the tape, which can affect the tightness of the cargo compartment floor panels that provide an enclosed area to maintain halon concentration in the event of a fire. This condition, if not addressed, could affect the fire extinguishing system efficiency in the cargo compartments, possibly resulting in failure of the system to contain a cargo compartment fire or permanently extinguish a fire.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2023–0011, dated January 17, 2023 (EASA AD 2023–0011).

(h) Exceptions to EASA AD 2023–0011

(1) Where EASA AD 2023–0011 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where paragraph (2) of EASA AD 2023–0011 specifies accomplishing corrective actions if ''discrepancies, as identified in the AOT'' are found, for this AD, discrepancies is defined as cargo sealing tape that has migrated more than 11 millimeters, complete migration of the tape as shown in Condition B of the service information reference in EASA 2023–0011, incorrect seating/condition of the tape in repaired areas, and incorrect sealant condition in repaired areas.

(3) This AD does not adopt the ''Remarks'' section of EASA AD 2023–0011.

(i) Additional AD Provisions

The following provisions also apply to this AD:

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

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraph (i)(2) of this AD, if any service information referenced in EASA AD 2023–0011 contains paragraphs that are labeled as RC, the instructions in RC paragraphs, including subparagraphs under an RC paragraph, must be done to comply with this AD; any paragraphs, including subparagraphs under those paragraphs, that are not identified as RC are recommended. The instructions in paragraphs, including subparagraphs under those paragraphs, not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the instructions identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to instructions identified as RC require approval of an AMOC.

(j) Additional Information

For more information about this AD, contact Dat Le, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 516–228–7317; email *dat.v.le@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2023–0011, dated January 17, 2023.

(ii) [Reserved]

(3) For EASA AD 2023–0011, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

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

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

Issued on February 17, 2023.

Christina Underwood,

Acting Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–04020 Filed 2–23–23; 8:45 am]

BILLING CODE 4910–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1212

[Document Number NASA–21–091; Docket Number–NASA–2021–0007]

RIN 2700–AE64

Privacy Act—NASA Regulations

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Direct final rule.

SUMMARY: This direct final rule makes changes to NASA's rules governing implementation of the Privacy Act by providing for electronic access to records and, most significantly, exempting NASA's harassment investigative case files system of records notice (SORN) from specific subsections in the Privacy Act. The rule also makes several non-substantive changes to correct titles and minor provide clarifications.

DATES: This rule is effective on April 28, 2023, unless adverse comments are received by March 29, 2023. If adverse comments are received, NASA will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: Comments must be identified with RIN 2700–AE64 and may be sent to NASA via the Federal E-Rulemaking Portal: *https://www.regulations.gov.* Follow the online instructions for submitted comments. Please note that NASA will post all comments on the internet with changes, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Corey Portalatin-Berrien, Office of the Chief Information Officer, 202–358–4787.

SUPPLEMENTARY INFORMATION:

Background

Part 1212 establishes procedures for individuals to access their Privacy Act records and to request amendment of information in records concerning them. This rule was last published as a direct final rule in the **Federal Register** at 77 FR 60620, October 4, 2012, to make non-substantive changes to NASA rules governing implementation of the Privacy Act by updating statute citations, position titles, terminology, and adjusting appellate responsibility for records held by the NASA Office of the Inspector General. However, correction to these amendments were published in the **Federal Register** at 78 FR 8963, February 7, 2013, to add the responsibility of NASA's Freedom of Information Act Office that processes request for individual records. NASA is currently amending the rule to make changes to provide for electronic access to records. Furthermore, NASA is exempting its system of records (SOR) for Harassment Report Case Files/NASA 10RCF, under 5 U.S.C. 552a(k)(2) (k)(5) from the following subsections of the Privacy Act of 1974, 5 U.S.C. 552a:

- Subsection (c)(3) relating to access to the disclosure accounting.
- Subsection (d) relating to access to the records.
- Subsection (e)(1) relating to the type of information maintained in the records.
- Subsections (e)(4)(G), (H) and (I) relating to publishing in the annual system notice information as to agency procedures for access and correction and information as to the categories of sources of records.
- Subsection (f) relating to developing agency rules for gaining access and making corrections.

The determination to exempt these records was made because it is necessary for NASA to continue to investigate violations of law, regulation, and policy and also to determine continue suitability for Federal employment. In accordance with Federal anti-discrimination laws, the Equal Employment Opportunity Commission (EEOC) requires that all Federal agencies have an Antiharassment policy and program. NASA's specific policy prohibits harassment by all employees, provides an avenue for individuals to report allegations of harassment, and a process by which NASA fact-finders conduct inquiries/investigations. Furthermore, NASA's policy prohibits retaliation against individuals for raising allegations of harassment or participating in the process. In order for NASA to promptly address and resolve potential violations of law, regulation, or NASA policy, individuals who are participating in this process must be assured that their statements will be kept confidential consistent with law. Some investigations have been hindered by witnesses' lack of willingness to come forward fearful that their statements or identities would be revealed. Other agencies, including the EEOC, have exempted these records from certain provisions of the Privacy Act.

This SORN relies on multiple legal authorities to support exempting these records under 5 U.S.C. 552a(K)(2) and (K)(5), including, NASA's Antiharassment Policy, which states that NASA has an affirmative obligation to maintain a harassment-free workplace and to take prompt and effective action when allegations arise. NASA's policy encourages all employees to report concerns and for NASA to address such conduct before it becomes ''severe or pervasive'' within the meaning of the anti-discrimination laws. Additional authoritative sources include the EEOC, anti-discrimination laws, and Supreme Court precedent that require agencies to take prompt and effective action if an individual is alleging harassment by a NASA employee. Additionally, the investigatory material compiled by this system of records may be used to determine a putative harasser's suitability for continued NASA employment and such records would be exempt from release under certain provisions of the Privacy Act but only in cases where the disclosure of such information would reveal the identity of a source who provided information to NASA under the condition of anonymity.

Non-substantive changes will also be made to correct typos and titles and provide clarity.

Direct Final Rule Adverse Comments

NASA has determined this rulemaking meets the criteria for a direct final rule because it involves two substantive changes, one to address electronic access to records as required by Creating Advanced Streamlined Electronic Services for Constituents Act of 2019; the second to add an exemption for an Agency system of records. No opposition to the changes and no significant adverse comments are expected. However, if the Agency receives a significant adverse comment, it will withdraw this direct final rule by publishing a document in the **Federal Register**. A significant adverse comment is one that explains: (1) why the direct final rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of this direct final rule, NASA will consider whether it warrants a substantive response in a notice and comment process.

Statutory Authority

The National Aeronautics and Space Act (the Space Act), 51 U.S.C. 20101(a), authorizes the NASA Administrator to make, promulgate, issue, rescind, and amend rules and regulations governing the manner of its operations and the exercise of the powers vested in it by law.

Regulatory Analysis

Executive Order 12866, Regulatory Planning and Review and Executive Order 13563, Improvement Regulation and Regulation Review

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated as ''administrative'' under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to prepare an initial regulatory flexibility analysis to be published at the time the proposed rule is published. This requirement does not apply if the agency ''certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities'' (5 U.S.C. 603). This rule does not have any economic impact on small entities.

Review Under the Paperwork Reduction Act

This direct final rule does not contain any information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Review Under Executive Order of 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999), requires regulations be reviewed for federalism effects on the institutional interest of states and local governments, and, if the effects are sufficiently substantial, preparation of the Federal assessment is required to assist senior policy makers. The amendments will not have any direct effects on state and local governments within the meaning of the Executive order. Therefore, no federalism assessment is required.

List of Subjects in 14 CFR Part 1212

Privacy, Procedural rules.

For reasons discussed in the preamble, NASA amends 14 CFR part 1212 as follows:

PART 1212—PRIVACY ACT—NASA REGULATIONS

■ 1. The authority citation for part 1212 continues to read as follows:

Authority: 51 U.S.C. 20101 *et seq.;* 5 U.S.C. 552a; Pub. L. 115–59, 131 Stat. 1152 (42 U.S.C. 405 note).

Subpart 1212.2—Requests for Access to Records

■ 2. Revise § 1212.201 to read as follows:

§ 1212.201 Requesting a record.

(a) Individuals may request access to their Privacy Act records, either in person, in writing, or electronically.

(b) Individuals may also authorize a third party to have access to their Privacy Act records. This authorization shall be in writing, signed by the individual, or submitted electronically. Requests must contain the individual's address or email address, as well as the name, address or email address of the representative being authorized access. The identities of both the subject individual and the representative must be verified in accordance with the procedures set forth in § 1212.202.

(c)(1) In-person or written requests must be directed to the appropriate system manager, or, if unknown, to the Center Privacy Manager or Freedom of Information Act (FOIA) Office at NASA Headquarters or Field Center. The request should be identified clearly on the envelope and on the letter as a ''Request Under the Privacy Act.''

(2) Electronic requests may be initiated online at *https://www.nasa.gov/about/highlights/HP_Privacy.html.*

(3) Where possible, requests should contain the following information to ensure timely processing:

(i) Name and address of subject.

(ii) Email address of subject, for electronic requests only.

(iii) Identity of the system of records.

(iv) Nature of the request.

(v) Identifying information specified in the applicable system notice to assist in identifying the request, such as location of the record, if known, full name, birth date, time periods in which the records are believed to have been compiled, etc.

(d) NASA has no obligation to comply with a nonspecific request for access to information concerning an individual, *e.g.,* a request to provide copies of ''all information contained in your files concerning me,'' although a good faith effort will be made to locate records if there is reason to believe NASA has records on the individual. If the request is so incomplete or incomprehensible that the requested record cannot be identified, additional information or clarification will be requested in the acknowledgement, and assistance to the individual will be offered as appropriate.

(e) If the Center Privacy Manager receives a request for access, the Privacy Manager will record the date of receipt and immediately forward the request to the responsible system manager for handling.

(f) If the Center FOIA Office receives a first party request for records or access, the FOIA Office will process the request under the Privacy Act pursuant to this part.

(g) Normally, the system manager shall respond to a request for access within 10 business days of receipt of the request and the access shall be provided within 30 business days of receipt.

(1) In response to a request for access, the system manager or Privacy Act Officer shall:

(i) Notify the requester that there is no record on the individual in the system of records and inform the requester of the procedures to follow for appeal (see § 1212.4);

(ii) Notify the requester that the record is exempt from disclosure, cite the appropriate exemption, and inform the requester of the procedures to follow for appeal (see § 1212.4);

(iii) Upon request, promptly provide copies of the record, subject to the fee requirements (see § 1212.204); or

(iv) Make the individual's record available for personal inspection in the presence of a NASA representative.

(2) Unless the system manager agrees to another location, personal inspection of the record shall be at the location of the record as identified in the system notice.

(3) When an individual requests records in a system of records maintained on a third party, the request shall be processed as a FOIA request under 14 CFR part 1206. If the records requested are subject to release under FOIA (5 U.S.C. 552(b)), then a Privacy Act exemption may not be invoked to deny access.

(4) When an individual requests records in a system of records maintained on the individual, the request shall be processed under this part. NASA will not rely on exemptions contained in FOIA to withhold any record which is otherwise accessible to the individual under this part.

■ 3. Revise § 1212.202 to read as follows:

§ 1212.202 Identification procedures.

(a) The system manager will release records to the requester or representative in person only upon production of satisfactory identification which includes the individual's name, signature, and photograph or physical description.

(b) The system manager will release records to the requester or representative electronically via a NASA provided temporary secure storage space, after the identities of both are validated by the Agency's identity authorization process.

(c) The system manager will release copies of records by mail only when the circumstances indicate that the requester and the subject of the record are the same. The system manager may require that the requester's signature be notarized or witnessed by two individuals unrelated to the requester.

(d) Identity procedures more stringent than those required in this section may be prescribed in the system notice when the records are medical or otherwise sensitive.

§ 1212.204 [Amended]

■ 4. Amend § 1212.204 in paragraph (b) by adding the words ''hard-copy'' before the word ''duplication.''

§ 1212.205 [Amended]

■ 5. Amend § 1212.205 in paragraph (b) by removing the word ''manages'' and adding in its place the word ''manager.''

Subpart 1212.4—Appeals and Related Matters

§ 1212.400 [Amended]

■ 6. Amend § 1212.400 in paragraphs (b), (c)(1), and (e) by removing the words ''Associate Deputy Administrator'' and adding in their place the words ''Associate Administrator.''

Subpart 1212.5—Exemptions to Individuals' Rights of Access

§ 1212.500 [Amended]

■ 7. Amend § 1212.500 in paragraph (b) by removing the words ''Associate Deputy Administrator'' and adding in their place the words ''Associate Administrator.''

■ 8. Amend § 1212.501 by adding paragraph (c) to read as follows:

§ 1212.501 Record systems determined to be exempt.

* * * * *

(c) *Harassment Report Case Files*—(1) *Sections of the Act from which exempted.* Harassment Report Case Files records are exempt under 5 U.S.C. 552a(k)(2) from the following sections of the Privacy Act (5 U.S.C. 552a): subsection (c)(3) relating to access to the disclosure accounting; subsection (d) relating to access to the records; subsection (e)(1) relating to the type of information maintained in the records; subsections (e)(4)(G), (H), and (I) relating to publishing in the annual system notice information as to agency procedures for access and correction and information as to the categories of sources of records; and subsection (f) relating to developing agency rules for gaining access and making corrections.

(2) *Reason for exemption*—(i) *Subsection (c)(3).* The release of the disclosure accounting to the individual who is the subject of the investigation/fact-finding would present a serious impediment to NASA's ability to conduct fact-findings into potential violations of law or policy.

(ii) *Subsection (d).* Access to records contained in this system would inform the subject of an actual or potential investigation, of the existence of that investigation, of the nature and scope of the investigation, of the information and evidence obtained as to their activities, and of the identity of witnesses. Such access would impede a fact-finder/investigator's ability to freely investigate such cases, including concerns that some witnesses have been promised confidentiality and would not want their statements provided to the subject of the investigation. Amendment of the records would interfere with the ongoing fact-finding process.

(iii) *Subsection (e)(1).* Under the provision of (e)(1), the agency must only maintain such information that is relevant and necessary. It is difficult to know during the course of an investigation what is relevant and necessary. In this connection, facts or evidence may not seem relevant at first, but later in the investigation, their relevance is borne out.

(iv) *Subsections (e)(4)(G) and (H).* These subsections are inapplicable to the extent that these systems are exempt from the access provisions of subsection (d) and the rules provisions of subsection (f).

(v) *Subsection (e)(4)(I).* The categories of sources of the records in these systems have been published in the **Federal Register** in broad generic terms in the belief that this is all that subsection (e)(4)(I) of the Act requires. In the event, however, that this subsection should be interpreted to require more detail as to the identity of sources of the records in this system, exemption from this provision is necessary to protect the confidentiality of the sources of criminal and related law enforcement information. Such exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(vi) *Subsection (f).* Procedures for notice to an individual pursuant to subsection (f)(1) as to existence of records pertaining to the individual dealing with an actual or potential criminal, civil, or regulatory investigation or prosecution must be exempted because such notice to an individual would be detrimental to the successful conduct and/or completion of an investigation or case, pending or future. In addition, mere notice of the fact of an investigation could inform the subject or others that their activities are under investigation or may become the subject of an investigation and could enable the subjects to avoid detection, to influence witnesses improperly, to destroy evidence, or to fabricate testimony. Since an exemption is being claimed for subsection (d) of the Act, the rules required pursuant to subsections (f)(2) through (5) are inapplicable to these systems of records to the extent that these systems of records are exempted from subsection (d).

(3) *Determination.* NASA has determined that the exemption of this system of records from subsections (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) of the Privacy Act is necessary for the Agency's law enforcement efforts to address and eradicate harassment in its workplace.

Subpart 1212.7—NASA Authority and Responsibilities

■ 9. Amend § 1212.701 by revising the section heading and introductory text to read as follows:

§ 1212.701 Associate Administrator.

The Associate Administrator is responsible for:

* * * * *

§ 1212.705 [Amended]

■ 9. Amend § 1212.705 in paragraph (a)(3) by removing the words ''Associate Deputy Administrator'' and adding in their place the words ''Associate Administrator.''

Nanette Smith,

Team Lead, NASA Directives and Regulations.

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 734 and 746

[Docket No. 230221–0049]

RIN 0694–AJ12

Export Control Measures Under the Export Administration Regulations (EAR) To Address Iranian Unmanned Aerial Vehicles (UAVs) and Their Use by the Russian Federation Against Ukraine

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Export Administrations Regulations (EAR) to impose new export control measures on Iran. These measures address the use of Iranian Unmanned Aerial Vehicles (UAVs) by the Russian Federation (Russia) in its ongoing war against Ukraine, contrary to U.S. national security and foreign policy interests. Although UAVs are also known as Unmanned Aircraft Systems (UASs), for purposes of consistency with the Missile Technology Control Regime (MTCR) they are referred to as UAVs in the EAR. These amendments to the EAR target Iran's supply of UAVs to Russia to enhance Russia's defense industrial base and its military efforts against Ukraine and build on prior EAR amendments, including the addition of Iranian entities to the Entity List as Russian 'military end users.' Specifically, these controls impose license requirements for a subset of EAR99 items that are destined to Iran, regardless of whether a U.S. person is involved in the transaction. Such items are identified by Harmonized Tariff Schedule (HTS)–6 Codes in a new supplement added to the EAR, which will allow BIS and other relevant U.S. Government agencies to track and quantify these exports. This rule also identifies certain foreign-produced items as subject to the EAR by adding a new foreign direct product (FDP) rule specific to Iran that applies to items in certain categories of the Commerce Control List (CCL) and the EAR99 items identified in this new supplement. This rule similarly revises the EAR's existing Russia/Belarus FDP rule to reference these EAR99 items. Together with a separate rule published in the same issue of the **Federal Register** adding export controls for Russia and Belarus, these changes impose license requirements on additional exports from abroad and reexports to Iran, Russia, and Belarus, with the purpose of degrading the Iranian UAV program and Russia's use of such UAVs against Ukraine.

DATES: This rule is effective on February 24, 2023.

FOR FURTHER INFORMATION CONTACT: For general questions on this final rule, contact Eileen Albanese, Director, Office of National Security and Technology Transfer Controls, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–0092, Email: *rpd2@bis.doc.gov.* For emails, include ''Iran UAVs-RIN 0694–AJ12'' in the subject line.

SUPPLEMENTARY INFORMATION:

I. Background

In response to Russia's February 2022 further invasion of Ukraine, BIS imposed extensive export controls on Russia under the EAR (15 CFR parts 730 through 774) as part of the final rule *Implementation of Sanctions Against Russia Under the Export Administration Regulations (EAR)* (the Russia Sanctions Rule), effective on February 24, 2022, and published on March 3, 2022 (87 FR 12226). Since the publication of the Russia Sanctions Rule, BIS has published several other final rules imposing stringent export controls on Russia. The new restrictions included two new Russia (and Belarus)-specific Foreign-Direct Product rules. See § 734.9(f)(1)(i) and (ii). U.S. allies have implemented substantially similar measures against Russia. The BIS actions reflect the U.S. Government's position that Russia's further invasion of Ukraine and Belarus' complicity in such invasion flagrantly violated international law, is contrary to U.S. national security and foreign policy interests, and undermines global order, peace, and security.

Consistent with the U.S. Government's and its allies' commitment to further strengthening the impact of export control measures in response to Russia's aggression, this rule amends the EAR to impose new controls to address the use of Iranian UAVs in ways that are contrary to U.S. national security and foreign policy interests, specifically, by Russia against Ukraine. Iran has been supplying Iranian UAVs to Russia to enhance Russia's defense industrial base in the country's ongoing military assault in Ukraine. BIS and U.S. Government allies and partners have taken additional actions to restrict Iran's ability to obtain ''items'' required to manufacture UAVs, such as the blocking restrictions put in place by the European Union (EU) on identified Iranian drone companies and export restrictions on relevant low-level items where there is knowledge the items are ultimately destined to Russia. On January 31, 2023, BIS added seven Iranian entities involved in the manufacture of UAVs to the Entity List as Russian 'Military End Users,' thereby subjecting them to some of the most comprehensive export restrictions under the EAR, including on foreign-produced items under the Russia/Belarus-Military End User FDP rule (see § 734.9(g) of the EAR). 88 FR 6621 (Feb. 1, 2023). Recent investigations indicate that pieces of Iranian UAVs have been found on the battlefield in Ukraine, in some cases with U.S.-branded ''parts'' and ''components.''

Iran is already subject to comprehensive export restrictions under U.S. law, including pursuant to § 746.7 of the EAR. This rule builds on recent efforts to target Russian activity involving Iran-supplied UAVs by imposing new destination-based controls on Iran. These new controls impose export and reexport license requirements on a subset of EAR99 items, *i.e.,* items not specified on the Commerce Control List (supplement no. 1 to part 774 of the EAR) if destined to Iran, regardless of whether a U.S. person, is involved in the transaction. Such items are identified by HTS–6 Codes in a new supplement for Iran that is being added to the EAR by this rule and require a license for exports and reexports to Iran. This rule also adds a new FDP rule specific to Iran for items in certain categories of the CCL. The new FDP rule also covers certain other items identified in this new supplement to render additional foreign-produced items subject to the EAR. This rule similarly revises the existing Russia/Belarus FDP rule to reference these foreign-produced items to ensure that the items described in this supplement will be similarly controlled to Russia and Belarus when they are also the ''direct product'' of certain U.S.-origin ''technology'' or ''software,'' or are produced by a plant or a 'major component' of a plant which is itself the ''direct product'' of certain U.S.-origin ''technology'' or ''software.'' Together, with a separate rule published in the same issue of the **Federal Register** adding export controls for Russia and Belarus, these changes impose license requirements on additional exports from abroad and reexports to Iran, Russia, and Belarus, with the purpose of substantially degrading the Iranian UAV program and Russia's use of such UAVs against Ukraine. Some of the items added to supplement no. 7 to part 746 already required a license for exports,

reexports, and transfers (in-country) to Russia and Belarus prior to this rule because they were already identified on supplement no. 4 or 5 to part 746. The separate rule published in the same issue of the **Federal Register** is adding the remaining items added by this rule to supplement no. 7 to part 746 to supplement no. 4 or 5 to impose a license requirement for exports and reexports and transfers within Russia and Belarus and to align those other controls with U.S. allies.

II. Overview of New Controls

For the reasons stated above, this rule takes four actions targeting Iranian UAVs.

First, BIS is creating a list of items used in Iranian UAVs. This rule identifies these items using HTS–6 codes in a new supplement no. 7 to part 746 of the EAR.

Second, this rule, in conjunction with a separate rule in the same issue of the **Federal Register** adding export controls for Russia and Belarus, expands the Russia/Belarus FDP rule and adds an Iran FDP rule to ensure that foreign-produced items identified in new supplement no. 7 to part 746 are subject to the EAR when they are destined to Russia, Belarus, or Iran, and that certain foreign-produced items specified in any ECCN in Categories 3 through 5 or 7 on the CCL are subject to the EAR when they are destined for Iran.

Third, this rule expands the license requirements for Iran in § 746.7 of the EAR to include requirements for exports and reexports of items identified in new supplement no. 7 to part 746 (including foreign-made items subject to the EAR under the new Iran FDP rule described in § 734.9(j)).

Fourth, this rule exempts countries identified in supplement no. 3 to part 746 (Countries Excluded from Certain License Requirements, pursuant to § 746.8), from some of the new controls on foreign-produced items described in new supplement no. 7 to part 746.

III. Amendments to the Export Administration Regulations (EAR)

This rule imposes new export controls on Iran in connection with its UAV program in order to degrade Iran's ability to support Russia's military aggression in Ukraine, as described below:

A. Imposition of additional license requirements for Iran covering items used in UAVs that are identified by HTS–6 codes in new supplement no. 7 to part 746.

In part 746, this rule adds a new supplement no. 7 to part 746—Items that Require a License under § 746.7 When Destined for Iran and under § 746.8 When Destined to Russia or Belarus. This rule adds these items because they are useful in Iran's UAV program and Russia has used such UAVs in its further invasion of Ukraine. New supplement no. 7 to part 746 consists of two columns: HTS–6 Code and the HTS Description. This rule adds twelve entries to the new supplement. These HTS–6 codes cover a greater range of items than those described in existing Export Control Classification Numbers (ECCNs) on the CCL, and will consequently capture items that are designated EAR99 (*i.e.,* not specifically described on the CCL).

This rule adds a paragraph (a) to the introductory text of the supplement to explain the origin of the HTS–6 codes and descriptions in this list, *i.e.,* the United States International Trade Commission (USITC's) HTS of the United States (2023). Similar to introductory text set forth in the supplement no. 4 to part 746, this paragraph specifies that the items described in supplement no. 7 to part 746 include any modified or designed ''components,'' ''parts,'' ''accessories,'' and ''attachments'' therefor to the items listed in the supplement regardless of the HTS Code or HTS Description of the ''components,'' ''parts,'' ''accessories,'' and ''attachments,'' except that any ''part'' or minor ''component'' that is a fastener (*e.g.,* screw, bolt, nut, nut plate, stud, insert, clip, rivet, pin), washer, spacer, insulator, grommet, bushing, spring, wire, or solder is excluded. New paragraph (a) also advises exporters with general questions on HTS codes to contact an import specialist at U.S. Customs and Border Protection at the nearest port of export. Exporters with questions on how to classify an item on the CCL or whether a particular ''component,'' ''part,'' accessory,'' or ''attachment'' therefor is ''modified or designed'' for an item listed in supplement no. 7 to part 746 should contact BIS.

This rule also adds a paragraph (b) to the introductory text of the supplement to specify that the items identified in the HTS–6 Code column of supplement no. 7 to part 746 are subject to the license requirements under §§ 746.7(a)(1)(ii) and (iii) and 746.8(a)(2). Paragraph (b) clarifies that the HTS Description column is intended to assist exporters with their Automated Export System (AES) filing responsibilities. BIS clarifies here that a subjective interpretation of the HTS Description does not determine whether an item is subject to the license requirements under §§ 746.7(a)(1)(ii) and (iii) and 746.8(a)(2). If an item is classified under any 10-digit Schedule B, or 8-digit HTS code beginning with the HTS–6 Code indicated in supplement no. 7 to part 746, then it is subject to the license requirements under §§ 746.7(a)(1)(ii) and (iii) and 746.8(a)(2), regardless of how the HTS Description is interpreted. For example, if an exporter, reexporter, or transferor ''knows'' their item is classified under an HTS–6 Code in supplement no. 7 to part 746, but disagrees that their item matches the HTS Description in supplement no. 7 to part 746, in that scenario, then the HTS–6 Code is still controlling for determining the license requirement under §§ 746.7(a)(1)(ii) and (iii) and 746.8(a)(2), even if someone believes their item could potentially meet the description of more than one HTS Description. As noted above, the HTS Description is intended to assist exporters with their AES filing responsibilities, but is not determinative for whether an item is identified under supplement no. 7 to part 746.

The use of the HTS–6 Code to identify the license requirements for these items will ease compliance burdens on exporters and reexporters because the HTS–6 Code is more precise than the HTS Description. The use of the HTS–6 Code for identifying the license requirement will also help to enhance the enforcement of these items because the HTS–6 Code will be easier to identify in the Electronic Export Information (EEI) in AES.

BIS estimates the addition of supplement no. 7 to part 746 will not result in any additional license applications submitted to BIS annually, because the export and reexport to Iran of items newly subject to the EAR will be subject to the regulatory authority of the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) to the extent the export or reexport is prohibited by 31 CFR 560.204 or 560.205 of the Iranian Transactions and Sanctions Regulations, 31 CFR part 560 (ITSR); such exports and reexports therefore will be subject to the licensing jurisdiction of OFAC and eligible for general or specific licenses issued—pursuant to the ITSR for purposes of these destination-based license requirements for Iran. Any export, reexport, or transfer (in-country) subject to a part 744 end-use or end-user license requirements will still require a separate authorization from BIS.

B. Expansion of Russia/Belarus FDP rule and addition of new Iran FDP rule for items identified in new supplement no. 7 to part 746.

This rule makes two changes to § 734.9 Foreign-Direct Product (FDP)

Rules related to the new supplement no. 7 to part 746.

1. *Expansion of Russia/Belarus FDP rule.* This rule revises the existing Russia/Belarus FDP rule in paragraphs (f)(1)(i)(B) and (f)(1)(ii)(B) of § 734.9 to reference new supplement no. 7 to part 746, which expands the product scope of the Russia/Belarus FDP rule to include items identified in new supplement no. 7 to part 746, even if such items are designated EAR99 when they meet the FDP criteria under paragraph (f). The items this rule adds to supplement no. 7 to part 746 includes ''parts'' and ''components'' that are used in UAVs that have been found on the battlefield in Ukraine. As detailed above, Russia has been relying on Iran's UAVs for use in strikes against Ukraine. Many of the ''parts'' and ''components'' found in such UAVs are branded as U.S. or U.S.-origin, including by referring to U.S. manufacturers. However, such branding does not definitively indicate that such items were produced in the United States. Thus, expanding the foreign direct product rule to cover these items will help ensure that such products are not available for shipment to Iran for use in the manufacture of UAVs that are being used by Russia in Ukraine.

This rule also revises paragraph (f)(1)(i)(B) and (f)(1)(ii)(B) of § 734.9 to remove the term ''identified'' and adds in its place the phrase ''specified in any ECCN on the CCL.'' This rule also removes the phrase ''or is not designated EAR99,'' because the phrase is no longer needed with the other revisions made to these two paragraphs. These changes will align the text more closely with the same type of text used in the other FDP rules in § 734.9.

This rule also revises paragraph (f)(2) of § 734.9 to remove the phrase ''not designated EAR99'' and adding in its place the phrase ''specified in any ECCN on the CCL or in supplement no. 6 or 7.'' The revision to add ''specified in any ECCN'' is a clarification and the addition of ''supplement no. 6 or 7'' is a conforming change to reflect the current scope of the Russia/Belarus FDP rule.

BIS estimates these changes to § 734.9(f) will not result in any additional license applications submitted to BIS annually, because even though this rule will add items subject to the EAR, the license review policy of denial generally discourages applicants from submitting licenses.

2. *Addition of new Iran FDP rule.* This rule adds a new foreign direct product rule under paragraph (j) (Iran FDP rule) of § 734.9 of the EAR. This Iran FDP rule is generally modeled after the Russia/Belarus FDP rule in § 734.9(f), but with slight differences to make the Iran FDP rule more narrowly targeted at Iran's UAV activities of concern. The Iran FDP rule establishes jurisdiction over foreign-produced items that are the direct product of U.S.-origin software or technology classified in Categories 3 through 5 and 7 of the CCL, or are produced by a plant or major component of a plant which itself is the ''direct product'' of such software or technology. The product scope is limited to foreign-produced items identified in supplement no. 7 to part 746—including items designated EAR99—and to items classified in any ECCN in Categories 3 through 5 or 7 of the CCL.

As further described below, transactions from or within countries identified in supplement no. 3 to part 746 are exempted from the license requirements for items subject to this new FDP rule.

BIS estimates that the addition of paragraph (j) to § 734.9 will result in an additional five license applications submitted to BIS annually.

C. Expansion of Iran controls under part 746 to impose license requirements for items identified in new supplement no. 7 to part 746 and for foreign-produced items made subject to the EAR under the new Iran FDP rule.

In § 746.7—Iran, this rule revises the fourth sentence of the introductory text to the section to add a reference to new licensing requirement paragraphs in § 746.7. This rule also revises paragraph (a) (License Requirements) for Iran by redesignating the existing text of paragraph (a)(1) (apart from the paragraph (a)(1) heading) as new paragraph (a)(1)(i) (CCL-based license requirements). This rule adds a new license requirement to § 746.7 under new paragraph (a)(1)(ii) (Supplement no. 7 to part 746 of the EAR license requirements) for export or reexport of items identified in new supplement no. 7 to part 746, and adds a new license requirement for the export from abroad or reexport of foreign-produced items subject to the EAR because of the new Iran FDP rule under new paragraph (a)(1)(iii). This rule also adds new paragraph (a)(1)(iv) to exempt certain exports from abroad and reexports from countries identified in supplement no. 3 to part 746 from the license requirement in paragraph (a)(1)(iii) and adds new paragraph (a)(1)(v) to exempt items designated EAR99 and identified in supplement no. 7 to part 746 from consideration as U.S.-origin controlled content when incorporated into a foreign-made item exported or reexported from a country identified in supplement no. 3 to part 746. The exemptions in paragraphs (a)(1)(iv) and (v) are similar in regulatory construction to those that apply to the same countries for purposes of export controls on Russia and Belarus in § 746.8 of the EAR.

As a conforming change, this final rule also revises supplement no. 2 to part 734—Guidelines for *De Minimis* Rules, by revising the third sentence of paragraph (a)(1), which specifies that exporters must use the license requirements in part 746 for identifying U.S.-origin controlled content for *de minimis* purposes (excluding U.S.-origin content that meets the criteria in § 746.8(a)(5)). This final rule revises this parenthetical phrase to specify that U.S.-origin controlled content that meets the criteria in § 746.7(a)(1)(v) is also excluded from *de minimis* calculations when identifying controlled U.S.-origin content.

As currently stated in § 746.7 of the EAR, and as applied to the new license requirements added by this rule, if a transaction is authorized by the U.S. Department of the Treasury, Office of Foreign Assets Control (OFAC), separate authorization from BIS is not required. However, BIS authorization will generally be required for transactions that require a license from BIS under the new Iran license requirements added by this rule but that are not subject to the ITSR, unless an exemption applies (*e.g.,* exports of foreign-produced items subject to the new Iran FDP rule that do not involve U.S. persons and that would not qualify for an OFAC general license if subject to the ITSR).

BIS adds a sentence to the end of new paragraph (a)(1)(iii) under § 746.7 to specify that reexports and exports from abroad of foreign-produced items that would have otherwise met all of the terms and conditions of an OFAC general license if the transactions had been subject to OFAC license requirements are exempt from BIS license requirements in paragraph (a)(1)(iii). This exemption was added because of the potential for the Iran FDP rule to reach certain items that may be used in applications other than to develop or produce Iran UAVs, such as use in medical devices or communications devices authorized for export or reexport to Iran under the ITSR. To the extent that foreign-produced items subject to the EAR under the Iran FDP rule fall outside the scope of OFAC jurisdiction, BIS will treat transactions involving such foreign-produced items consistently with comparable transactions that are eligible for OFAC general licenses if they were conducted by U.S. persons or

involved reexports of items exported from the United States. Questions about whether a transaction is exempt because it is comparable to a transaction that would be authorized if subject to the ITSR should be directed to OFAC.

D. Conforming change to expand the scope of supplement no. 3 to part 746 to reflect allied countries' exclusion from the new Iran FDP rule.

In supplement no. 3 to part 746—Countries Excluded from Certain License Requirements, pursuant to § 746.8, this rule revises the heading of the supplement to add a reference to the Iran export controls section under § 746.7. This rule also adds a new second sentence to the introductory text of the supplement to specify that the countries in the supplement are excluded from certain requirements related to Iran in § 746.7 of the EAR, as described in § 746.7(a)(1)(iv) and (v).

Savings Clause

Shipments of items removed from eligibility for a License Exception or export, reexport, or transfer (in-country) without a license (NLR) as a result of this regulatory action that were en route aboard a carrier to a port of export, reexport, or transfer (in-country), on February 24, 2023, pursuant to actual orders for export, reexport, or transfer (in-country) to or within a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export, reexport, or transfer (in-country) without a license (NLR), provided the export, reexport, or transfer (in-country) is completed no later than on March 27, 2023.

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (codified, as amended, at 50 U.S.C. 4801–4852). ECRA provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule. To the extent it applies to certain activities that are the subject of this rule, the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA) (codified, as amended, at 22 U.S.C. 7201–7211) also serves as authority for this rule.

Rulemaking Requirements

1. This final rule is not a ''significant regulatory action'' because it ''pertain[s]'' to a ''military or foreign affairs function of the United States'' under sec. 3(d)(2) of Executive Order 12866.

2. Notwithstanding any other provision of 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 Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.

This rule involves the following OMB-approved collections of information subject to the PRA:

- 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 29.4 minutes for a manual or electronic submission;
- 0694–0096 ''Five Year Records Retention Period,'' which carries a burden hour estimate of less than 1 minute; and
- 0607–0152 ''Automated Export System (AES) Program,'' which carries a burden hour estimate of 3 minutes per electronic submission.

BIS estimates that these new controls on Iran under the EAR will result in an increase of five license applications submitted annually to BIS. However, the additional burden falls within the existing estimates currently associated with these control numbers. Additional information regarding these collections of information—including all background materials—can be found at *https://www.reginfo.gov/public/do/PRAMain* by using the search function to enter either the title of the collection or the OMB Control Number.

3. This rule does not contain policies with federalism implications as that term is defined in Executive Order 13132.

4. Pursuant to section 1762 of the Export Control Reform Act of 2018 (50 U.S.C. 4821) (ECRA), this action is exempt from the Administrative Procedure Act (APA) (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date. While section 1762 of ECRA provides sufficient authority for such an exemption, this action is also independently exempt from these APA requirements because it involves a military or foreign affairs function of the United States (5. U.S.C. 553(a)(1)).

5. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects

15 CFR Part 734

Administrative practice and procedure, Exports, Inventions and patents, Research, Science and technology.

15 CFR Part 746

Exports, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, parts 734 and 746 of the Export Administration Regulations (15 CFR parts 730 through 774) are amended as follows:

PART 734—SCOPE OF THE EXPORT ADMINISTRATION REGULATIONS

■ 1. The authority citation for 15 CFR part 734 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13637, 78 FR 16129, 3 CFR, 2014 Comp., p. 223; Notice of November 8, 2022, 87 FR 68015 (November 10, 2022).

■ 2. Section 734.9 is amended by revising paragraphs (f)(1)(i)(B), (f)(1)(ii)(B), and (f)(2) and adding paragraph (j) to read as follows:

§ 734.9 Foreign-Direct Product (FDP) Rules.

* * * * *

(f) * * *

(1) * * *

(i) * * *

(B) The foreign-produced item is specified in any ECCN on the CCL or in supplement no. 6 or 7 to part 746 of the EAR; or

(ii) * * *

(B) The foreign-produced item is specified in any ECCN on the CCL or in supplement no. 6 or 7 to part 746 of the EAR.

(2) *Destination scope of the Russia/Belarus FDP rule.* A foreign-produced item meets the destination scope of this paragraph (f)(2) if there is ''knowledge'' that the foreign-produced item is destined to Russia or Belarus or will be incorporated into or used in the ''production'' or ''development'' of any ''part,'' ''component,'' or ''equipment'' specified in any ECCN on the CCL or in supplement no. 6 or 7 to part 746 of the EAR and produced in or destined to Russia or Belarus.

* * * * *

(j) *Iran FDP rule.* A foreign-produced item is subject to the EAR if it meets both the product scope in paragraph

(j)(1) of this section and the destination scope in paragraph (j)(2) of this section. See § 746.7 of the EAR for license requirements, license review policy, and license exceptions applicable to foreign-produced items that are subject to the EAR pursuant to this paragraph (j).

(1) *Product scope of Iran FDP rule.* The product scope applies if a foreign-produced item meets the conditions of either paragraph (j)(1)(i) or (ii) of this section.

(i) ''*Direct product*'' *of* ''*technology*'' *or* ''*software.*'' A foreign-produced item meets the product scope of this paragraph (j)(1)(i) if the foreign-produced item meets both of the following conditions:

(A) The foreign-produced item is the ''direct product'' of U.S.-origin ''technology'' or ''software'' subject to the EAR that is specified in any ECCN in product groups D or E in Categories 3 through 5 or 7 of the CCL; and

(B) The foreign-produced item is identified in supplement no. 7 to part 746 of the EAR or is specified in any ECCN on the CCL in Categories 3 through 5 or 7 of the CCL; or

(ii) *Product of a complete plant or 'major component' of a plant that is a* ''*direct product.*'' A foreign-produced item meets the product scope of this paragraph (j)(1)(ii) if it meets both of the following conditions:

(A) The foreign-produced item is produced by any plant or 'major component' of a plant that is located outside the United States, when the plant or 'major component' of a plant, whether made in the United States or a foreign country, itself is a ''direct product'' of U.S.-origin ''technology'' or ''software'' subject to the EAR that is specified in any ECCN in product groups D or E in Categories 3 through 5 or 7 of the CCL; and

(B) The foreign-produced item is identified in supplement no. 7 to part 746 of the EAR or is specified in any ECCN on the CCL in Categories 3 through 5 or 7 of the CCL.

(2) *Destination scope of the Iran FDP rule.* A foreign-produced item meets the destination scope of this paragraph (j)(2) if there is ''knowledge'' that the foreign-produced item is destined to Iran or will be incorporated into or used in the ''production'' or ''development'' of any ''part,'' ''component,'' or ''equipment,'' including any modified or designed ''components,'' ''parts,'' ''accessories,'' and ''attachments'' therefor, identified in supplement no. 7 to part 746 of the EAR or is specified in any ECCN on the CCL in Categories 3 through 5 or 7 of the CCL that is located in or destined to Iran.

■ 3. Supplement no. 2 to part 734 is amended by revising the third sentence of paragraph (a)(1) to read as follows:

Supplement No. 2 to Part 734—Guidelines for De Minimis Rules

(a) * * *

(1) * * * For purposes of identifying U.S.-origin controlled content, you should consult the Commerce Country Chart in supplement no. 1 to part 738 of the EAR and controls described in part 746 of the EAR (excluding U.S.-origin content that meets the criteria in §§ 746.7(a)(1)(v) and 746.8(a)(5)). * * * * * * * * * *

PART 746—EMBARGOES AND OTHER SPECIAL CONTROLS

■ 4. The authority citation for 15 CFR part 746 is revised to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 287c; Sec 1503, Pub. L. 108–11, 117 Stat. 559; 22 U.S.C. 2151 note; 22 U.S.C. 6004; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p 168; Presidential Determination 2003–23, 68 FR 26459, 3 CFR, 2004 Comp., p. 320; Presidential Determination 2007–7, 72 FR 1899, 3 CFR, 2006 Comp., p. 325; Notice of May 9, 2022, 87 FR 28749 (May 10, 2022).

■ 5. Section 746.7 is amended by revising the fourth sentence of the introductory text and paragraph (a)(1) to read as follows:

§ 746.7 Iran.

* * * In addition, BIS maintains licensing requirements on exports and reexports to or from Iran under the EAR as described in paragraphs (a)(1)(i) through (iii) of this section or elsewhere in the EAR (*see, e.g.,* § 742.8).

(a) * * *

(1) *EAR license requirements*—(i) *CCL-based license requirements.* A license is required under the EAR to export or reexport to Iran any item on the CCL containing a CB Column 1, CB Column 2, CB Column 3, NP Column 1, NP Column 2, NS Column 1, NS Column 2, MT Column 1, RS Column 1, RS Column 2, CC Column 1, CC Column 2, CC Column 3, AT Column 1 or AT Column 2 in the Country Chart Column of the License Requirements section of an ECCN or classified under ECCNs 0A503, 0A980, 0A982, 0A983, 0E982, 1C355, 1C395, 1C980, 1C982, 1C983, 1C984, 2A994, 2D994, 2E994, 5A001.f.1, 5A980, 5D001 (for 5A001.f.1or for 5E001.a (for 5A001.f.1, or for 5D001.a (for 5A001.f.1)), 5D980, 5E001.a (for 5A001.f.1, or for 5D001.a (for 5A001.f.1)) or 5E980.

(ii) *Supplement no. 7 to part 746 of the EAR license requirements.* A license is required under the EAR to export or reexport to Iran any item identified in supplement no. 7 to part 746 of the EAR when such item is subject to the EAR for any reason other than § 734.9(j) of the EAR.

(iii) *Foreign-produced items subject to the EAR under § 734.9(j) of the EAR (Iran FDP rule).* Except as described in paragraph (a)(1)(iv) of this section, a license is required to reexport or export from abroad to Iran any foreign-produced item subject to the EAR under the Iran FDP rule that is located in or destined to Iran. A Department of Commerce license is not required for transactions described in this paragraph (a)(1)(iii) that would have otherwise met all of the terms and conditions of an OFAC general license if the transactions had been subject to OFAC jurisdiction.

(iv) *Exclusion from license requirements under paragraph (a)(1)(iii) of this section.* Exports from abroad or reexports from the countries described in supplement no. 3 to this part from the countries described in supplement no. 3 are not subject to the license requirements described in paragraph (a)(1)(iii) of this section, unless a limit to the exclusion is described in the ''Scope'' column in supplement no. 3.

(v) *Exclusion from scope of U.S.-origin controlled content under paragraph (a)(1) of this section.* For purposes of determining U.S.-origin controlled content under supplement no. 2 to part 734 of the EAR when making a *de minimis* calculation for reexports and exports from a country described in supplement no. 3 to this part to Iran, the license requirements in paragraph (a)(1)(ii) of this section are not used to determine controlled U.S.-origin content in a foreign-made item, provided the U.S.-origin content is identified in supplement no. 7 to this part and is designated EAR99 and is not otherwise excluded from the applicable ''Scope'' column in supplement no. 3 to this part.

* * * * *

■ 6. Supplement no. 3 to part 746 is amended by:

■ a. Revising the heading of the supplement; and

■ b. Adding a sentence after the first sentence of the introductory text.

The revision and addition read as follows:

Supplement No. 3 to Part 746—Countries Excluded From Certain License Requirements of §§ 746.7 and 746.8

* * * In addition, these countries are excluded from the license requirements related to Iran in § 746.7, as described in § 746.7(a)(1)(iv) and (v). * * *

* * * * *

■ 7. Supplement no. 7 to part 746 is added to read as follows:

Supplement No. 7 to Part 746—Items That Require a License Under § 746.7 When Destined to Iran and Under § 746.8 When Destined to Russia or Belarus

The items identified in this supplement are a subset of items that are identified in specific Export Control Classification Numbers or designated as EAR99 under the Commerce Control List (CCL) in supplement no. 1 to part 774 of the EAR. Also see paragraph (f) of § 734.9 of the EAR for the Russia/Belarus Foreign Direct Product (FDP) rule and paragraph (j) for the Iran FDP rule. Both of these FDP rules include the items identified in this supplement as part of the criteria for what foreign made items are subject to the EAR.

(a) The source for the Harmonized Tariff Schedule (HTS)-6 codes and descriptions in this list is the United States International Trade Commission (USITC's) Harmonized Tariff Schedule of the United States (2023). The items described in this supplement include any modified or designed ''components,'' ''parts,'' ''accessories,'' and ''attachments'' therefor regardless of the HTS Code or HTS Description of the ''components,'' ''parts,'' ''accessories,'' and ''attachments,'' apart from any ''part'' or minor ''component'' that is a fastener (*e.g.,* screw, bolt, nut, nut plate, stud, insert, clip, rivet, pin), washer, spacer, insulator, grommet, bushing, spring, wire, or solder. This supplement includes two columns consisting of the HTS Code and HTS Description to assist exporters, reexporters, and transferors in identifying the products in this supplement. For information on HTS codes in general, you may contact a local import specialist at U.S. Customs and Border Protection at the nearest port.

(b) The items classified under the provisions identified in the HTS–6 Code column of this supplement are subject to the license requirements under §§ 746.7(a)(1)(ii) and (iii) and 746.8(a)(2). The other column—HTS Description—is intended to assist exporters with their AES filing responsibilities. The license requirements extend to HTS Codes at the 8 and 10 digit level when those HTS–8 and HTS–10 codes begin with the HTS–6 Codes as the first 6 numbers of those longer HS Codes.

HTS–6 codes	HTS description
840710	Aircraft spark-ignition reciprocating or rotary internal combustion piston engines.
840890	Compression-ignition internal combustion piston engines (diesel or semi-diesel engines), NESOI.
840910	Parts for spark-ignition or rotary internal combustion piston engines or compression-ignition internal combustion piston engines, for aircraft.
847150	Processing units other than those of subheading 8471.41 or 8471.49, whether or not containing in the same housing one or two of the following types of unit: storage units, input units, output units.
851762	Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus.
852691	Radio navigational aid apparatus.
853221	Tantalum capacitors.
853224	Fixed capacitors NESOI, multilayer ceramic dielectric.
854231	Processors and controllers, whether or not combined with memories, converters, logic circuits, amplifiers, clock and timing circuits, or other circuits.
854232	Memories.
854233	Amplifiers.
854239	Other electronic integrated circuits.

Thea D. Rozman Kendler,

Assistant Secretary for Export Administration.

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BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 230221–0048]

RIN 0694–AJ11

Additions of Entities to the Entity List; Revisions of Entities on the Entity List

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce is amending the Export Administration Regulations (EAR) by adding seventy-six entities to the Entity List. These entities have been determined by the U.S. Government to be acting contrary to the national security or foreign policy interests of the United States and are listed on the Entity List under the destination of Russia. This rule also revises four existing entries on the Entity List under the destination of Russia.

DATES: This rule is effective February 24, 2023.

FOR FURTHER INFORMATION CONTACT: Chair, End-User Review Committee, Office of the Assistant Secretary for Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–5991, Email: *ERC@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Entity List (supplement no. 4 to part 744 of the EAR (15 CFR parts 730–774)) identifies entities for which there is reasonable cause to believe, based on specific and articulable facts, that the entities have been involved, are involved, or pose a significant risk of being or becoming involved in activities contrary to the national security or foreign policy interests of the United States, pursuant to § 744.11(b). The EAR impose additional license requirements on, and limit the availability of, most license exceptions for exports, reexports, and transfers (in-country) when a listed entity is a party to the transaction. The license review policy for each listed entity is identified in the ''License Review Policy'' column on the Entity List, and the impact on the availability of license exceptions is described in the relevant **Federal Register** document that added the entity to the Entity List. The Bureau of Industry and Security (BIS) places entities on the Entity List pursuant to

part 744 (Control Policy: End-User and End-Use Based) and part 746 (Embargoes and Other Special Controls) of the EAR.

The End-User Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote and makes all decisions to remove or modify an entry by unanimous vote.

Additions to the Entity List

The ERC determined to add 3DiVi, AO Papilon, IT-Papillon OOO, OOO Adis, and Papilon Limited Liability Company to the Entity List under the destination of Russia. These entities are added for their involvement in activities that are contrary to the foreign policy interests of the United States under § 744.11, including but not limited to providing support for Russia's filtration operations in occupied areas of Ukraine, which include the use of biometric technology in suppressing Ukrainian resistance and enforcing loyalty among the Ukrainian population in occupied areas. For these five entities, BIS imposes a license requirement for all items subject to the EAR and will review license applications under a presumption of denial.

The ERC determined to add Joint Stock Company Elektron Optronik, Joint Stock Company Zelenograd Nanotechnology Center, Public Joint Stock Company Kremny, Technopark Skolkovo Limited Liability Company, and VisionLabs Limited Liability Company to the Entity List under the destination of Russia for acquiring and attempting to acquire U.S.-origin items in support of activities contrary to U.S. national security and foreign policy interests. This activity is contrary to U.S. national security and foreign policy interests under § 744.11. For these five entities, BIS imposes a license requirement for all items subject to the EAR and will review license applications under a policy of denial.

The End-User Review Committee determined to add the following sixty-six Russian entities to the Entity List for acquiring and attempting to acquire U.S.-origin items in support of Russia's military: Advanced Research Foundation; Federal Service for Military-Technical Cooperation; Federal State Budgetary Scientific Institution Research and Production Complex Technology Center; Federal State Institution Federal Scientific Center Scientific Research Institute for System Analysis of the Russian Academy of Sciences; Joint Stock Company All Russian Research Institute of Radio Engineering; Joint Stock Company All-Russian Research Institute Signal; Joint Stock Company Center of Research and Technology Services Dinamika; Joint Stock Company Concern Avtomatika; Joint Stock Company Design Center Soyuz; Joint Stock Company Design Technology Center Elektronika; Joint Stock Company Institute for Scientific Research Microelectronic Equipment Progress; Joint Stock Company Kizlyar Electromechanical Plant; Joint Stock Company Machine-Building Engineering Office Fakel Named After Akademika P.D. Grushina; Joint Stock Company North Western Regional Center of Almaz Antey Concern Obukhovsky Plant; Joint Stock Company Penza Electrotechnical Research Institute; Joint Stock Company Production Association Sever; Joint Stock Company Production Association Ural Optical and Mechanical Plant Named After E.S. Yalamov; Joint Stock Company Ramenskoye Design Company; Joint Stock Company Research and Production Association Named After S.A. Lavochkina; Joint Stock Company Research and Production Association of Measuring Equipment; Joint Stock Company Research and Production Enterprise Radar MMS; Joint Stock Company Research and Production Enterprise Sapfir; Joint Stock Company Research Center ELINS; Joint Stock Company RT-Tekhpriemka; Joint Stock Company Russian Research Institute Electronstandart; Joint Stock Company Ryazan Plant of Metal Ceramic Instruments; Joint Stock Company Scientific Production Enterprise Digital Solutions; Joint Stock Company Scientific Production Enterprise Kontakt; Joint Stock Company Scientific Production Enterprise Topaz; Joint Stock Company Scientific Research Institute Giricond; Joint Stock Company Scientific Research Institute of Computer Engineering NII SVT; Joint Stock Company Scientific Research Institute of Electrical Carbon Products; Joint Stock Company Scientific Research Institute of Electronic and Mechanical Devices; Joint Stock Company Scientific Research Institute of Electronic Engineering Materials; Joint Stock Company Scientific Research Institute of Gas Discharge Devices Plasma; Joint Stock Company Scientific Research Institute of Industrial Television Rastr; Joint Stock Company Scientific Research Institute of Precision Mechanical Engineering; Joint Stock Company Shipbuilding Corporation Ak Bars; Joint Stock Company Special Design Bureau of Computer Engineering; Joint Stock Company Special Design Bureau of Control Means; Joint Stock Company Special Design Bureau Turbina; Joint Stock Company Special Relay System Design and Engineering Bureau; Joint Stock Company State Missile Center Named After Akademika V.P. Makeyeva; Joint Stock Company State Scientific Research Institute Kristall; Joint Stock Company Svetlana Semiconductors; Joint Stock Company Tekhnodinamika; Joint Stock Company the Institute of Electronic Control Computers Named After I.S. Bruk; Joint Stock Company Vologda Optical and Mechanical Plant; Joint Stock Company Voronezh Semiconductor Devices Factory Assembly; Joint Stock Company Vyatka Machine-Building Enterprise Avitek; KAMAZ Publicly Traded Company; Keldysh Institute of Applied Mathematics of the Russian Academy of Sciences; Limited Liability Company Research and Production Association Radiovolna; Limited Liability Company RSB-Group; Mitishinskiy Scientific Research Institute of Radio Measuring Instruments; Open Joint Stock Company Ilyushin Aviation Complex; Open Joint Stock Company Khabarovsk Radio Engineering Plant; Open Joint Stock Company Mariyskiy Machine-Building Plant; Open Joint Stock Company Scientific and Production Enterprise Pulsar; Public Joint Stock Company Megafon; Public Joint Stock Company Tutaev Motor Plant; Public Joint Stock Company Vympel Interstate Corporation; RT-Inform Limited Liability Company; Skolkovo Foundation; Skolkovo Institute of Science and Technology; *and* State Flight Testing Center Named After V.P. Chkalov). These entities' acquisition and attempts to acquire U.S.-origin items in support of Russia's military are contrary to U.S. national security and foreign policy interests under § 744.11 and these entities qualify as military end users under § 744.21 of the EAR. These entities are receiving a footnote 3 designation because the ERC has determined that they are Russian or Belarusian 'military end users' pursuant to § 744.21. A footnote 3 designation subjects these entities to the Russia/Belarus-Military End User Foreign Direct Product (FDP) rule, detailed in § 734.9(g). Five of the entities (Federal State Budgetary Scientific Institution Research and Production Complex Technology Center; Joint Stock Company Research and Production Association Named After S.A.

Lavochkina; Joint Stock Company Research and Production Association of Measuring Equipment; Joint Stock Company Scientific Research Institute of Industrial Television Rastr; and Joint Stock Company State Missile Center Named After Akademika V.P. Makeveva (GRTS Makevev)) have a license requirement for all items subject to the EAR. For these five entities, License Exception GOV is available for use pursuant to § 740.11(b)(2) and (e). The license review policy for these five entities is a policy of denial for all items subject to the EAR other than food and medicine designated as EAR99 and for items for U.S. Government-supported use in the International Space Station (ISS), which will be reviewed on a case-by-case basis. The remaining sixty-one entities are added with a license requirement for all items subject to the EAR and a license review policy of denial.

For the reasons described above, this final rule adds the following seventy-six entities to the Entity List and includes, where appropriate, aliases:

Russia

- 3DiVi OOO,
- Advanced Research Foundation,
- AO Papilon,
- Federal Service for Military-Technical Cooperation;
- Federal State Budgetary Scientific Institution Research and Production Complex Technology Center;
- Federal State Institution Federal Scientific Center Scientific Research Institute for System Analysis of the Russian Academy of Sciences;
- IT-Papillon OOO,
- Joint Stock Company All Russian Research Institute of Radio Engineering;
- Joint Stock Company All-Russian Research Institute Signal;
- Joint Stock Company Center of Research and Technology Services Dinamika;
- Joint Stock Company Concern Avtomatika;
- Joint Stock Company Design Center Soyuz;
- Joint Stock Company Design Technology Center Elektronika;
- Joint Stock Company Elektron Optronik,
- Joint Stock Company Institute for Scientific Research Microelectronic Equipment Progress;
- Joint Stock Company Kizlyar Electromechanical Plant;
- Joint Stock Company Machine-Building Engineering Office Fakel Named After Akademika P.D. Grushina;
- Joint Stock Company North Western Regional Center of Almaz Antey Concern Obukhovsky Plant;
- Joint Stock Company Penza Electrotechnical Research Institute;
- Joint Stock Company Production Association Sever;
- Joint Stock Company Production Association Ural Optical and Mechanical Plant Named After E.S. Yalamov;
- Joint Stock Company Ramenskoye Design Company;
- Joint Stock Company Research and Production Association Named After S.A. Lavochkina;
- Joint Stock Company Research and Production Association of Measuring Equipment;
- Joint Stock Company Research and Production Enterprise Radar MMS;
- Joint Stock Company Research and Production Enterprise Sapfir;
- Joint Stock Company Research Center ELINS;
- Joint Stock Company RT-Tekhpriemka;
- Joint Stock Company Russian Research Institute Electronstandart;
- Joint Stock Company Ryazan Plant of Metal Ceramic Instruments;
- Joint Stock Company Scientific Production Enterprise Digital Solutions;
- Joint Stock Company Scientific Production Enterprise Kontakt;
- Joint Stock Company Scientific Production Enterprise Topaz;
- Joint Stock Company Scientific Research Institute Giricond;
- Joint Stock Company Scientific Research Institute of Computer Engineering NII SVT;
- Joint Stock Company Scientific Research Institute of Electrical Carbon Products;
- Joint Stock Company Scientific Research Institute of Electronic and Mechanical Devices;
- Joint Stock Company Scientific Research Institute of Electronic Engineering Materials;
- Joint Stock Company Scientific Research Institute of Gas Discharge Devices Plasma;
- Joint Stock Company Scientific Research Institute of Industrial Television Rastr;
- Joint Stock Company Scientific Research Institute of Precision Mechanical Engineering;
- Joint Stock Company Shipbuilding Corporation Ak Bars;
- Joint Stock Company Special Design Bureau of Computer Engineering;
- Joint Stock Company Special Design Bureau of Control Means;
- Joint Stock Company Special Design Bureau Turbina;
- Joint Stock Company Special Relay System Design and Engineering Bureau;
- Joint Stock Company State Missile Center Named After Akademika V.P. Makeyeva;
- Joint Stock Company State Scientific Research Institute Kristall;
- Joint Stock Company Svetlana Semiconductors;
- Joint Stock Company Tekhnodinamika;
- Joint Stock Company the Institute of Electronic Control Computers Named After I.S. Bruk;
- Joint Stock Company Vologda Optical and Mechanical Plant;
- Joint Stock Company Voronezh Semiconductor Devices Factory Assembly;
- Joint Stock Company Vyatka Machine-Building Enterprise Avitek;
- Joint Stock Company Zelenograd Nanotechnology Center,
- KAMAZ Publicly Traded Company;
- Keldysh Institute of Applied Mathematics of the Russian Academy of Sciences;
- Limited Liability Company Research and Production Association Radiovolna;
- Limited Liability Company RSB-Group;
- Mitishinskiy Scientific Research Institute of Radio Measuring Instruments;
- OOO Adis,
- Open Joint Stock Company Ilyushin Aviation Complex;
- Open Joint Stock Company Khabarovsk Radio Engineering Plant;
- Open Joint Stock Company Mariyskiy Machine-Building Plant;
- Open Joint Stock Company Scientific and Production Enterprise Pulsar;
- Papilon Systems Limited Liability Company,
- Public Joint Stock Company Kremny,
- Public Joint Stock Company Megafon;
- Public Joint Stock Company Tutaev Motor Plant;
- Public Joint Stock Company Vympel Interstate Corporation;
- RT-Inform Limited Liability Company;
- Skolkovo Foundation;
- Skolkovo Institute of Science and Technology;
- State Flight Testing Center Named After V.P. Chkalov;
- Technopark Skolkovo Limited Liability Company, *and*
- VisionLabs Limited Liability Company.

Revisions to the Entity List

The ERC determined to modify four entities (Concern Radio-Electronic Technologies, Public Joint Stock

Company Moscow Institute of Electro Mechanics and Automation; Meteor Plant; Moscow Institute of Thermal Technology; and Obninsk Research and Production Enterprise) on the Entity List under the destination of Russia by revising the aliases, addresses and license requirement for these entries. Four additional aliases are being added to the entry for Concern Radio-Electronic Technologies, Public Joint Stock Company Moscow Institute of Electro Mechanics and Automation; two aliases are being added to the entry for Meteor Plant JSC, three additional aliases are being added to the entry for Moscow Institute of Thermal Technology, and two aliases are being added to the entry for Obninsk Research and Production Enterprise (ORPE). The addresses for the four entities are also being revised for clarification purposes only. The license requirement for all four entities is being revised to read ''Policy of denial'' as these entities have acquired and attempted to acquire U.S.-origin items in support of Russia's military.

Savings Clause

For the changes being made in this final rule, shipments of items removed from eligibility for a License Exception or export, reexport, or transfer (in-country) without a license (NLR) as a result of this regulatory action that were en route aboard a carrier to a port of export, reexport, or transfer (in-country), on February 24, 2023, pursuant to actual orders for export, reexport, or transfer (in-country) to or within a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export, reexport, or transfer (in-country) without a license (NLR).

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (50 U.S.C. 4801–4852). ECRA provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule.

Rulemaking Requirements

1. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to or be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications and commodity classifications, and carries a burden estimate of 29.4 minutes for a manual or electronic submission for a total burden estimate of 33,133 hours. Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule.

3. This rule does not contain policies with federalism implications as that term is defined in Executive Order 13132.

4. Pursuant to section 1762 of the Export Control Reform Act of 2018, this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date.

5. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects

15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 744—CONTROL POLICY: END-USER AND END-USE BASED

■ 1. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of September 19, 2022, 87 FR 57569 (September 21, 2022); Notice of November 8, 2022, 87 FR 68015 (November 10, 2022).

■ 2. Supplement No. 4 to part 744 is amended under RUSSIA by:

■ a. Adding in alphabetical order, entries for ''3DiVi OOO;'' ''Advanced Research Foundation;'' ''AO Papilon;'';

■ b. Revising the entry for ''Concern Radio-Electronic Technologies'';

■ c. Adding in alphabetical order, entries for ''Federal Service for Military-Technical Cooperation;'' ''Federal State Budgetary Scientific Institution Research and Production Complex Technology Center;'' ''Federal State Institution Federal Scientific Center Scientific Research Institute for System Analysis of the Russian Academy of Sciences;'' ''IT-Papillon OOO;'' ''Joint Stock Company All Russian Research Institute of Radio Engineering;'' ''Joint Stock Company All-Russian Research Institute Signal;'' ''Joint Stock Company Center of Research and Technology Services Dinamika;'' ''Joint Stock Company Concern Avtomatika;'' ''Joint Stock Company Design Center Soyuz;'' ''Joint Stock Company Design Technology Center Elektronika;'' ''Joint Stock Company Elektron Optronik;'' ''Joint Stock Company Institute for Scientific Research Microelectronic Equipment Progress;'' ''Joint Stock Company Kizlyar Electromechanical Plant;'' ''Joint Stock Company Machine-Building Engineering Office Fakel Named After Akademika P.D. Grushina''; ''Joint Stock Company North Western Regional Center of Almaz Antey Concern Obukhovsky Plant;'' Joint Stock Company Penza Electrotechnical Research Institute;'' ''Joint Stock Company Production Association Sever;'' ''Joint Stock Company Production Association Ural Optical and Mechanical Plant Named After E.S. Yalamov;'' Joint Stock Company Ramenskoye Design Company;'' ''Joint Stock Company Research and Production Association Named After S.A. Lavochkina; ''Joint Stock Company Research and Production Association of Measuring Equipment;'' ''Joint Stock Company Research and Production Enterprise Radar MMS;'' ''Joint Stock Company Research and Production Enterprise Sapfir;'' ''Joint Stock Company Research Center ELINS;'' ''Joint Stock Company RT-Tekhpriemka;'' ''Joint Stock Company Russian Research Institute Electronstandart;'' ''Joint Stock Company Ryazan Plant of Metal Ceramic Instruments;'' ''Joint Stock Company Scientific Production Enterprise Digital Solutions;'' ''Joint Stock Company Scientific Production Enterprise Kontakt;'' ''Joint Stock

Company Scientific Production Enterprise Topaz;'' ''Joint Stock Company Scientific Research Institute Giricond;'' ''Joint Stock Company Scientific Research Institute of Computer Engineering NII SVT;'' ''Joint Stock Company Scientific Research Institute of Electrical Carbon Products;'' ''Joint Stock Company Scientific Research Institute of Electronic and Mechanical Devices;'' ''Joint Stock Company Scientific Research Institute of Electronic Engineering Materials;'' ''Joint Stock Company Scientific Research Institute of Gas Discharge Devices Plasma;'' ''Joint Stock Company Scientific Research Institute of Industrial Television Rastr;'' ''Joint Stock Company Scientific Research Institute of Precision Mechanical Engineering;'' ''Joint Stock Company Shipbuilding Corporation Ak Bars;'' ''Joint Stock Company Special Design Bureau of Computer Engineering;'' ''Joint Stock Company Special Design Bureau of Control Means;'' Joint Stock Company Special Design Bureau Turbina;'' ''Joint Stock Company Special Relay System Design and Engineering Bureau;'' ''Joint Stock Company State Missile Center Named After Akademika V.P. Makeyeva;'' ''Joint Stock Company State Scientific Research Institute Kristall;'' ''Joint Stock Company Svetlana Semiconductors;'' ''Joint Stock Company Tekhnodinamika;'' ''Joint Stock Company the Institute of Electronic Control Computers Named After I.S. Bruk;'' ''Joint Stock Company Vologda Optical and Mechanical Plant;'' ''Joint Stock Company Voronezh Semiconductor Devices Factory Assembly;'' ''Joint Stock Company Vyatka Machine-Building Enterprise Avitek;'' ''Joint Stock Company Zelenograd Nanotechnology Center'';

''KAMAZ Publicly Traded Company;'' ''Keldysh Institute of Applied Mathematics of the Russian Academy of Sciences;'' ''Limited Liability Company Research and Production Association Radiovolna;'' *and* ''Limited Liability Company RSB-Group'';

■ d. Revising the entry for ''Meteor Plant JSC'';

■ e. Adding in alphabetical order, an entry for ''Mitishinskiy Scientific Research Institute of Radio Measuring Instruments'';

■ f. Revising the entries for ''Moscow Institute of Thermal Technology'' *and* ''Obninsk Research and Production Enterprise (ORPE)''; *and*

■ g. Adding in alphabetical order, entries for ''OOO Adis;'' ''Open Joint Stock Company Ilyushin Aviation Complex;'' ''Open Joint Stock Company Khabarovsk Radio Engineering Plant;'' ''Open Joint Stock Company Mariyskiy Machine-Building Plant;'' ''Open Joint Stock Company Scientific and Production Enterprise Pulsar;'' ''Papilon Limited Liability Company;'' ''Public Joint Stock Company Kremny'';

''Public Joint Stock Company Megafon;'' ''Public Joint Stock Company Tutaev Motor Plant;'' ''Public Joint Stock Company Vympel Interstate Corporation;'' ''RT-Inform Limited Liability Company;'' ''Skolkovo Foundation;'' ''Skolkovo Institute of Science and Technology;'' ''State Flight Testing Center Named After V.P. Chkalov;'' ''Technopark Skolkovo Limited Liability Company;'' *and* ''VisionLabs Limited Liability Company.''

The additions and revisions read as follows:

Supplement No. 4 to Part 744—Entity List

* * * * *

Country	Entity	License requirement	License review policy	**Federal Register** citation
*	* *	*	* *	*
RUSSIA	3DiVi OOO, a.k.a., the following one alias: —Tridivi LLC. 64–d Lenin Ave., 6th floor, Chelyabinsk, 454080, Russia; *and* 48 Prospekt Makeeva, Miass, Chelyabinskaya Oblast, 4563200, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
	* *	*	* *	*
	Advanced Research Foundation, a.k.a., the following two aliases: —Fond Perspektivnykh Issledovaniy; *and* —FPI. 22 Berezhkovskaya Embankment, Building 3, Moscow, 121059, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
	* *	*	* *	*
	AO Papilon, a.k.a., the following one alias: —Aktsionernoe Obshchestvo Papilon. 48 Prospekt Makeeva, Miass, Chelyabinskaya Oblast, 4563200, Russia; *and* 63 Novocheremushkinskaya Str., Bld. 1, Moscow, 117418, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
	* *	*	* *	*
	Concern Radio-Electronic Technologies, Public Joint Stock Company Moscow Institute of Electro Mechanics and Automation, a.k.a., the following five aliases: —Joint Stock Company Moscow Institute of Electromechanics and Automatics; —MIEA JSC; —Moscow Institute of Electromechanics and Automatics PJSC; —Moskovskiy Institute Elektromekhaniki I Avtomatiki; *and* —PAO MIEA. 5 Aviation Lane, Moscow, 125167, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	87 FR 34157, 6/6/22. 88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
	* *	*	* *	*
	Federal Service for Military-Technical Cooperation, a.k.a., the following four aliases: —Federalnaya Sluzhba po Voenno-Tekhnicheskomu Sotrudnishestvu; —FSMTC;	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].

Country	Entity	License requirement	License review policy	**Federal Register** citation
	—FSVTS; *and* —FSVTS Rossii. 18/1 Ovchinnikovskaya Embankment, Moscow, 115035, Russia.			
	* *	*	* *	*
	Federal State Budgetary Scientific Institution Research and Production Complex Technology Center, a.k.a., the following five aliases: —Federalnoe Gosudarstvennoe Byudzhetnoe Nauchnoe Uchrezhdenie Nauchno-Proizvodstvenny Kompleks Tekhnologicheskiy Tsentr —NPK Technological Center; —NPKTS; —Scientific Manufacturing Complex Technological Center; *and* —SMC Technological Center. 1 Shokina Square, Building 7, Office 7237, Zelenograd, Moscow, 124498, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR) This license requirement may be overcome by License Exception GOV under § 740.11(b)(2) and (e).	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99 and for items for U.S. Government supported use in the International Space Station (ISS), which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
	Federal State Institution Federal Scientific Center Scientific Research Institute for System Analysis of the Russian Academy of Sciences, a.k.a., the following four aliases: —Federalnoe Gosudarstvennoe Uchrezhdenie Federalnyy Nauchnyy Tsentr Nauchno-Issledovatelskiy Institut Sistemnykh Issledovaniy Rossiyskoy Akademii Nauk; —FGU FNTS NIISI RAN; —FSI FSC SRISA RAS; *and* —Scientific Research Institute of System Analysis, Russian Academy of Sciences. 36 Nakhimovskiy Avenue, Building 1, Moscow, 117218, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
	* *	*	* *	*
	IT-Papillon OOO, a.k.a., the following one alias: —Papillon Information Technologies LLC. 48 Prospekt Makeeva, Miass, Chelyabinskaya Oblast, 4563200, 4563200, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
	* *	*	* *	*
	Joint Stock Company All Russian Research Institute of Radio Engineering, a.k.a., the following three aliases: —AO Vserossiyskiy Nauchno-Issledovatelskiy Institut Radiotekhniki; —JSC Vserossiyskiy Institute for Scientific Research Radiotekhniki; *and* —VNIIRT. 22 Bolshaya Pochtovaya Street, Building 8, Moscow, 105082, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
	Joint Stock Company All-Russian Research Institute Signal, a.k.a., the following four aliases: —AO Vserossiyskiy Nauchno-Issledovatelskiy Institut Signal; —AO VNII Signal; —JSC VNII Signal; *and* —OJSC All-Russian Research Institute Signal. 57 Krupskoy Street, Kovrov, Vladimir Oblast, 601903, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
	* *	*	* *	*
	Joint Stock Company Center of Research and Technology Services Dinamika, a.k.a., the following three aliases: —AO TSNTU Dinamika; —AO Tsentr Nauchno-Tekhnicheskikh Uslug Dinamika; *and* —JSC Center for Scientific and Technical Services Dinamika. 9/18 Shkolnaya Street, Zhukovskiy, Moscow Oblast, 140184, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
	* *	*	* *	*
	Joint Stock Company Concern Avtomatika, a.k.a., the following three aliases: —AO Kontsern Avtomatika; —JSC Concern Automation; *and* —OJSC Kontsern Avtomatika.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].

Country	Entity	License requirement	License review policy	Federal Register citation
	25 Botanicheskaya Street, Premises 1, Moscow, 127106, Russia.			
	* *	*	* *	*
	Joint Stock Company Design Center Soyuz, a.k.a., the following one alias: —AO Dizain Tsentr Soyuz. 14 Konstruktora Lukina Street, Building 1, Zelenograd, Moscow, 124482, Russia; *and* K. 100, Kom. 205, Zelenograd, Moscow, 124482, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
	Joint Stock Company Design Technology Center Elektronika, a.k.a., the following five aliases: —AO KTTS Elektronika; —AO Konstruktorsko-Tekhnologicheskiy Tsentr Elektronika; —JSC Electronics EDC; —JSC Electronics Engineering and Design Center; *and* —JSC Elektronika Engineering and Design Center. 119A Leninskiy Prospekt, Building 17a, 2nd Floor, Voronezh, 394033, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
	Joint Stock Company Elektron Optronik, a.k.a., the following six aliases: —AO Tsentralniy Nauchno-Issledovatelskiy Institut Elektron; —AO Elektron Optronik; —Elektron Optronik PAO; —JSC Central Scientific-Research Institute Elektron; —JSC Elektron Optronik; *and* —JSC TSII Elektron. 68 Toreza Avenue, Saint Petersburg, 194223, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
	* *	*	* *	*
	Joint Stock Company Institute for Scientific Research Microelectronic Equipment Progress, a.k.a., the following four aliases: —AO NIIMA Progress; —Microelectronics Research Institute Progress JSC; —Nauchno-Issledovatelskiy Institut Mikroelektronnoiy Apparatury Progress; *and* —Progress MRI JSC. 54 Cherepanovykh Drive, Moscow, 125183, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
	* *	*	* *	*
	Joint Stock Company Kizlyar Electromechanical Plant, a.k.a., the following three aliases: —AO Concern KEMZ; —JSC Kontsern Kizlyarskii Elektromekhanicheskii Zavod; *and* —Kizlyar Electro-Mechanical Plant. 1 Kutuzova Street, Kizlyar, 368870, Dagestan Republic, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
	* *	*	* *	*
	Joint Stock Company Machine-Building Engineering Office Fakel Named After Akademika P.D. Grushina, a.k.a., the following four aliases: —AO MKB Fakel; —Engineering Design Bureau Fakel; —JSC EBD Fakel; *and* —Mashinostroitelnoe Konstruktorskoe Byuro Fakel I.M. Akademika P.D. Grushina. 33 Akademika Grushina Street, Khimki, Moscow Oblast, 141401, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
	* *	*	* *	*
	Joint Stock Company North Western Regional Center of Almaz Antey Concern Obukhovsky Plant, a.k.a., the following five aliases: —AO GOZ; —AO Severo-Zapadny Regionalny Tsentr Kontserna VKO Almaz-Antei Obukhovsky Zavod; —JSC GOZ Obukhov Plant; —JSC Obukhovskiy Zavod; *and* —JSC SOP Obukhovskiy Plant.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].

Country	Entity	License requirement	License review policy	**Federal Register** citation
	120 Obukhovskoy Oborony Avenue, Building 19, Premises 1–N #708, Saint Petersburg, 190012, Russia.			
	* *	*	* *	*
	Joint Stock Company Penza Electrotechnical Research Institute, a.k.a., the following three aliases: —AO Penzenskiy Nauchno- Issledovatelskiy Elektrotekhnicheskiy Institut; —JSC Penza; *and* —JSC PNIEI. 9 Sovetskaya Street, Penza, Penza Oblast, 440026, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
	* *	*	* *	*
	Joint Stock Company Production Association Sever, a.k.a., the following four aliases: —AO PO Sever; —JSC PA Sever; —JSC PO North; *and* —Proizvodstvennoe Obedinenie Sever. 3 Obedineniya Street, Novosibirsk, Novosibirsk Oblast, 630020, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
	Joint Stock Company Production Association Ural Optical and Mechanical Plant Named After E.S. Yalamov, a.k.a., the following four aliases: —AO Proizvodsvennoe Obedinenie Uralskii Opitko-Mekhanicheskii Zavod; —JSC PA UOMP; —JSC PO UOMZ; *and* —Ural Optical and Mechanical Plant. 33B Vostochnaya Street, Yekaterinburg, Sverdlovsk Oblast, 620100, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
	Joint Stock Company Ramenskoye Design Company, a.k.a., the following four aliases: —AO Ramenskoe Priborostroitelnoe Konstruktorskoe Byuro; —AO RPKB; —JSC Ramenskoe Instrument Design Company; *and* —JSC RDC. 2 Guriyeva Street, Ramenskoye, Moscow Oblast, 140103, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
	* *	*	* *	*
	Joint Stock Company Research and Production Association Named After S.A. Lavochkina, a.k.a., the following five aliases: —AO Nauchno-Proizvodstvennoe Obedinenie IM. S.A. Lavochkina; —JSC Lavochkin Science and Production Association; —NPO Imeni S.A. Lavochkina; —NPO Lavochkin; *and* —S.A. Lavochkin Scientific Production Association. 24 Leningradskaya Street, Khimki, Moscow Oblast, 141402, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR) This license requirement may be overcome by License Exception GOV under § 740.11(b)(2) and (e).	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99 and for items for U.S. Government supported use in the International Space Station (ISS), which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
	Joint Stock Company Research and Production Association of Measuring Equipment, a.k.a., the following three aliases: —AO NPO IT; —AO Nauchno Proizvodstvennoe Obedinenie Izmeritelnoi Tekhniki; *and* —JSC NPO IT. 2 Pionerskaya Street, Building 4, Floor 3, Office 344, Korolyov, Moscow Oblast, 141074, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR) This license requirement may be overcome by License Exception GOV under § 740.11(b)(2) and (e).	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99 and for items for U.S. Government supported use in the International Space Station (ISS), which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
	* *	*	* *	*
	Joint Stock Company Research and Production Enterprise Radar MMS, a.k.a., the following four aliases: —AO Nauchno-Proizvodstvennoe Predpriyatie Radar MMS; —JSC Radar MMS; —NPP Radar MMS; *and* —Scientific Production Association Radar MMS JSC. 37A Novoselkovskaya Street, Saint Petersburg, 197375, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].

Country	Entity	License requirement	License review policy	Federal Register citation
	Joint Stock Company Research and Production Enterprise Sapfir, a.k.a., the following four aliases: —AO NPP Sapfir; —AO Nauchno-Proizvodstvennoe Predpriyatie Sapfir; —JSC NPP Sapphire; *and* —JSC Research and Production Company Sapfir. 53 Shcherbakovskaya Street, Building 17, Moscow, 105187, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
	Joint Stock Company Research Center ELINS, a.k.a., the following six aliases: —AO Nauchnyy Tsentr ELINS; —ELINS STC JSC; —JSC ELINS; —JSC Scientific and Technical Center ELINS; —NTTS ELINS; *and* —Scientific-Technical Center ELINS. 10 Panfilovsky Avenue, Zelenograd, Moscow, 124460, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
	Joint Stock Company RT-Tekhpriemka, a.k.a., the following three aliases: —AO RT-Techpriemka; —JSC Aviatekhpriemka; *and* —JSC RT-Tekhpriemka. 1 Elektricheskii Lane, Building 12, Moscow, 123557, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
	Joint Stock Company Russian Research Institute Electronstandart, a.k.a., the following four aliases: —AO Nauchno-Proizvodtvennoe Predpriyatie Elektronstandart; —AO RNII Elektronstandart; —JSC NPP Elektrostandart; *and* —RNII Electronstandard. 25 Tsvetochnaya Street, Building 3, Saint Petersburg, 196006, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
	Joint Stock Company Ryazan Plant of Metal Ceramic Instruments, a.k.a., the following five aliases: —AO Ryazanski Zavod Metallokeramicheskikh Priborov; —AO RZMKP; —JSC Ryazan Metal Ceramics Instrumentation Plant; —Ryazan Plant of Ceramic Devices; *and* —RMCIP. 51V Novaya Street, Ryazan, Ryazan Oblast, 390027, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
	Joint Stock Company Scientific Production Enterprise Digital Solutions, a.k.a., the following five aliases: —ASIC and Electronic Engineering Design Center Digital Solutions JSC; —AO NPP Tsifrovye Resheniya; —DSol NPP; —JSC Digital Solutions; *and* —LLC Scientific Production Enterprise Digital Solutions. 9a Second Sinichkina Street, Room 4, Office 1, 3rd Floor, Building 7, Moscow 111020, Russia; *and* A/Ya 18, Moscow, 105066, Russia; *and* 10 Zavoda Serp I Molot Drive, Moscow, 111250, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
	Joint Stock Company Scientific Production Enterprise Kontakt, a.k.a., the following four aliases: —AO NPP Kontakt; —AO Nauchno-Proizvodstvennoe Predpriyatie Kontakt; —JSC NPP Kontakt; *and* —JSC SPE Contact. 1 Spitsyna Street, Saratov, Saratov Oblast, 410086, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
	Joint Stock Company Scientific Production Enterprise Topaz, a.k.a., the following four aliases: —AO Nauchno-Proizvodstvennoe Predpriyatie Topaz; —JSC NPP Topaz;	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].

Country	Entity	License requirement	License review policy	**Federal Register** citation
	—Closed Joint-Stock Company Scientific Production Enterprise Topaz; *and* —JSC Research and Production Enterprise Topaz. 16 Third Mytishchinskaya Street, Building 34, Moscow, 129626, Russia.			
	Joint Stock Company Scientific Research Institute Giricond, a.k.a., the following three aliases: —AO Nauchno-Issledovatelskiy Institut Girikond; —AO NII Girikond; *and* —Research Institute Girikond. 10 Kurchatova Street, Saint Petersburg, 194223, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
	Joint Stock Company Scientific Research Institute of Computer Engineering NII SVT, a.k.a., the following four aliases: —AO NII SVT; —AO Nauchno Issledovatelskii Institut Sredstv Vychislitelnoi Tekhniki; —JSC NII SVT; *and* —NII SVT PAO. 31 Melnichnaya Street, Kirov, Kirov Oblast, 610025, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
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	Joint Stock Company Scientific Research Institute of Electrical Carbon Products, a.k.a., the following four aliases: —AO NIIEI; —AO Nauchno Issledovatelskii I Proektno-Tekhnologicheskii Institut Elektrougolnykh Izdelii; —JSC NIIEI; *and* —JSC Scientific Research and Project-Technical Institute of Electrical Carbon Products. 1 Gorki Lane, Elektrougli, Moscow Oblast, 142455, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
	Joint Stock Company Scientific Research Institute of Electronic and Mechanical Devices, a.k.a., the following four aliases: —AO NII Elektronno-Mekhanicheskikh Priborov; —JSC NIIEMP; —JSC SRIEMI; *and* —Penza Scientific Research Institute of Electro-Mechanical Devices. 44 Karakozova Street, Penza, Penza Oblast, 440600, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
	Joint Stock Company Scientific Research Institute of Electronic Engineering Materials, a.k.a., the following three aliases: —AO Nauchno-Issledovatelskiy Institut Materialov Elektronnoi Tekhniki; —AO NIIMET; *and* —JSC NIIMET. 1 Gagarina Street, Kaluga, Kaluga Oblast, 248650, Russia; *and* 17 Second Academicheskiy Drive, Building 3G, Rooms 27–40, Kaluga, Kaluga Oblast, 248033, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
	Joint Stock Company Scientific Research Institute of Gas Discharge Devices Plasma, a.k.a., the following three aliases: —AO Nauchno-Issledovatelskiy Institut Gazorazriyadnikh Priborov Plazma; —AO Plasma; *and* —JSC Plasma. 24 Tsiolkovskogo Street, Ryazan, Ryazan Oblast, 390023, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
	Joint Stock Company Scientific Research Institute of Industrial Television Rastr, a.k.a., the following two aliases: —AO Nauchno Issledovatelskii Institut Promyshlennogo Televideniya Rastr; *and* —AO NIIPT Rastr. 39 Bolshaya Sankt-Peterburgskaya Street, Veliky Novgorod, Novgorod Oblast, 173001, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR) This license requirement may be overcome by License Exception GOV under § 740.11(b)(2) and (e).	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99 and for items for U.S. Government supported use in the International Space Station (ISS), which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].

Country	Entity	License requirement	License review policy	Federal Register citation
	Joint Stock Company Scientific Research Institute of Precision Mechanical Engineering, a.k.a., the following six aliases: —AO Nauchno-Issledovatelskiy Institut Tochnogo Mashinostroeniya; —AO NIITM; —NIITM PAO; —OJSC Scientific and Research Institute of Precision Engineering; —Research Institute of Precision Machine Manufacturing; *and* —Scientific and Research Institute of Precision Mechanical Engineering. 10 Panfilovsky Avenue, Zelenograd, Moscow, 124460, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
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	Joint Stock Company Shipbuilding Corporation Ak Bars, a.k.a., the following three aliases: —AO SK Ak Bars; —AO Sudostroyitelnaya Korporatsiya Ak Bars; *and* —JSC SC Ak Bars. 9a, Zavodskaya Street, Zelenodolsk, Republic of Tatarstan, 422546, Russia; *and* 5 Zavodskaya Street, Zelenodolsk, Republic of Tatarstan, 422546, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
	Joint Stock Company Special Design Bureau of Computer Engineering, a.k.a., the following two aliases: —AO Spetsialnoe Konstruktorskoe Byuro Vychislitelnoi Tekhniki; *and* —AO SKB VT. 1 Maksima Gorkogo Street, Pskov, Pskov Oblast, 180007, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
	Joint Stock Company Special Design Bureau of Control Means, a.k.a., the following two aliases: —AO Spetsialnoe Proektno-Konstruktorskoe Byuro Sredstv Upravleniya; *and* —AO SPKB SU. 9 Vagzhanovski Lane, Office 315, Tver, Tver Oblast, 170100, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
	Joint Stock Company Special Design Bureau Turbina, a.k.a., the following three aliases: —AO SKB Turbina; —AO Spetsialnoe Konstrucktorskoe Byuro Turbina; *and* —JSC Turbina SDB. 2B Lenin Avenue, Chelyabinsk, Chelyabinsk Oblast, 454007, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
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	Joint Stock Company Special Relay System Design and Engineering Bureau, a.k.a., the following two aliases: —AO SKTB RT; *and* —AO Spetsialnoe Konstruktorsko-Tekhnologicheskoe Byuro Po Releinoi Tekhnike. 55 Nekhinskaya Street, Veliky Novgorod, Novgorod Oblast, 173025, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
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	Joint Stock Company State Missile Center Named After Akademika V.P. Makeyeva, a.k.a, the following seven aliases: —JSC Gosudarstvenny Raketny Tsentr Imeni Akademika V.P. Makeeva; —JSC GRTS Makeyeva; —JSC Makeyev Design Bureau; —JSC State Rocket Center Named After Akademika V.P. Makeyeva; —Makeyev State Missile Center; —Makeyev State Rocket Center; *and* —Makeyev Rocket Design Bureau. 1 Turgoyakskoe Highway, Miass, Chelyabinsk Region, 456300, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR) This license requirement may be overcome by License Exception GOV under § 740.11(b)(2) and (e).	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99 and for items for U.S. Government supported use in the International Space Station (ISS), which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
	Joint Stock Company State Scientific Research Institute Kristall, a.k.a., the following four aliases: —AO GOSNII Kristall; —AO Gosudarstvenny Nauchno-Issledovatelski Institut Kristall;	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].

Country	Entity	License requirement	License review policy	**Federal Register** citation
	—OAO GOSNII Kristall; *and* —OJSC Kristall State Research Institute. 6 Zelenaya Street, Dzerzhinsk, Nizhny Novgorod Oblast, 606007, Russia.			
	Joint Stock Company Svetlana Semiconductors, a.k.a., the following two aliases: —AO Svetlana Poluprovodniki; *and* —Svetlana Semiconductors Stock Company. 27, Engels Prospect, Saint Petersburg 194156, Russia; *and* 6 Akademika Valieva Street, Building 2, Floor/Premises 1/I, Room 28, Zelenograd, Moscow, 124460, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
	Joint Stock Company Tekhnodinamika, a.k.a., the following three aliases: —AO Tekhnodinamika; —JSC Aviation Equipment; *and* —JSC Technodynamics. 35 Bolshaya Tatarskaya Street, Building 5, Moscow, 115184, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
	Joint Stock Company the Institute of Electronic Control Computers Named After I.S. Bruk, a.k.a., the following three aliases: —AO INEUM IM. I.S. Bruk; —Institut Elektronniykh Upravlyayushchikh Mashin IM. I.S. Bruka; *and* —JSC INEUM. 24 Vavilova Street, Moscow, 119334, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
	Joint Stock Company Vologda Optical and Mechanical Plant, a.k.a., the following four aliases: —AO Vologodsky Optiko Mekhanichesky Zavod, —AO VOMZ; —JSC VOMZ; *and* —OAO VOMZ. 54 Maltseva Street, Vologda, Vologda Oblast, 160009, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
	Joint Stock Company Voronezh Semiconductor Devices Factory Assembly, a.k.a., the following three aliases: —AO Voronezhsky Zavod Poluprovodnikovykh Priborov-Sborka; —AO VZPP–S; *and* —JSC VZPP–S. 119a Leninsky Avenue, Voronezh, Voronezh Oblast, 394033, Russia; *and* 119a Leninsky Avenue, Voronezh, Voronezh Oblast, 394007, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
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	Joint Stock Company Vyatka Machine-Building Enterprise Avitek, a.k.a., the following five aliases: —AO VMP AVITEK; —Avitek Vyatskoe Machine Building Enterprise JSC; —JSC VMP AVITEC; —JSC Vyatskoe Mashinostroitelnoe Predpriyatie Avitek; *and* —Vyatka Machinery Plant Avitec JSC. 1A Oktyabrskiy Avenue, Kirov, Kirov Oblast, 610047, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
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	Joint Stock Company Zelenograd Nanotechnology Center, a.k.a., the following three aliases: —AO ZNTTS; —AO Zelenogradski Nanotekhnologicheski Tsentr; *and* —ZNTC. 6 Solnechnaya Alley, Premises IX, Office 17, Zelenograd, Moscow, 124527, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
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	KAMAZ Publicly Traded Company, a.k.a., the following four aliases: —KAMAZ PJSC; —KAMAZ PAO; —KAMAZ PTC; *and* —Kamskoe Obedinenie PO Proizvodstvu Bolshegruznykh Avtomobilei Kamaz.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].

Country	Entity	License requirement	License review policy	Federal Register citation
	2 Avtozavodskiy Avenue, Naberezhnye Chelny, Republic of Tatarstan, 423827, Russia.			
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	Keldysh Institute of Applied Mathematics of the Russian Academy of Sciences, a.k.a., the following three aliases: —Federalnoe Gosudarstvennoe Uchrezhdenie Federalny Issledovatelski Tsentr Institut Prikladnoi Metematiki I.M. Keldysha Rossiiskoi Akademii Nauk; —IPM IM. M.V. Keldisha RAN; *and* —KIAM RAS. 4 Miusskaya Square, Moscow, 125047, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
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	Limited Liability Company Research and Production Association Radiovolna, a.k.a., the following three aliases: —LLC NPO Radiovolna; —OOO Nauchno-Proizvodstvennoe Obedinenie Radiovolna; *and* —OOO NPO Radiovolna. 3 22nd Liniya, Building 1M, Premises 1N, Office 618, Vasilevskiy Island, Municipal District No. 7, Saint Petersburg, 199106, Russia; *and* 1–3P Kozhevennaya Liniya, Premises 1N, Saint Petersburg, 199106, Russia; *and* 55 Kingiseppskoe Highway, Avtovo, St Petersburg, 198320, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
	Limited Liability Company RSB-Group, a.k.a., the following four aliases: —LLC Intelligence Technologies; —OOO RSB-Grupp; —Razvedyvatelnye Tekhnologii OOO; *and* —Russian Security Systems. 3 Dnepropetrovskaya Street, Building 5, Floor 1, Premises III, Room 8, Office 6–6, Moscow, 117525, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
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	Meteor Plant JSC, a.k.a., the following two aliases: —AO Zavod Meteor; *and* —Joint Stock Company Meteor Plant. 1 Gorkogo Street Volzhskiy, Volgograd Oblast, 404130, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	87 FR 20299, 4/7/22. 87 FR 34136, 6/6/22. 88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
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	Mitishinskiy Scientific Research Institute of Radio Measuring Instruments, a.k.a., the following seven aliases: —Federalnoe Gosudarstvennoe Byudzhetnoe Uchrezhdenie Vserossiiskii Nauchno-Issledovatelskii Institut Radioelektroniki; —Federal State Unitary Enterprise MNIIRIP; —FGBU VNIIR; —FGBU Vserossiiskii Nauchno-Issledovatelskii Institut Radioelektroniki; —FGUP MNIIRIP, —FSBI VNIIR; *and* —Mytishchi Research Institute for RF Measurement Instruments. 2A Kolpakova Street, Building B1, Floor 3, Office 86,87, Mytishchi, Moscow Oblast, 141002, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
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	Moscow Institute of Thermal Technology, a.k.a., the following four aliases: —AO Koporatsiya Moskovskiy Institut Teplotekhniki; —JSC Corporation MIHT; —JSC Corporation Moscow Institute of Heat Technology; *and* —MITT. 10 Berezovaya Alley, Moscow, 127273, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	87 FR 60066, 10/4/22. 88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
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Country	Entity	License requirement	License review policy	**Federal Register** citation
	Obninsk Research and Production Enterprise (ORPE), a.k.a., the following four aliases: —AO Obninskoe NPP Tekhnologiya IM. A.G. Romashina; —AO ONPP Tekhnologiya IM. A.G. Romashina; —Joint Stock Company Obninsk Research and Production Enterprise Technologiya Named After A.G. Romashin; *and* —JSC ORPE Technology Named After A.G. Romashin. 15 Kievskoe Highway, Obninsk, Kaluga Oblast, 249031, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	83 FR 48534, 9/26/18. 84 FR 40241, 8/14/19. 88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
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	OOO Adis, 48 Prospekt Makeeva, Miass, Chelyabinskaya Oblast, 4563200, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
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	Open Joint Stock Company Ilyushin Aviation Complex, a.k.a., the following nine aliases: —AK Imeni S.V. Ilyshina AO; —JSC Ilyushin Aviation Complex; —OAO Ilyushin Aviation Complex; —OJSC IL; —OJSC Ilyushin Aviation Complex; —PAO Aviatsionny Kompleks IM. S.V. Ilyushin a; —PAO IL; —PJSC IL; *and* —PJSC Ilyushin Aviation Complex. 45G Leningradsky Avenue, Moscow, 125190, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
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	Open Joint Stock Company Khabarovsk Radio Engineering Plant, a.k.a., the following five aliases: —AO Khabarovskiy Radiotekhnicheskiy Zavod; —AO KHRTZ —JSC Khabarovsk Radio Engineering Plant; —KHRTZ PAO; *and* —OAO KHRTZ. 8 Kedrovy Lane, Building V, Khabarovsk, Khabarovsk Territory, 680041, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
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	Open Joint Stock Company Mariyskiy Machine-Building Plant, a.k.a., the following six aliases: —AO Mariyskiy Mashinostroitelnyi Zavod; —AO MMZ; —JSC Mari Machine Building Plant; —MARI MMZ; —OAO Mariyskiy Mashinostroitelnyy Zavod; *and* —OAO MMZ. 15 Suvorova Street, Yoshkar-Ola, Republic of Mari-El, 424003, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
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	Open Joint Stock Company Scientific and Production Enterprise Pulsar, a.k.a., the following seven aliases: —AO Nauchno-Proizvodstvennoe Predpriyatie Pulsar; —AO NPP Pulsar; —Enterprise SPE Pulsar JSC; —JSC NPP Pulsar; —JSC SPC Pulsar; —OAO NPP Pulsar; *and* —SPE Pulsar. 27 Okruzhnoy Drive, Moscow, 105187, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
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	Papilon Systems Limited Liability Company, a.k.a., the following one alias: —OOO Sistemy Papilon. 48 Prospekt Makeeva, Miass, Chelyabinskaya Oblast, 4563200, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
*	*	*	*	*
	Public Joint Stock Company Kremny, a.k.a., the following five aliases: —AO Gruppa Kremny EL; —CJSC Kremny AI Group; —JSC Gruppa Kremny EL;	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].

Country	Entity	License requirement	License review policy	Federal Register citation
	—Kremny Marketing; —Kremny Group; *and* —PAO Kremni. 103 Krasnoarmeyskaya Street, Bryansk, Bryansk Oblast, 241037, Russia.			
	Public Joint Stock Company Megafon, a.k.a., the following three aliases: —Megafon; —PAO Megafon; *and* —PJSC Megafon. 41 Oruzheiny Lane, Moscow, 127006, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
	Public Joint Stock Company Tutaev Motor Plant, a.k.a., the following three aliases: —OAO Tutaevski Motorny Zavod; —PAO TMZ; *and* —PAO Tutaevski Motorny Zavod. 1 Stroitelei Street, Tutayev, Yaroslavl Oblast, 152303, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
*	*	*	*	*
	Public Joint Stock Company Vympel Interstate Corporation, a.k.a., the following six aliases: —JSC MAC Vympel; —PAO MAK Vympel; —PAO Mezhgosudarstvennaya Aktsionernaya Korporatsiya Vympel; —Vimpel; —Vympel Interstate Commercial Corporation; *and* —Vympel MAK PAO Defense Corporation. 10 Geroyev Panfilovtsev Street, Building 1, Moscow, 125480, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
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	RT-Inform Limited Liability Company, a.k.a., the following one alias: —OOO RT-Inform. 6 Turchaninov Lane, Building 2, Office 105, Moscow, 119048, Russia; *and* 23 Savvinskaya Embankment, Building 2, Office 613, Moscow, 119435, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
*	*	*	*	*
	Skolkovo Foundation, a.k.a., the following four aliases: —Foundation for the Development of the Center for Elaboration and Commercialization of New Technologies; —Fond Skolkovo; —Fund Skolkovo; *and* —Nekommercheskaya Organizatsiya Fond Razvitiya Tsentra Razrabortki I Kommertsializatsii Novykh Tekhnologii. 4 Lugovaya Street, Skolkovo Innovation Center, Moscow, 121205, Russia; *and* 5 Nobelya Street, Skolkovo Innovation Center, Moscow, 121205, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
	Skolkovo Institute of Science and Technology, a.k.a., the following three aliases: —Autonomous Non-Profit Organization for Higher Education Skolkovo Institute of Science and Technology; —Skolkovskiy Institut Nauki I Tekhnologii; *and* —Skoltech. 30 Bolshoi Boulevard, Skolkovo Innovation Center, Building 1, Moscow, 121205, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
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	State Flight Testing Center Named After V.P. Chkalov, a.k.a., the following five aliases: —929 GLITS; —929 State Flight Test Center; —929 GLITS VVS; —929 Gosudarstvenniy Letno-Ispytatelniy Tsentr Ministerstvo Oboroni Rossiiskoi Federatsii IM. V.P. Chkalova; *and* —GLITS MO RF IM. V.P. Ckhalova. Akhtubinsk, Astrakhan Oblast, 416500, Russia; *and* Chkalovsky Airfield, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
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Country	Entity	License requirement	License review policy	**Federal Register** citation
	Technopark Skolkovo Limited Liability Company, a.k.a., the following two aliases: —LLC Science and Technology Park Skolkovo; *and* —OOO Tekhnopark Skolkovo. 42 Bolshoi Boulevard, Building 1, Floor 2, Premises 822, Skolkovo Innovation Center, Moscow, 121205, Russia; *and* 42 Bolshoy Bulvar 42, Building 1, Office 502, Moscow, 121205, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
	* *	*	* *	*
	VisionLabs Limited Liability Company, a.k.a., the following two aliases: —OOO Vizhnlabs; *and* —VisionLabs. 8 Tvardovskogo Street, Building 1, Floor 2, Premises I, Office 1, Moscow, 123458, Russia; *and* 23 Podsosenskiy Lane, Building 3, Moscow, 105062, Russia.	For all items subject to the EAR. (See § 744.11 of the EAR).	Policy of denial	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
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Thea D. Rozman Kendler,

Assistant Secretary for Export Administration.

[FR Doc. 2023–04099 Filed 2–24–23; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 230221–0050]

RIN 0694–AJ13

Additions of Entities to the Entity List

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce is amending the Export Administration Regulations (EAR) by adding 10 entities under 13 entries to the Entity List. These entities have been determined by the U.S. Government to be acting contrary to the national security or foreign policy interests of the United States. These entities are listed on the Entity List under the destinations of Canada (2), China (5), France (1), Luxembourg (1), Netherlands (1), and Russia (3).

DATES: This rule is effective February 24, 2023.

FOR FURTHER INFORMATION CONTACT: Chair, End-User Review Committee, Office of the Assistant Secretary for Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–5991, Email: *ERC@bis.doc.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Entity List (supplement no. 4 to part 744 of the EAR (15 CFR parts 730–774)) identifies entities for which there is reasonable cause to believe, based on specific and articulable facts, that the entities have been involved, are involved, or pose a significant risk of being or becoming involved in activities contrary to the national security or foreign policy interests of the United States, pursuant to § 744.11(b). The EAR impose additional license requirements on, and limit the availability of, most license exceptions for exports, reexports, and transfers (in-country) when a listed entity is a party to the transaction. The license review policy for each listed entity is identified in the ''License Review Policy'' column on the Entity List, and the impact on the availability of license exceptions is described in the relevant **Federal Register** document that added the entity to the Entity List. The Bureau of Industry and Security (BIS) places entities on the Entity List pursuant to part 744 (Control Policy: End-User and End-Use Based) and part 746 (Embargoes and Other Special Controls) of the EAR.

The End-User Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote and makes all decisions to remove or modify an entry by unanimous vote.

Additions to the Entity List

The ERC determined to add AOOK Technology Ltd., under the destination of China; CPUNTO Inc., under the destination of Canada; Dexias Industrial Products and Trade Limited Company, under the destination of Russia; Electronic Network Inc., under the destination of Canada; Innovation and Technologies LLC, under the destination of Russia; and Promtekhkomplekt JSC, under the destination of Russia, to the Entity List. These additions are based on information that these companies significantly contribute to Russia's military and/or defense industrial base and are involved in activities contrary to U.S. national security and foreign policy interests under §§ 744.11 and 744.21 of the EAR. These entities will receive a footnote 3 designation because the ERC has determined that they are Russian or Belarusian 'military end users' in accordance with § 744.21. A footnote 3 designation subjects these entities to the Russia/Belarus-Military End User Foreign Direct Product (FDP) rule, detailed under § 734.9(g). These entities are added with a license requirement for all items subject to the EAR. License applications will be reviewed under a policy of denial for all items subject to the EAR, other than applications for food and medicine designated as EAR99, which will be reviewed on a case-by-case basis.

The ERC determined to add Beijing Ti-Tech Science and Technology Development Co., under the destination of China; Beijing Yunze Technology Co., Ltd., under the destination of China; China HEAD Aerospace Technology Co., under the destinations of China, France, and the Netherlands; and Spacety Co.,

Ltd., under the destinations of China and Luxembourg, to the Entity List. These additions are based on information that these companies significantly contribute to Russia's military and/or defense industrial base and are involved in activities contrary to U.S. national security and foreign policy interests under §§ 744.11 and 744.21 of the EAR. These entities will receive a footnote 3 designation because the ERC has determined that they are Russian or Belarusian 'military end users' in accordance with § 744.21. A footnote 3 designation subjects these entities to the Russia/Belarus-Military End User Foreign Direct Product (FDP) rule, detailed under § 734.9(g). These entities are added with a license requirement for all items subject to the EAR. License applications for these entities will be reviewed under a policy of denial for all items subject to the EAR, other than applications for food and medicine designated as EAR99, which will be reviewed on a case-by-case basis.

For the reasons described above, this final rule adds the following 10 entities under 13 entries to the Entity List and includes, where appropriate, aliases:

Canada

- CPUNTO Inc., *and*
- Electronic Network Inc.

China

- AOOK Technology Ltd.,
- Beijing Ti-Tech Science and Technology Development Co.,
- Beijing Yunze Technology Co., Ltd.,
- China HEAD Aerospace Technology Co., *and*
- Spacety Co. Ltd.

France

- China HEAD Aerospace Technology Co.

Luxembourg

- Spacety Co., Ltd.

Netherlands

- China HEAD Aerospace Technology Co.

Russia

- Dexias Industrial Products and Trade Limited Company,
- Innovation and Technologies LLC, *and*
- Promtekhkomplekt JSC.

Allied Governments Note

BIS notes that this rule is meant to serve as a response to Russian aggression against Ukraine. This rule does include entities in several allied and partnered countries, but is not an action against the countries in which the entities are located or registered or the governments of those countries. This rule only serves as an action against those entities listed, which have assisted the Russian military, contrary to U.S. foreign and national security policy interests.

Savings Clause

For the changes being made in this final rule, shipments of items removed from eligibility for a License Exception or export, reexport, or transfer (in-country) without a license (NLR) as a result of this regulatory action that were en route aboard a carrier to a port of export, reexport, or transfer (in-country), on February 24th, pursuant to actual orders for export, reexport, or transfer (in-country) to or within a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export, reexport, or transfer (in-country) without a license (NLR).

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (50 U.S.C. 4801–4852). ECRA provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule.

Rulemaking Requirements

1. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to or be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications and commodity classifications, and carries a burden estimate of 29.4 minutes for a manual or electronic submission for a total burden estimate of 33,133 hours. Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule.

3. This rule does not contain policies with federalism implications as that term is defined in Executive Order 13132.

4. Pursuant to section 1762 of the Export Control Reform Act of 2018, this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date.

5. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 744—CONTROL POLICY: END-USER AND END-USE BASED

■ 1. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of September 19, 2022, 87 FR 57569 (September 21, 2022); Notice of November 8, 2022, 87 FR 68015 (November 10, 2022).

■ 2. Supplement No. 4 to part 744 is amended:

■ a. Under CANADA, by adding in alphabetical order, entries for ''CPUNTO Inc.'' and ''Electronic Network Inc.'';

■ b. Under CHINA, PEOPLE'S REPUBLIC OF, by adding, in alphabetical order, entries for ''AOOK Technology Ltd.''; ''Beijing Ti-Tech Science and Technology Development Co.''; ''Beijing Yunze Technology Co., Ltd.''; ''China HEAD Aerospace Technology Co.''; *and* ''Spacety Co., Ltd.'';

■ c. Under FRANCE, by adding in alphabetical order, an entry for ''China HEAD Aerospace Technology Co.'';

■ d. Under LUXEMBOURG, by adding in alphabetical order, an entry for ''Spacety Co., Ltd.'';

■ e. Under NETHERLANDS, by adding in alphabetical order, an entry for ''China HEAD Aerospace Technology Co.''; *and*

■ f. Under RUSSIA, by adding, in alphabetical order, entries for ''Dexias Industrial Products and Trade Limited Company''; ''Innovation and Technologies LLC''; *and* ''Promtekhkomplekt JSC''.

Supplement No. 4 to Part 744—Entity List

* * * * *

Country	Entity	License requirement	License review policy	**Federal Register** citation
*	*	*	*	*
CANADA	*	*	*	*
	CPUNTO Inc., a.k.a., the following one alias: —CPUNTO. 5929 Route Transcanadienne Ste 130 St. Laurent, Quebec H4T 1Z6 Canada.	For all items subject to the EAR. (See §§ 734.9(g),[3] 744.21(b), and 746.8(a)(3) of the EAR).	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
	*	*	*	*
	Electronic Network Inc., a.k.a., the following six aliases: —Electronic Network; —Electronic Network Holdings; —Electronic Network Holdings Inc.; —Electronic Network Incorporated; —Electronic Network Products Inc.; *and* —Electronic's Network & Technology Corp. 145 Montee De Liesse Ste 10 St. Laurent, Quebec H4T 1T9 Canada.	For all items subject to the EAR. (See §§ 734.9(g),[3] 744.21(b), and 746.8(a)(3) of the EAR).	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
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*	*	*	*	*
CHINA, PEOPLE'S REPUBLIC OF.	*	*	*	*
	AOOK Technology Ltd., a.k.a., the following two aliases: —AOOK; *and* —AOOK Electronics. Rm 803 Chevalier Building 45–51 Chatham Rd S Tsim Sha Tsui Hong Kong, China.	For all items subject to the EAR. (See §§ 734.9(g),[3] 744.21(b), and 746.8(a)(3) of the EAR).	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
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	Beijing Ti-Tech Science and Technology Development Co., a.k.a., the following two aliases: —Beijing Ti-Tech; *and* —China Ti-Tech Development Co. Ltd. 5F, Building 5 Science and Technology Park, A–2 North Xisanhuan Road, Beijing 100081 China.	For all items subject to the EAR. (See §§ 734.9(g),[3] 744.21(b), and 746.8(a)(3) of the EAR).	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
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Country	Entity	License requirement	License review policy	Federal Register citation
	Beijing Yunze Technology Co., Ltd., a.k.a., the following three aliases: —Beijing Yunze; —Beijing Yunze Technology Company; *and* —Yunze Beijing. West of Floor 1, Building 7, Jiajia Garden Courtyard 15, Fengtai Beijing 100000 China; *and* 201, Floor 2, 36#, Yinhe Garden, Miyun District Beijing 100000 China; *and* 402, Floor 4, No. 85, Huilongguan W. Street, Changping District Beijing 102200 China.	For all items subject to the EAR. (See §§ 734.9(g),[3] 744.21(b), and 746.8(a)(3) of the EAR).	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
	* *	*	* *	*
	China HEAD Aerospace Technology Co., a.k.a., the following seven aliases: —China HEAD; —China HEAD Technology Co; —HEAD Aerospace; —HEAD Aerospace Group; —HEAD Aerospace Netherlands; —HEAD France; *and* —HEAD Technology France. 5F, Bldg 5, Science and Technology Park, A–2 North Xisanhuan Road, Haidian District, Beijing 100081, P.R. China; *and* Room 01, floor 13, building 5, no. A2 courtyard, west 3rd ring r. Beijing, 10004–8, China; *and* B–11a–02 Keshi Plaza 28 Shangdi Xinxi Rd Beijing 100058 China. (See alternate address under France and Netherlands).	For all items subject to the EAR. (See §§ 734.9(g),[3] 744.21(b), and 746.8(a)(3) of the EAR).	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
	Spacety Co., Ltd., a.k.a., the following three aliases: —Changsha Tianyi Space Science and Technology Research Institute; —Spacety; *and* —Spacety Luxembourg S.A. 9 Dengzhuang South Rd Beijing, Beijing China; *and* Room 445, 9th Floor, Block B, No. 18 Zhongguancun Street, Haidian District, Beijing China. (See alternate address under Luxembourg).	For all items subject to the EAR. (See §§ 734.9(g),[3] 744.21(b), and 746.8(a)(3) of the EAR).	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
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FRANCE	* *	*	* *	*
	China HEAD Aerospace Technology Co., a.k.a., the following seven aliases: —China HEAD; —China HEAD Technology Co; —HEAD Aerospace; —HEAD Aerospace Group; —HEAD Aerospace Netherlands; —HEAD France; *and* —HEAD Technology France. 71 Boulevard national, 92250 La Garenne-Colombes Paris, France. (See alternate address under China and Netherlands).	For all items subject to the EAR. (See §§ 734.9(g),[3] 744.21(b), and 746.8(a)(3) of the EAR).	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
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LUXEMBOURG	* *	*	* *	*

Country	Entity	License requirement	License review policy	**Federal Register** citation
	Spacety Co., Ltd., a.k.a., the following three aliases: —Changsha Tianyi Space Science and Technology Research Institute; —Spacety; *and* —Spacety Luxembourg S.A. 9, Avenue des Hauts-Fourneaux, L–4362 Esch-Sur-Alzette, Luxembourg. (See alternate address under China).	For all items subject to the EAR. (See §§ 734.9(g),[3] 744.21(b), and 746.8(a)(3) of the EAR).	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
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*	* * *	*	* *	*
NETHERLANDS	* *	*	* *	*
	China HEAD Aerospace Technology Co., a.k.a., the following seven aliases: —China HEAD; —China HEAD Technology Co; —HEAD Aerospace; —HEAD Aerospace Group; —HEAD Aerospace Netherlands; —HEAD France; *and* —HEAD Technology France. Kapteynstraat 1 2201 BB Noordwijk ZH, Netherlands. (See alternate address under China and France).	For all items subject to the EAR. (See §§ 734.9(g),[3] 744.21(b), and 746.8(a)(3) of the EAR).	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
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RUSSIA.				
	Dexias Industrial Products and Trade Limited Company, a.k.a., the following five aliases: —Dexias; —Dexias Endil strivel; —Dexias IPTLC; —Mainbox LLC; *and* —Orunler ve Ticaret Limited Sirketi. Apartment 261, Building 3, Ryabinovaya Street, Moscow, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 744.21(b), and 746.8(a)(3) of the EAR).	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
	* *	*	* *	*
	Innovation and Technologies LLC, a.k.a., the following two aliases: —Intekh; *and* —INTEKH OOO. D. 83 K. 3 OFIS 516, Ul. Savushkina, St. Petersburg 197374 Russia; *and* Mira prospect, 2–7 601901 Kovrov, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 744.21(b), and 746.8(a)(3) of the EAR).	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
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	Promtekhkomplekt JSC, a.k.a., the following four aliases: —AO TipoMTeXKOMirneKT; —Promtech Komplekt; —Promtekhkomplekt; *and* —Promtekhkomplekt Joint Stock Company. MKAD Greenwood Business Park building 9 floor 3, pos. Putilko o, 69 km., Moscow region, 143441, Russia; *and* 6/1 Griboyedov Street, OF.23, Tyumen, Tyumen Oblast, Russia.	For all items subject to the EAR. (See §§ 734.9(g),[3] 746.8(a)(3), and 744.21(b) of the EAR).	Policy of denial for all items subject to the EAR apart from food and medicine designated as EAR99, which will be reviewed on a case-by-case basis. See §§ 746.8(b) and 744.21(e).	88 FR [INSERT FR PAGE NUMBER AND 2/27/2023].
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Thea D. Rozman Kendler,
Assistant Secretary for Export Administration.

[FR Doc. 2023–03929 Filed 2–24–23; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 744 and 746

[Docket No. 230221–0047]

RIN 0694–AJ09

Implementation of Additional Sanctions Against Russia and Belarus Under the Export Administration Regulations (EAR) and Refinements to Existing Controls

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Final rule.

SUMMARY: In response to the Russian Federation's (Russia's) ongoing aggression against Ukraine, as substantially enabled by Belarus, the Department of Commerce is expanding and strengthening the existing sanctions against Russia and Belarus, including the scope of the Export Administration Regulations (EAR)'s Russian and Belarusian industry sector sanctions and 'luxury goods' sanctions. This rule also refines existing export controls on Russia and Belarus. The Department of Commerce is taking these actions to enhance the effectiveness of its controls on both countries and to better align them with those implemented by U.S. allies and partners.

DATES: This rule is effective on February 24, 2023.

FOR FURTHER INFORMATION CONTACT: For general questions on this final rule, contact Eileen Albanese, Director, Office of National Security and Technology Transfer Controls, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–0092, Fax: (202) 482–482–3355, Email: *rpd2@bis.doc.gov.* For emails, include ''Russia and Belarus February 2023 sanctions'' in the subject line.

SUPPLEMENTARY INFORMATION:

I. Background

In response to Russia's February 2022 further invasion of Ukraine, BIS imposed extensive sanctions on Russia under the Export Administration Regulations (15 CFR parts 730–774) (EAR) as part of the final rule *Implementation of Sanctions Against Russia Under the Export Administration Regulations (EAR)* (the Russia Sanctions Rule), effective on February 24, 2022, and published on March 3, 2022 (87 FR 12226). Effective March 2, 2022, BIS also imposed similar sanctions on Belarus under the EAR in a final rule, *Implementation of Sanctions Against Belarus* (''Belarus Sanctions Rule''), published on March 8, 2022 (87 FR 13048). Since the publication of the Russia Sanctions Rule and the Belarus Sanctions Rule, BIS has published several other final rules imposing stringent export controls on Russia and Belarus. These actions reflect the U.S. Government's position that Russia's invasion of Ukraine, and Belarus's complicity in the invasion, flagrantly violated international law, are contrary to U.S. national security and foreign policy interests, and undermine global order, peace, and security.

The export control measures in this final rule build upon the policy objectives set forth in the earlier rules referenced above. The adoption of these measures, undertaken in part to better align U.S. controls with stringent measures implemented by partner and ally countries, will enhance the effectiveness of the multilateral sanctions on Russia by further limiting access to items that enable Russia's military capabilities and sources of revenue that could support those capabilities. Additionally, the new or expanded controls specified in this rule target Belarus as part of the U.S. response to the country's complicity in Russia's aggression.

II. Overview of New Controls

This rule revises the EAR to enhance and strengthen the existing sanctions against Russia and Belarus by expanding the scope of the Russian and Belarusian industry sector sanctions and the 'luxury goods' sanctions to better align them with the controls that have been implemented by U.S. allies and partners imposing substantially similar controls on Russia and Belarus. For similar policy reasons, this rule also refines other existing controls on Russia and Belarus that were imposed in response to the February 2022 further invasion of Ukraine.

III. Amendments to the Export Administration Regulations (EAR)

This rule enhances and strengthens the sanctions that have been implemented on Russia and Belarus under the EAR, as described under Sections A and B below. The regulatory revisions described under *Section A. Imposition of new export controls on Russia and Belarus, including to align the EAR's controls with those imposed by U.S. allies and partners,* include:

- Revisions to the sanctions under supplement no. 2 to part 746 to make conforming changes with other supplements (supplements nos. 4 and 6 to part 746) used under the Russian and Belarusian Industry Sector Sanctions to provide alignment with sanctions imposed by U.S. partners and allies, and make the EAR sanctions stronger, more effective, and easier to understand;
- Expansion of Russian Industry Sector Sanctions under supplement no. 4 to part 746 by adding additional items to align the sanctions with sanctions imposed by U.S. partners and allies and by making other changes to render the EAR's sanctions stronger, more effective, and easier to understand;
- Expansion of Russian Industry Sector Sanctions under supplement no. 6 to part 746 by adding additional items to align them with sanctions imposed by U.S. partners and allies and by making other changes to render the EAR's sanctions stronger, more effective, and easier to understand;
- Expansion of 'Luxury Goods' Sanctions by adding additional items to supplement no. 5 to part 746 to align them with sanctions imposed by U.S. allies and partners; and
- Alignment changes to supplement no. 3 to part 746 of the EAR (Countries Excluded from Certain License Requirements of §§ 746.7 and 746.8) to add Taiwan.

The remaining changes are described under *Section B. Corrections and clarifications to existing controls on Russian and Belarus.* The changes described under Section B include:

- Clarification that § 744.7 extends to transfers (in-country), in addition to exports and reexports;
- Clarification that the exclusion for items controlled under ECCN 5A992 or 5D992 under § 746.8 also applies to 'Luxury Goods Sanctions' license requirements under § 746.10(a)(1); and
- Conforming changes to the licensing policies under §§ 746.5, 746.8, and 746.10 and addition of a case-by-case license review policy for applications for the disposition of items needed as part of companies curtailing or closing all operations in Russia or Belarus.

A. Imposition of New Export Controls on Russia and Belarus, Including Changes To Align Controls With Those Imposed by U.S. Allies and Partners

This rule expands the scope of the Russian Industry Sector Sanctions by adding additional items to supplement no. 4 to part 746 that will require a license under § 746.5(a)(1)(ii), as

described further below. This rule also expands the scope of the ''Luxury Goods'' Sanctions by adding additional items to supplement no. 5 to part 746 that will require a license under § 746.10, as described further below.

1. Revisions to the Heading and Contents of Supplement No. 2 to Part 746 so That It Conforms With Other Supplements That Relate to the Russian and Belarusian Industry Sector Sanctions, Thereby Providing Alignment With Controls Imposed by U.S. Partners and Allies and Also Make the EAR's Controls Stronger, More Effective, and Easier To Understand

a. *Clarifying changes to the heading of supplement no. 2 to part 746.*

In supplement no. 2 to part 746—Russian Industry Sector Sanctions, this rule makes a clarifying change by revising the section heading to add Belarus and a reference to § 746.5(a)(1)(i). These two changes are made to conform this supplement's heading with the same heading structure used in the other two supplements used to identify items that require a license under the Russian and Belarusian Industry Sector Sanctions, *i.e.,* supplements nos. 4 and 6. These two clarifying changes are intended to make it easier for exporters, reexporters, and transferors to understand the scope of supplement no. 2 to part 746 and to create greater consistency in the three supplement headings used to identify items that require a license if destined for Russian and Belarusian industry sectors.

b. *Changing the methodology for identifying items by using the HTS–6 Code and HTS Description to make it easier to align with U.S. allies' and partners' controls.*

In supplement no. 2 to part 746, this rule revises the table to remove the columns for 'Schedule B' and 'Schedule B description' and adds in their place columns to identify the same set of items but by using the Harmonized Tariff Schedule (HTS)–6 Code and HTS Description. With these changes in the methodology used to identify items, the supplement will now utilize HTS–6 Codes and HTS Descriptions, instead of the applicable Schedule B number and Schedule B Description. This change aligns the underlying controls with those of U.S. allies and partners who are generally using the HS–6 Codes and HS Descriptions, which are equivalent to the HTS–6 Codes and HTS Descriptions used under the U.S. Harmonized Tariff Schedule. Because the HS–6 Codes and HS Descriptions are recognized and used internationally, it will make it easier to align the EAR controls with those of U.S. allies and partners.

c. *Conforming changes to supplement no. 2 to part 746 introductory text to reflect the use of the HTS–6 Codes and HTS Descriptions and to better align this supplement with supplement no. 4 to part 746 introductory text.*

This rule makes a conforming change that revises the introductory text of supplement no. 2 to part 746 to remove references to the Schedule B numbers and Schedule B descriptions and adds in their place references to the applicable HTS–6 codes and HTS descriptions, as well as specifying that the source for the HTS–6 codes and descriptions in this list comes from the United States International Trade Commission (USITC's) Harmonized Tariff Schedule of the United States (2023). The revised introductory text to supplement no. 2 is modeled after the same type of description text as used in supplement no. 4 to part 746 and is similarly intended to make it easier for exporters, reexporters, and transferors to understand and comply with the EAR's Russian and Belarusian industry sector sanctions as a whole. The rule also revises the sentence in the introductory text by removing references to three Schedule B numbers that were listed in both supplements nos. 2 and 4 prior to this rule and identifying instead the applicable six HTS–6 codes: 841350, 841360, 842139, 843049, 843139, and 847989.

d. *Expansion and clarification of supplement no. 2 to part 746 to strengthen the controls by specifying that the supplement includes any modified or designed ''parts,'' ''components,'' ''accessories,'' and ''attachments'' for the items identified in the table to better align the supplement with supplement no. 4 to part 746.*

Also in supplement no. 2 to part 746, this rule expands the scope of the items that are subject to the Russian and Belarusian Industry Sector Sanctions by revising newly added paragraph (a) in the introductory text to specify that the items captured include any modified or designed ''components,'' ''parts,'' ''accessories,'' and ''attachments'' therefor, regardless of their HTS Code or HTS Description.'' In many cases these ''components,'' ''parts,'' ''accessories,'' and ''attachments'' are not specifically identified by HTS Code or HTS Description. Paragraph (a) also specifies that the expansion does not include any ''part'' or minor ''component'' that is a fastener (*e.g.,* screw, bolt, nut, nut plate, stud, insert, clip, rivet, pin), washer, spacer, insulator, grommet, bushing, spring, wire, or solder. By expanding the scope of the items set forth in the supplement in this manner, this revision aligns this aspect of supplement no. 2 with supplement no. 4, which also already included the same text for ''components,'' ''parts,'' ''accessories,'' and ''attachments,'' and generally promotes and enhances the strength and effectiveness of the sanctions set forth in this supplement.

e. *Clarifications to supplement no. 2 to part 746 introductory text to specify that the scope of the license requirement applies to an item's HTS–6 Code and describe how such information relates to other information in the supplement's table, as well as to content describing other HTS Codes that are longer but still derived from HTS–6 Codes.*

This rule adds a new paragraph (b) to specify that the items identified in the HTS–6 Code column of supplement no. 2 to part 746 are the items that are subject to the license requirement under § 746.5(a)(1)(i). This rule adds one sentence to paragraph (b) to clarify that that HTS Description is included as a column heading under the table to assist exporters with their Automated Export System (AES) filing responsibilities and to have a better idea of the types of items that fall under specific HTS–6 Codes. This rule also adds a sentence to specify that the HTS–6 Code governs in determining the license requirement. For example, if an exporter ''knows'' their item is classified under an HTS–6 Code in supplement no. 2 to part 746, but does not believe that their item matches the corresponding HTS Description in supplement no. 2 to part 746, the HTS–6 Code will control for determining the license requirement under § 746.5(a)(1)(i). Likewise, if someone believes their item could potentially meet the description of more than one HTS Description, the HTS–6 Code will control. As noted above, the HTS Description is intended to assist exporters with their AES filing responsibilities but does not govern whether an item is identified under supplement no. 2 to part 746. Lastly, this rule adds a sentence to new paragraph (b) to clarify that the license requirements extend to HTS Codes at the 8 and 10 digit level when those HTS–8 and HTS–10 codes begin with the HTS–6 Codes as their first 6 numbers. This text is intended to prevent an exporter from identifying an item at the 8 or 10 digit level as a way to try to evade these controls. If the 8 or 10 digit code for the item begins with one of the HTS–6 Codes (that is, matches the first six numbers of the latter) that are specified in the table, the item will require a license under § 746.5(a)(1)(i).

BIS estimates these changes to supplement no. 2 to part 746 will result in an additional two license applications submitted to BIS annually.

2. Expansion of Russian and Belarusian Industry Sector Sanctions Under Supplement No. 4 to Part 746 To Add Additional Items To Align With Controls Imposed by U.S. Partners and Allies and Make Other Changes To Render the EAR's Controls Stronger, More Effective, and Easier To Understand

a. *Expansion of the controls by adding 322 HTS–6 Codes to supplement no. 4 to part 746.*

In supplement no. 4 to part 746—Russian and Belarusian Industry Sector Sanctions pursuant to § 746.5(a)(1)(ii), this rule expands the scope of the Russian and Belarusian Industry Sector Sanctions by adding 322 additional HTS–6 Code entries corresponding to 322 industrial items that will require a license for export or reexport to or transfer within Russia or Belarus under § 746.5(a)(1)(ii). The restrictions on these additional industrial items are intended to further undermine the Russian and Belarusian industrial bases and their ability to continue to support the Russian invasion of and subsequent military aggression in Ukraine. The items added include a variety of electronics, industrial machinery, and equipment. The complete list of 322 new HTS–6 Codes this rule adds to supplement no. 4 are as follows: 720810, 720825, 720826, 720827, 720836, 720837, 720838, 720839, 720840, 720851, 720852, 720853, 720854, 720890, 720915, 720916, 720917, 720918, 720925, 720926, 720927, 720928, 720990, 721011, 721012, 721020, 721030, 721041, 721049, 721050, 721061, 721069, 721070, 721119, 721123, 721190, 721220, 721230, 721240, 721250, 721911, 721912, 721913, 721914, 721921, 721922, 721923, 721924, 721931, 721932, 721933, 721934, 721935, 721990, 722011, 722012, 722020, 722090, 722511, 722540, 722550, 722591, 722592, 722611, 722619, 722620, 722692, 722699, 730810, 730820, 730830, 730840, 730890, 731021, 731029, 761010, 761090, 761210, 840410, 840420, 840490, 840510, 840681, 840682, 840721, 840729, 840810, 840820, 840890, 840999, 841090, 841111, 841112, 841121, 841122, 841191, 841311, 841319, 841330, 841350, 841360, 841381, 841410, 841610, 841620, 841630, 841690, 841720, 841919, 841950, 841960, 841990, 842111, 842611, 842619, 842620, 842630, 842641, 842649, 842691, 842710, 842790, 842831, 842870, 842911, 842920, 842930, 842940, 842951, 842952, 843049, 843120, 843139, 843141, 844319, 845420, 845490, 845522, 845530, 845620, 845640, 845710, 845730, 845811, 845819, 845891, 845899, 845921, 845931, 845941, 845961, 846012, 846019, 846022, 846023, 846024, 846029, 846031, 846039, 846040, 846222, 846223, 846224, 846225, 846226, 846229, 846232, 846233, 846239, 846242, 846249, 846251, 846259, 846261, 846262, 846263, 846269, 846290, 846310, 846320, 846330, 846390, 846410, 846420, 846490, 846691, 846693, 846694, 846810, 846820, 846880, 847330, 847431, 847730, 847981, 847982, 848130, 848250, 848310, 848320, 848330, 848340, 848350, 848360, 848390, 848520, 848530, 848590, 848610, 848620, 848630, 848640, 848710, 850153, 850211, 850212, 850300, 850511, 850590, 850710, 850720, 851110, 851120, 851130, 851140, 851150, 851180, 851190, 851220, 851290, 851411, 851419, 851420, 851490, 851511, 851519, 851521, 851529, 851680, 851771, 851779, 852351, 852581, 852582, 852583, 852589, 852610, 852721, 852849, 852910, 853080, 853221, 853224, 853229, 853230, 853290, 853400, 853510, 853521, 853650, 853690, 853810, 853929, 853951, 853952, 854121, 854129, 854130, 854141, 854142, 854143, 854149, 854320, 854330, 854411, 854430, 854449, 854470, 854520, 854710, 854800, 854911, 854912, 854913, 854914, 854919, 854921, 854929, 854931, 854939, 854991, 854999, 870310, 870423, 870510, 870540, 871690, 900110, 900510, 900580, 900590, 901380, 901410, 901420, 901480, 901490, 901510, 901520, 902480, 902519, 902590, 902710, 902781, 902789, 902920, 902990, 903032, 903039, 903040, 903082, and 903089.

b. *Removal of Schedule B and Schedule B Description columns under supplement no. 4 to part 746 to make it easier to understand the supplement's scope and to align the controls with those imposed by U.S. allies and partners.*

Also in supplement no. 4 to part 746, this rule revises the table to remove the columns for Schedule B and Schedule B Description while retaining the existing HTS Code and HTS Description columns. With these changes, the supplement will now utilize HTS–6 Code and the HTS Description, instead of the Schedule B and Schedule B Description. This change aligns the underlying controls with those of U.S. allies and partners who generally use HS–6 Codes and HS Descriptions, which are equivalent to the HTS–6 Codes and HTS Descriptions used under the U.S. Harmonized Tariff Schedule. Because the HS–6 Codes and HS Descriptions are recognized and used internationally, these changes will make it easier to align these EAR controls with those of U.S. allies and partners.

c. *Revision to the column used to identify the license requirement under supplement no. 4 to part 746 to use the HTS–6 Code column instead of the HTS Description column.*

Prior to this rule, the supplement no. 4 to part 746 introductory text specified that the HTS Description column is determinative in identifying the items that require a license under § 746.5(a)(1)(ii). BIS determined that in making changes to align the EAR's controls in this supplement with those imposed by U.S. allies and partners, it would be preferable from a consistency and precision perspective to make the HTS–6 Code, as opposed to the HTS Description, be the determinative factor in assessing licensing obligations under § 746.5(a)(1)(ii). While using the HTS–6 Code instead of the HTS Description may result in some additional items being subject to the license requirements under § 746.5(a)(1)(ii), as a general matter, using the HTS–6 column will make it easier for exporters, reexporters, and transferors to understand and comply with these controls. This revision may also facilitate the licensing of these items by BIS. The use of the HTS–6 Code to identify the items subject to the license requirement under § 746.5(a)(1)(ii) will also help to improve the effectiveness of enforcement-related activities because it will be easier for BIS and other U.S. Government enforcement officials to identify items that require a license under supplement no. 4 to part 746 due to the fact that if there is a match between an HTS–6 Code in the Electronic Export Information (EEI) data filed in the Automated Export System (AES) and an HTS–6 Code identified under supplement no. 4 to part 746, a license will be required for the export of the item at issue.

d. *Clarifications to the supplement no. 4 to part 746 introductory text to specify how the HTS–6 Codes relate to other information in the table, as well as to content referring to other HTS Codes that are longer but derived from HTS–6 Codes.*

Similar to the clarifications described above to the supplement no. 2 to part 746 introductory text, this rule revises paragraph (b) under the supplement no. 4 to part 746 introductory text to clarify

that that HTS Description is included as a column heading under the table to assist exporters with their AES filing responsibilities, as well as to provide them with clarity regarding the types of items that fall under specific HTS–6 Codes. This rule also adds a sentence to specify that the HTS–6 Code governs in determining the license requirement. As with the example provided above for supplement no. 2 to part 746 where an exporter believes more than one HTS Description may apply to their item, the HTS–6 Code governs the license requirements for the items set forth in supplement no. 4 to part 746. Lastly, this rule adds a sentence to new paragraph (b) to clarify that the license requirements extend to HTS Codes at the 8 and 10 digit level when those HTS–8 and HTS–10 codes begin with the HTS–6 Codes as their first 6 numbers. This text is intended to prevent an exporter from identifying an item at the 8 or 10 digit level as a way to try to evade these controls. If the 8 or 10 digit code begins with the six numbers of one of the HTS–6 Codes in the table, it will require a license under § 746.5(a)(1)(i).

BIS estimates these changes to supplement no. 4 to part 746 will result in an additional 10 license applications submitted to BIS annually.

3. Expansion of Russian and Belarusian Industry Sector Sanctions Under Supplement No. 6 to Part 746 To Add Additional Items To Align With Controls Imposed by U.S. Partners and Allies and Make Other Changes To Render the Controls Stronger, More Effective, and Easier To Understand

In supplement no. 6 to part 746, this rule expands the list of items that require a license under § 746.5(a)(1)(iii) to better align these Russian and Belarusian Russian Industry Sector Sanctions with the U.S. allies' and partners' controls. This rule also makes certain clarifying changes to facilitate understanding of the controls, such as adding explanatory notes. Specifically, this rule makes the following changes to supplement no. 6 to part 746:

a. Under paragraph (c), by expanding the scope of the paragraph to add 'thiafentanil' as an additional chemical to align with controls imposed by U.S. allies and partners on the same chemical.

b. Under paragraph (e), this rule makes the following changes:

Under paragraph (e)(4) this rule clarifies the scope of items controlled by adding the words ''isolated or purified' before the references to nucleotides and oligonucleotides and by adding an 'and' between the terms nucleotides and oligonucleotides. This rule also deletes the phrase 'and reagents for oligonucleotide synthesis' and the 'or' at the end of the paragraph. These words are no longer needed because of the greater specificity that has been added by the other changes to this paragraph. Additionally, due to the addition of new paragraphs (e)(6) and (7), the 'or' is no longer needed between paragraphs (e)(4) and (5).

Under paragraph (e)(5), this rule clarifies the scope of items controlled by adding the words ''isolated or purified' before amino acids, peptides, and proteins. This rule also adds an 'and' between the terms peptides and proteins and deletes the phrase 'and resins and reagents for peptide synthesis at the end of the paragraph. This deletion is being made in light of the greater specificity that has been added with the other changes to paragraph (e)(5).

This rule adds a new paragraph (e)(6) to control reagents and materials for oligonucleotide synthesis, n.e.s. This rule also adds a new paragraph (e)(7) to control resins, reagents, and materials for peptide synthesis under the Russian and Belarusian Industry Sector Sanctions set forth in § 746.5(a)(1)(iii). These expansions are made to align with the U.S. allies' and partners' controls on these items and to further strengthen the EAR's controls.

c. Under paragraph (f), this rule makes the following changes:

Under paragraph (f)(1), this rule removes the term 'fermenters' because it is not needed for defining the scope of the control, as fermenters are listed under paragraph (f)(12) of this rule. This change is made to align this control with the controls imposed by the U.S. allies and partners and to make it easier for exporters to understand the scope of the control.

Under paragraph (f)(2), this rule removes the phrase 'in which all surfaces that come into direct contact with the chemicals being processed are made from controlled materials' and in its place adds the broader term 'n.e.s.' This phrase was removed because the words 'controlled materials' was confusing from a compliance perspective. Under paragraph (f)(3), this rule adds the term ''components'' to the scope of the control and adds quotes around the terms ''parts'' and ''accessories'' to clarify that these terms are defined terms under the EAR. This clarification addresses questions that BIS has received from exporters regarding whether consumables are captured under paragraph (f)(3). As described below, this rule adds a note to paragraph (f) to specify that ''components, parts, and accessories'' include consumables.

Under paragraph (f)(10), this rule expands the scope of the control by adding 'and microarrays' after well plates. This term is added to better achieve the intended scope of the control and to strengthen it.

Under paragraph (f)(13), this rule clarifies the scope of the paragraph by adding the term ''and ultracentrifuges'' and by adding quotes around the EAR-defined terms ''components'' and ''accessories.'' Biological sample separation capabilities capture 'ultracentrifuges' as well as 'centrifuges.' The addition of the term 'ultracentrifuges' will make the scope of the control parameter clearer.

Under paragraphs (f)(14) through (17), this rule expands their scope by adding the defined EAR terms ''components,'' ''parts,'' and ''accessories.'' These terms are added to better achieve the intended scope of these controls, to better align them with U.S. allies' and partners' controls, and to strengthen the EAR's controls. In addition, under paragraph (f)(16), this rule adds the term 'and qPCR' to clarify that these types of instruments are caught under the control parameter in addition to Polymerase chain reaction (PCR) instruments. While 'qPCR' instruments already fell under the scope of the paragraph (e)(16) control parameter, this added text will make it clearer and better align with the U.S. allies' and partners' controls, which reference the term 'qPCR.'

Under paragraph (f)(18), this rule adds quotes around the EAR-defined terms ''components,'' ''parts,'' and ''accessories'' and adds the term ''n.e.s.' to clarify the scope of this control parameter.

Under paragraph (f)(19), this rule expands the scope of the paragraph by adding the EAR-defined terms ''components,'' ''parts,'' and ''accessories.'' These terms are added to better achieve the intended scope of these controls and strengthen them, as well as better align them with U.S. allies' and partners' controls.

Under paragraph (f)(22), this rule removes the word 'or' because it is no longer needed with the addition of new paragraphs (f)(24) through (27) described below.

Under paragraph (f)(23), this rule expands the scope of the paragraph by adding the EAR-defined terms ''parts'' and ''accessories,'' as well as adding term 'n.e.s.' These terms are added to better achieve the intended scope of these controls and strengthen them, as well as better align them with U.S. allies' and partners' controls.

This rule adds a new paragraph (f)(24) to control ''microreactors, n.e.s.'' This rule adds a new paragraph (f)(25) to control 'solid and liquid aerosol generating equipment, n.e.s.'; a new paragraph (f)(26) to control 'laboratory milling equipment, ''components,'' ''parts,'' and ''accessories,'' n.e.s.'; and a new paragraph (f)(27) to control 'peptide synthesizers, ''components,'' ''parts,'' and ''accessories.'' These expansions are made to align BIS's controls with the controls that U.S. allies and partners have imposed on these items and to strengthen them.

As mentioned above, this rule also adds a new Note 6 to paragraph (f). The new note clarifies that consistent with the definitions in part 772 of the EAR, ''components,'' ''parts,'' and ''accessories'' include consumables. The clarifications to paragraph (f), along with the new Note 6 to paragraph (f), will clarify that consumables are within the scope of the control parameters.

Lastly, under paragraph (f)(23), this rule revises Technical Note 1 to paragraph (f)(23) to specify that consistent with EU List X.B.X.001, for purposes of paragraph (f)(23), 'continuous flow reactors' consist of plug and play systems. This revised technical note clarifies that these are plug and play systems in which reactants are continuously fed into the reactor and the resultant product is collected at the outlet.

BIS estimates these changes to supplement no. 2 to part 746 will result in an additional 10 license applications submitted to BIS annually.

4. Expansion of 'Luxury Goods' Sanctions To Add Additional Items To Supplement No. 5 to Part 746 To Align With U.S. Allies' and Partners' 'Luxury Goods' Controls and Strengthen the EAR's Controls

In supplement no. 5 to part 746—'Luxury Goods' Sanctions for Russia and Belarus Pursuant to § 746.10(a)(1) and (2), this rule expands the scope of the 'Luxury Goods' Sanctions by adding two hundred and seventy-six additional entries that will require a license for export or reexport to or transfers within Russia or Belarus and for designated Russian and Belarusian oligarchs and malign actors worldwide under § 746.10(a)(1) and (2). The restrictions on these additional items are intended to impose additional costs on Russians and Belarusians supporting the Russian government's invasion of Ukraine. The items this rule adds include a variety of 'luxury goods.' The addition of these items will strengthen BIS's controls under the EAR and also align them with the controls imposed by U.S. allies and partners on these items.

BIS estimates these changes to supplement no. 5 to part 746 will result in an additional 15 license applications submitted to BIS annually.

5. Alignment Changes To Supplement No. 3 to Part 746 of the EAR To Add Taiwan

As noted above, in response to Russia's February 2022 invasion of Ukraine and Belarus's s complicity in the invasion, BIS imposed extensive export controls on Russia and Belarus under the EAR. However, certain of the new licensing requirements pertaining to foreign-produced items under § 746.8 do not apply to countries that have committed to implementing substantially similar export controls on Russia and Belarus under their domestic laws. These countries are listed in supplement no. 3. to part 746 of the EAR. Pursuant to § 746.8(a)(5) of the EAR, countries that have made such a commitment receive full or partial exclusions, as appropriate, from the Foreign Direct Product rules' license requirements set forth under § 746.8(a)(2) and (3), as well as under § 746.7(a)(1)(iii), as a result of a revision included in another rule published in today's **Federal Register** that revised supplement no. 3 to part 746 as described further below. Similarly, in the case of such ''excluded'' countries, the license requirements in § 746.8(a)(1) are not used to determine U.S.-origin controlled content under the EAR's *de minimis* rules, as set forth in supplement no. 2 to part 734 of the EAR, provided that the criteria in § 746.8(a)(5)(i) and (ii) are met.

Pursuant to the Russia Sanctions rule, 32 countries were added to new supplement no. 3. In March 2022, BIS published a rule that added South Korea to the list of countries,[1] and in April 2022, it published a rule that added Iceland, Liechtenstein, Norway, and Switzerland to the list.[2] Taiwan has implemented measures on Russia and Belarus that are substantially similar to those imposed by BIS. In this rule, in recognition of Taiwan's implementation of such measures, BIS is adding Taiwan to supplement no. 3 to part 746 of the EAR with the designation of ''full.''

Lastly, this rule makes a conforming change to the heading of supplement no. 3 to part 746 to conform with a revision that is being made by another final rule published in today's issue of the **Federal Register**, *Export Control Measures on Iran Under the Export Administration Regulations (EAR) to Address Iranian Unmanned Aerial Vehicles (UAV) and Their Use by Russia Against Ukraine,* that is revising the heading of supplement no. 3 to part 746.

B. Corrections and Clarifications to Existing Controls on Russian and Belarus

BIS estimates the changes described in Section B of this final rule will not result in the submission of any additional license applications to BIS. Some of the clarifications this rule makes were also described above under Section A where the clarifications and expansions were being made to the same EAR section or supplement. The corrections and clarifications under Section B do not include expansion of the controls, which includes the clarifications to § 744.7.

1. Clarification That § 744.7 Also Extends to Transfers (In-Country), in Addition to Exports and Reexports

In § 744.7, this rule adds the term ''transfer (in-country)'' wherever the terms ''exports'' and ''reexports'' occur to clarify that the license requirements of this section also apply to transfers (in-country). BIS is making this clarification as part of this rule due to the increased importance of this part 744 end-use control for imposing license requirements for Russian and Belarusian aircraft and vessels. In addition, BIS has received a number of questions recently from the public on whether the controls extend to transfers (in-country). These questioners have typically requested confirmation that their understanding is correct that the § 744.7 requirements included transfers (in-country), indicating that there is not a misunderstanding of this provision by the exporting community. However, to provide further guidance to exporters and to help further strengthen understanding and compliance with the Russia and Belarus sanctions related to items being exported, reexported, transferred (in-country) to such aircraft or vessels, this rule adds transfer (in-country) to § 744.7.

2. Clarification That the Exclusion for Items Controlled Under ECCN 5A992 or 5D992 Under § 746.8 Also Applies to 'Luxury Goods Sanctions' License Requirements Under § 746.10(a)(1)

In § 746.10 ('Luxury goods' sanctions against Russia and Belarus and Russian and Belarusian oligarchs and malign actors), this rule adds introductory text to paragraph (a) to clarify that the same exclusion for ECCNs 5A992 or 5D992 under § 746.8(a) introductory text also applies to the 'luxury goods' sanctions

[1] 87 FR 13627 (Mar. 10, 2022).

[2] 87 FR 21554 (Apr. 12, 2022).

under § 746.10(a)(1). This exclusion text is added to ensure that the 'luxury goods' license requirements under § 746.10(a)(1) do not undermine the scope of the ECCNs 5A992 and 5D992 exclusion under § 746.8 because certain items under supplement no. 5 to part 746 are also classified under ECCNs 5A992 or 5D992, which effectively negates some of the exclusion under § 746.8. This rule addresses this by adding the same exclusion text for ECCNs 5A992 and 5D992, so that the license requirement under § 746.10(a)(1) does not impose a separate license requirement on items that are within the scope of the exclusion text in § 746.8.

3. Conforming Changes to the Licensing Policies Under §§ 746.5, 746.8, and 746.10 and Addition of Case-by-Case License Review Policy for Applications for the Disposition of Items Needed as Part of Companies Curtailing or Closing All Operations in Russia or Belarus

In §§ 746.5, 746.8, and 746.10, this rule makes two changes to the license review policies of these sections to make conforming changes and to add one additional case-by-case license review policy.

a. *Conforming changes to the license review policies in §§ 746.5, 746.8, and 746.10.*

In §§ 746.5(b)(1) and (2) and 746.10(b), this rule makes conforming changes to each of the licensing policies to conform to the structure of the licensing policy paragraph under § 746.8(b). This rule does so by revising each of the sentences that specifies the policy of denial license review policy by adding a period and then adding a new sentence adding the same case-by-case license review policy text to §§ 746.5(b)(1) and (2) and 746.10(b), as is currently found in § 746.8(b). These changes also specify that license applications under those sections, will be reviewed on a case-by-case basis to determine whether the transaction in question would benefit the Russian or Belarusian government or defense sector.

b. *Addition of case-by-case license review policy for applications for the disposition of items by companies curtailing or closing all operations in Russia or Belarus.*

In §§ 746.5(b)(1) and (2), 746.8(b), and 746.10(b), this rule adds a new case-by-case license review policy for applications for the disposition of items by companies not headquartered in Country Group D:1, D:5, E:1 or E:2 that are curtailing or closing all operations in Russia or Belarus. Companies deciding to curtail or close all operations in Russia put further pressure on the Russian government and on the Russian and Belarusian defense industrial base, as their departure will hollow out both countries' industrial capacity and economy, which may lead to further degradation of their defense industrial base. BIS encourages companies to exit the Russian and Belarusian markets and is making these changes to facilitate such decisions. In curtailing or closing operations in Russia or Belarus, many companies and other entities have encountered difficulties, such as issues related to the disposition of items subject to the EAR that may be too large or cost-prohibitive to remove from Russia. The new case-by-case license review policy added by this rule will facilitate the orderly exit of companies and entities from Russia and Belarus in a manner consistent with U.S. national security and foreign policy interests. As discussed above, BIS will review such license application to determine whether the disposition of these items will benefit the Russian or Belarusian government or military.

Savings Clause

For the changes being made in this final rule, shipments of items removed from eligibility for a License Exception or export, reexport, or transfer (in-country) without a license (NLR) as a result of this regulatory action that were en route aboard a carrier to a port of export, reexport, or transfer (in-country), on February 24, 2023, pursuant to actual orders for export, reexport, or transfer (in-country) to or within a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export, reexport, or transfer (in-country) without a license (NLR), provided the export, reexport, or transfer (in-country) is completed no later than on March 27, 2023.

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (codified, as amended, at 50 U.S.C. 4801–4852). ECRA provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule. To the extent it applies to certain activities that are the subject of this rule, the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA) (codified, as amended, at 22 U.S.C. 7201–7211) also serves as authority for this rule.

Rulemaking Requirements

1. This final rule is not a ''significant regulatory action'' because it ''pertain[s]'' to a ''military or foreign affairs function of the United States'' under sec. 3(d)(2) of Executive Order 12866.

2. Notwithstanding any other provision of 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 Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.

This rule involves the following OMB-approved collections of information subject to the PRA:

- 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 29.4 minutes for a manual or electronic submission;
- 0694–0096 ''Five Year Records Retention Period,'' which carries a burden hour estimate of less than 1 minute; and
- 0607–0152 ''Automated Export System (AES) Program,'' which carries a burden hour estimate of 3 minutes per electronic submission.

BIS estimates that these new controls on Russia and Belarus under the EAR will result in an increase of 37 license applications submitted annually to BIS. However, the additional burden falls within the existing estimates currently associated with these control numbers. Additional information regarding these collections of information—including all background materials—can be found at *https://www.reginfo.gov/public/do/PRAMain* by using the search function to enter either the title of the collection or the OMB Control Number.

3. This rule does not contain policies with federalism implications as that term is defined in Executive Order 13132.

4. Pursuant to section 1762 of the Export Control Reform Act of 2018 (50 U.S.C. 4821) (ECRA), this action is exempt from the Administrative Procedure Act (APA) (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date. While section 1762 of ECRA provides sufficient authority for such an exemption, this action is also independently exempt from these APA requirements because it involves a military or foreign affairs function of the United States (5. U.S.C. 553(a)(1)).

5. Because a notice of proposed rulemaking and an opportunity for

public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects

15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

15 CFR Part 746

Exports, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, parts 744 and 746 of the Export Administration Regulations (15 CFR parts 730 through 774) are amended as follows:

PART 744—CONTROL POLICY: END USE AND END USER CONTROLS

■ 1. The authority citation for part 744 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of September 19, 2022, 87 FR 57569 (September 21, 2022); Notice of November 8, 2022, 87 FR 68015 (November 10, 2022).

■ 2. Section 744.7 is amended by revising paragraphs (a) introductory text, (b)(1) introductory text, and (b)(2) introductory text to read as follows:

§ 744.7 Restrictions on certain exports to and for the use of certain foreign vessels or aircraft.

(a) *General end-use prohibition.* In addition to the license requirements for items specified on the CCL, you may not export, reexport, or transfer (in-country) an item subject to the EAR to, or for the use of, a foreign vessel or aircraft, whether an operating vessel or aircraft or one under construction, located in any port including a Canadian port, unless a License Exception or NLR permits the shipment to be made:

* * * * *

(b) *Exception for U.S. and Canadian carriers.* (1) *Exception to general end-use prohibition.* Notwithstanding the general end-use prohibition in paragraph (a) of this section, export, reexport, and transfer (in-country) may be made of the commodities described in paragraph (b)(3) of this section, for use by or on a specific vessel or plane of U.S. or Canadian registry located at any seaport or airport outside the United States or Canada except a port in Country Group D:1 (excluding the PRC), (see supplement no. 1 to part 740) provided that such commodities are all of the following:

* * * * *

(2) *Exports to U.S. or Canadian Airline's Installation or Agent.* Exports, reexports, and transfers (in-country) of the commodities described in paragraph (e) of this section, except fuel, may be made to a U.S. or Canadian airline's installation or agent in any foreign destination except Country Group D:1 (excluding the PRC), (see supplement no. 1 to part 740) provided such commodities are all of the following:

* * * * *

PART 746—EMBARGOES AND OTHER SPECIAL CONTROLS

■ 3. The authority citation for 15 CFR part 746 is revised to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 287c; Sec 1503, Pub. L. 108–11, 117 Stat. 559; 22 U.S.C. 2151 note; 22 U.S.C. 6004; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p 168; Presidential Determination 2003–23, 68 FR 26459, 3 CFR, 2004 Comp., p. 320; Presidential Determination 2007–7, 72 FR 1899, 3 CFR, 2006 Comp., p. 325; Notice of May 9, 2022, 87 FR 28749 (May 10, 2022).

■ 4. Section 746.5 is amended by revising paragraph (b) to read as follows:

§ 746.5 Russian and Belarusian Industry Sector Sanctions.

* * * * *

(b) *Licensing policy.* (1) Applications for the export, reexport, or transfer (in-country) of any item pursuant to paragraph (a)(1)(i) of this section that requires a license for Russia or Belarus will be reviewed under a policy of denial when for use directly or indirectly for exploration or production from deepwater (greater than 500 feet), Arctic offshore, or shale projects in Russia or Belarus that have the potential to produce oil or gas. The following types of license applications will be reviewed on a case-by-case basis to determine whether the transaction in question would benefit the Russian or Belarusian government or defense sector: applications for export, reexport, or transfer (in-country) of items that may be necessary for health and safety reasons and applications for the disposition of items by companies not headquartered in Country Group D:1, D:5, E:1 or E:2 in supplement no. 1 to part 740 that are curtailing or closing all operations in Russia or Belarus.

(2) Applications for the export, reexport, or transfer (in-country) of any item pursuant to paragraph (a)(1)(ii) or (iii) of this section that requires a license for Russia or Belarus will be reviewed under a policy of denial. The following types of license applications will be reviewed on a case-by-case basis to determine whether the transaction in question would benefit the Russian or Belarusian government or defense sector: applications for export, reexport, or transfer (in-country) of items that may be necessary for health and safety reasons; applications for items that meet humanitarian needs; and applications for the disposition of items by companies not headquartered in Country Group D:1, D:5, E:1 or E:2 in supplement no. 1 to part 740 that are curtailing or closing all operations in Russia or Belarus.

* * * * *

■ 5. Section 746.8 is amended by revising paragraph (b) to read as follows:

§ 746.8 Sanctions against Russia and Belarus.

* * * * *

(b) *Licensing policy.* With limited exceptions, applications for the export, reexport, or transfer (in-country) of any item that requires a license pursuant to the requirements of this section will be reviewed with a policy of denial. The following types of license applications for licenses required under paragraphs (a)(1) and (2) of this section will be reviewed on a case-by-case basis to determine whether the transaction in question would benefit the Russian or Belarusian government or defense sector: applications related to safety of flight; applications related to maritime safety; applications for civil nuclear safety; applications to meet humanitarian needs; applications that support government space cooperation; applications for items destined to wholly-owned U.S. subsidiaries, branches, or sales offices, foreign subsidiaries, branches, or sales offices of U.S. companies that are joint ventures with other U.S. companies, joint ventures of U.S. companies with companies headquartered in countries from Country Group A:5 and A:6 in supplement no. 1 to part 740 of the EAR, the wholly-owned subsidiaries, branches, or sales offices of companies headquartered in countries from Country Group A:5 and A:6 in supplement no. 1 to part 740, joint

ventures of companies headquartered in Country Groups A:5 and A:6 with other companies headquartered in Country Groups A:5 and A:6; applications for companies headquartered in Country Groups A:5 and A:6 to support civil telecommunications infrastructure; applications for government-to-government activities; and applications for the disposition of items by companies not headquartered in Country Group D:1, D:5, E:1 or E:2 in supplement no. 1 to part 740 that are curtailing or closing all operations in Russia or Belarus. License applications required under paragraph (a)(3) of this section will be reviewed under a policy of denial in all cases.

* * * * *

■ 6. Section 746.10 is amended by adding paragraph (a) introductory text and revising paragraph (b) to read as follows:

§ 746.10 'Luxury Goods' Sanctions Against Russia and Belarus and Russian and Belarusian Oligarchs and Malign Actors.

(a) *License requirements.* For purposes of paragraphs (a)(1) of this section, commodities and software classified under ECCNs 5A992 or 5D992 that have been 'classified in accordance with § 740.17' do not require a license to or within Russia or Belarus for civil end-users that are wholly-owned U.S. subsidiaries, branches, or sales offices, foreign subsidiaries, branches, or sales offices of U.S. companies that are joint ventures with other U.S. companies, joint ventures of U.S. companies with companies headquartered in countries from Country Group A:5 and A:6 in supplement no. 1 to part 740 of the EAR, the wholly-owned subsidiaries, branches, or sales offices of companies headquartered in countries from Country Group A:5 and A:6 in supplement no. 1 to part 740, or joint ventures, branches, or sales offices of companies headquartered in Country Group A:5 and A:6 with other companies headquartered in Country Groups A:5 and A:6. In addition, for purposes of paragraphs (a)(1) and (2), transfers within Russia or Belarus for reexports (*i.e.,* return) to the United States or a country in Country Group A:5 or A:6 of any item, provided the owner retains title to and control of the item at all times, do not require a license. If a license is required for a reexport to a Country Group A:5 or A:6 country from Russia or Belarus, a separate EAR authorization is required to authorize the reexport.

* * * * *

(b) *Licensing policy.* Applications for the export, reexport, or transfer (in-country) of any item that requires a license for pursuant to the requirements of this section will be reviewed with a policy of denial. The following types of license applications will be reviewed on a case-by-case basis to determine whether the transaction in question would benefit the Russian or Belarusian government or defense sector: applications involving items to meet humanitarian needs and applications for the disposition of items by companies not headquartered in Country Group D:1, D:5, E:1 or E:2 in supplement no. 1 to part 740 that are curtailing or closing all operations in Russia or Belarus. The case-by-case license application review policy for items to meet humanitarian needs is included to address certain 'luxury goods' items that may be used in medical devices or situations in which a case-by-case analysis is needed to determine whether a license application should be approved to meet humanitarian needs while also taking into account the applicable broader U.S. national security and foreign policy concerns.

* * * * *

■ 7. Supplement No. 2 to part 746 is revised to read as follows:

Supplement No. 2 to Part 746—Russian and Belarusian Industry Sector Sanction List Pursuant to § 746.5(a)(1)(i)

(a) The source for the Harmonized Tariff Schedule (HTS)–6 codes and descriptions in this list comes from the United States International Trade Commission (USITC's) Harmonized Tariff Schedule of the United States (2023). The items described in supplement no. 2 to part 746 include any modified or designed ''components,'' ''parts,'' ''accessories,'' and ''attachments'' therefor regardless of the HTS Code or HTS Description of the ''components,'' ''parts,'' ''accessories,'' and ''attachments,'' apart from any ''part'' or minor ''component'' that is a fastener (*e.g.,* screw, bolt, nut, nut plate, stud, insert, clip, rivet, pin), washer, spacer, insulator, grommet, bushing, spring, wire, or solder. This supplement includes two columns consisting of the HTS Code and HTS Description to assist exporters, reexporters, and transferors in identifying the products in this supplement. For information on HTS codes in general, you may contact a local import specialist at U.S. Customs and Border Protection at the nearest port. HTS–6 codes 841350, 841360, 842139, 843049, 843139, and 847989 are listed in both this supplement and supplement no. 4 to this part, so exporters, reexporters, and transferors must comply with the license requirements under both § 746.5(a)(1)(i) and (ii) as applicable.

(b) The items identified in the HTS–6 Code column of this supplement are subject to the license requirement under § 746.5(a)(1)(i). The other column—HTS Description—is intended to assist exporters with their Automated Export System (AES) filing responsibilities. The license requirements apply to HTS Codes at the 8 and 10 digit level (HTS–8 and HTS–10 Codes, respectively) when such longer HTS codes begin with the HTS–6 Codes as their first 6 numbers.

HTS–6 code	HTS description
730411	LINE PIPE FOR OIL AND GAS PIPELINES, OF STAINLESS STEEL.
730419	LINE PIPE FOR OIL AND GAS PIPELINES, OF SEAMLESS IRON (OTHER THAN CAST IRON) OR STEEL, NES.
730422	DRILL PIPE OF A KIND USED IN DRILLING FOR OIL OR GAS, OF STAINLESS STEEL.
730423	DRILL PIPE OF A KIND USED IN DRILLING FOR OIL OR GAS, OF IRON (EXCEPT CAST IRON) OR STEEL. NES.
730424	CASING & TUBING USED IN DRILLING FOR OIL OR GAS, OTHER OF STAINLESS STEEL.
730429	CASING AND TUBING OF A KIND USED IN DRILLING FOR OIL OR GAS, OF IRON (EXCEPT CAST IRON) OR STEEL.
730511	LINE PIPE FOR OIL OR GAS PIPELINES, EXTERNAL DIAMETER OVER 406.4 MM (16 IN.), OF IRON OR STEEL, LONGITUDINALLY SUB-MERGED ARC WELDED.
730512	LINE PIPE FOR OIL OR GAS PIPELINES, EXTERNAL DIAMETER OVER 406.4 MM (16 IN.), OF IRON OR STEEL, LONGITUDINALLY WELD-ED NESOI.
730519	LINE PIPE FOR OIL OR GAS PIPELINES, EXTERNAL DIAMETER OVER 406.4 MM (16 IN.), OF IRON OR STEEL, RIVETED OR SIMILARLY CLOSED NESOI.
730520	CASING FOR OIL OR GAS DRILLING, EXTERNAL DIAMETER OVER 406.4 MM (16 IN.), OF IRON OR STEEL.
730611	LINE PIPE FOR OIL OR GAS PIPELINES, WELDED, OF STAINLESS STEEL, NESOI.
730619	LINE PIPE FOR OIL OR GAS PIPELINES, OF IRON OR STEEL, NESOI.
731100	CONTAINERS FOR COMPRESSED OR LIQUEFIED GAS, OF IRON OR STEEL.
761300	ALUMINUM CONTAINERS FOR COMPRESSED OR LIQUEFIED GAS.

HTS–6 code	HTS description
820713	ROCK DRILLING OR EARTH BORING TOOLS WITH WORKING PART OF CERMETS, AND PARTS THEREOF.
820719	INTERCHANGEABLE TOOLS FOR HANDTOOLS, WHETHER OR NOT POWER-OPERATED, OR FOR MACHINE-TOOLS, INCLUDING ROCK DRILLING OR EARTH BORING TOOLS; BASE METL PARTS.
841350	RECIPROCATING POSITIVE DISPLACEMENT PUMPS, NESOI.
841360	ROTARY POSITIVE DISPLACEMENT PUMPS, NESOI.
841382	LIQUID ELEVATORS.
841392	PARTS OF LIQUID ELEVATORS.
842139	FILTERING OR PURIFYING MACHINERY AND APPARATUS FOR GASES, NESOI.
843049	BORING OR SINKING MACHINERY, NESOI, OTHER THAN SELF-PROPELLED.
843139	PARTS FOR LIFTING, HANDLING, LOADING OR UNLOADING MACHINERY, NESOI.
843143	PARTS FOR BORING OR SINKING MACHINERY, NESOI.
847989	MACHINES AND MECHANICAL APPLIANCES HAVING INDIVIDUAL FUNCTIONS, NESOI.
870520	MOBILE DRILLING DERRICKS.
870899	PARTS AND ACCESSORIES FOR MOTOR VEHICLES, NESOI.
890520	FLOATING OR SUBMERSIBLE DRILLING OR PRODUCTION PLATFORMS.
890590	LIGHT VESSELS, FIRE FLOATS, FLOATING CRANES AND OTHER VESSELS WITH NAVIGABILITY NOT THE MAIN FUNCTION, NESOI; FLOATING DOCKS.

■ 8. Supplement no. 3 to part 746 is amended by revising the heading of the supplement and adding an entry for ''Taiwan,'' to the table in alphabetical order to read as follows:

Supplement No. 3 to Part 746—Countries Excluded From Certain License Requirements of §§ 746.7 and 746.8

* * * * *

Country	Scope	**Federal Register** citation
* * * * * * *		
Taiwan	Full	87 FR [INSERT FR PAGE NUMBER], 2/27/2023.
* * * * * * *		

■ 9. Supplement No. 4 to part 746 is revised to read as follows:

Supplement No. 4 to Part 746—Russian and Belarusian Industry Sector Sanctions Pursuant to § 746.5(a)(1)(ii)

(a) The source for the Harmonized Tariff Schedule (HTS)–6 codes and descriptions in this list comes from the United States International Trade Commission (USITC's) Harmonized Tariff Schedule of the United States (2023). The items described in supplement no. 4 to part 746 include any modified or designed ''components,'' ''parts,'' ''accessories,'' and ''attachments'' therefor regardless of the HTS Code or HTS Description of the ''components,'' ''parts,'' ''accessories,'' and ''attachments,'' apart from any ''part'' or minor ''component'' that is a fastener (*e.g.,* screw, bolt, nut, nut plate, stud, insert, clip, rivet, pin), washer, spacer, insulator, grommet, bushing, spring, wire, or solder. This supplement includes two columns consisting of the HTS Code and HTS Description to assist exporters, reexporters, and transferors in identifying the products in this supplement. For information on HTS codes in general, you may contact a local import specialist at U.S. Customs and Border Protection at the nearest port. HTS–6 codes 841350, 841360, 842139, 843049, 843139, and 847989 are listed in both this supplement and supplement no. 2 to this part, so exporters, reexporters, and transferors must comply with the license requirements under both § 746.5(a)(1)(i) and (ii) as applicable.

(b) The items identified in the HTS–6 Code column of this supplement are subject to the license requirement under § 746.5(a)(1)(ii). The other column—HTS Description—is intended to assist exporters with their AES filing responsibilities. The license requirements extend to HTS Codes at the 8 and 10 digit level (HTS–8 and HTS–10 codes, respectively) when such longer HTS Codes begin with the HTS–6 Codes as their first 6 numbers.

HTS–6 code	HTS description
381519	SUPPORTED CATALYSTS, NESOI.
440810	VENEER SHEETS AND SHEETS FOR PLYWOOD, ETC. WHETHER OR NOT PLANED, ETC., NOT OVER 6 MM (.236 IN.) THICK, OF CONIFEROUS WOOD.
440890	VENEER SHEETS AND SHEETS FOR PLYWOOD, ETC. WHETHER OR NOT PLANED, ETC., NOT OVER 6 MM (.236 IN.) THICK, OF NON-CONIFEROUS WOOD, NESOI.
441600	CASKS, BARRELS, VATS, TUBS AND OTHER COOPERS' PRODUCTS AND PARTS THEREOF, OF WOOD, INCLUDING STAVES.
720810	FLAT-ROLLED PRODUCTS OF IRON OR NONALLOY STEEL, OF A WIDTH OF 600 MM OR MORE, IN COILS, NOT FURTHER WORKED THAN HOT-ROLLED, WITH PATTERNS IN RELIEF.
720825	FLAT-ROLLED PRODUCTS OF IRON OR NONALLOY STEEL, OF A WIDTH OF 600 MM OR MORE, COILS, HOT-ROLLED WORKED ONLY, PICKLED, THICKNESS 4.75 MM OR MORE, NESOI.
720826	FLAT-ROLLED PRODUCTS OF IRON OR NONALLOY STEEL, OF A WIDTH OF 600 MM OR MORE, COILS, HOT-ROLLED WORKED ONLY, PICKLED, 3 MM BUT <4.75 MM THICK, N.E.S.O.I.
720827	FLAT-ROLLED PRODUCTS OF IRON OR NONALLOY STEEL, WIDTH OF 600 MM OR MORE, IN COILS, HOT-ROLLED WORKED ONLY, PICKLED, LESS THAN 3 MM THICK, N.E.S.O.I.
720836	FLAT-ROLLED PRODUCTS OF IRON OR NONALLOY STEEL, WIDTH OF 600 MM OR MORE IN COILS, HOT-ROLLED WORKED ONLY, OF A THICKNESS EXCEEDING 10 MM, N.E.S.O.I.
720837	FLAT-ROLLED PRODUCTS OF IRN OR NONALLOY STEEL, WIDTH OF 600 MM OR MORE, IN COILS, HOT-ROLLED WORKED ONLY, OF A THICKNESS 4.75 MM BUT NOT OVER 10 MM NESOI.

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720838	FLAT-ROLLED PRODUCTS OF IRON OR NONALLOY STEEL, WIDTH 600 MM OR MORE, IN COILS,HOT-ROLLED WORKED ONLY, OF A THICKNESS 3 MM OR MORE BUT UNDER 4.75 MM, NESOI.
720839	FLAT-ROLLED PRODUCTS OF IRON OR NONALLOY STEEL, WIDTH 600 MM OR MORE, IN COILS,HOT-ROLLED WORKED ONLY, OF A THICKNESS OF LESS THAN 3 MM, N.E.S.O.I.
720840	FLAT-ROLLED IRON OR NONALLOY STEEL, 600 MM OR MORE WIDE, HOT-ROLLED, NOT CLAD, PLATED OR COILS, PATTERNS IN RELIEF.
720851	FLAT-ROLLED PRODUCTS OF IRON OR NONALLOY STEEL, WIDTH 600 MM OR MORE, NOT IN COILS, HOT-ROLLED WORKED ONLY, OF A THICKNESS EXCEEDING 10 MM, N.E.S.O.I.
720852	FLAT-ROLLED IRON OR NONALLOY STEEL, 600 MM OR MORE WIDE, HOT-ROLLED, NOT CLAD, PLATED, COATED OR COILS, 4.75 MM TO 10 MM THICK.
720853	FLAT-ROLLED IRON OR NONALLOY STEEL, 600 MM OR MORE WIDE, HOT-ROLLED, NOT CLAD, PLATED, COATED OR COILS, 3 MM TO UNDER 4.75 MM THICK.
720854	FLAT-ROLLED IRON OR NONALLOY STEEL, 600 MM OR MORE WIDE, HOT-ROLLED, NOT CLAD, PLATED, COATED OR COILS, LESS THAN 3 MM THICK.
720890	FLAT-ROLLED IRON OR NONALLOY STEEL PRODUCTS, 600 MM OR MORE WIDE, HOT-ROLLED, NOT CLAD, PLATED OR COATED, NESOI.
720915	FLAT-ROLLED PRODUCTS OF IRON OR NONALLOY STEEL, WIDTH 600 MM OR MORE, IN COILS, COLD-ROLLED WORKED ONLY, OF A THICKNESS OF 3 MM OR MORE.
720916	FLAT-ROLLED PRODUCTS OF IRON OR NONALLOY STEEL, WIDTH 600 MM OR MORE, IN COILS, COLD-ROLLED WORKED ONLY, OF A THICKNESS OVER ONE MM BUT LESS THAN 3 MM.
720917	FLAT-ROLLED PRODUCTS OF IRON OR NONALLOY STEEL, WIDTH 600 MM OR MORE, IN COILS, COLD-ROLLED WORKED ONLY, OF A THICKNESS 0.5 MM OR MORE BUT NOT OVER 1 MM.
720918	FLAT-ROLLED PRODUCTS OF IRON OR NONALLOY STEEL, WIDTH 600 MM OR MORE, IN COILS, COLD-ROLLED WORKED ONLY, OF A THICKNESS OF LESS THAN 0.5 MM.
720925	FLAT-ROLLED PRODUCTS OF IRON OR NONALLOY STEEL, WIDTH 600 MM OR MORE, NOT IN COILS, COLD-ROLLED WORKED ONLY, OF A THICKNESS OF 3 MM OR MORE.
720926	FLAT-ROLLED PRODUCTS OF IRON OR NONALLOY STEEL, WIDTH 600 MM OR MORE, NOT IN COILS, COLD-ROLLED WORKED ONLY, OF A THICKNESS OVER 1 MM BUT LESS THAN 3 MM.
720927	FLAT-ROLLED PRODUCTS OF IRON OR NONALLOY STEEL, WIDTH 600 MM OR MORE, NOT IN COILS, COLD-ROLLED WORKED ONLY, OF A THICKNESS 0.5 MM OR MORE BUT N/O 1 MM.
720928	FLAT-ROLLED PRODUCTS OF IRON OR NONALLOY STEEL, WIDTH 600 MM OR MORE, NOT IN COILS, COLD-ROLLED WORKED ONLY, OF A THICKNESS OF LESS THAN 0.5 MM.
720990	FLAT-ROLLED IRON OR NONALLOY STEEL PRODUCTS, 600 MM OR MORE WIDE, COLD-ROLLED, NOT CLAD, PLATED OR COATED, NESOI.
721011	FLAT-ROLLED IRON OR NONALLOY STEEL PRODUCTS, 600 MM OR MORE WIDE, PLATED OR COATED WITH TIN, 0.5 MM OR MORE THICK.
721012	FLAT-ROLLED IRON OR NONALLOY STEEL PRODUCTS, 600 MM OR MORE WIDE, PLATED OR COATED WITH TIN, UNDER 0.5 MM THICK.
721020	FLAT-ROLLED IRON OR NONALLOY STEEL PRODUCTS, 600 MM OR MORE WIDE, PLATED OR COATED WITH LEAD, INCLUDING TERNE-PLATE.
721030	FLAT-ROLLED PRODUCTS OF IRON OR NONALLOY STEEL, WIDTH OF 600 MM OR MORE, ELECTROLYTICALLY PLATED OR COATED WITH ZINC.
721041	FLAT-ROLLED IRON OR NONALLOY STEEL PRODUCTS, CORRUGATED, 600 MM OR MORE WIDE, PLATED OR COATED WITH ZINC OTHER THAN ELECTROLYTICALLY.
721049	FLAT-ROLLED IRON OR NONALLOY STEEL PRODUCTS, NOT CORRUGATED, 600 MM OR MORE WIDE, PLATED OR COATED WITH ZINC OTHER THAN ELECTROLYTICALLY.
721050	FLAT-ROLLED IRON OR NONALLOY STEEL PRODUCTS, 600 MM OR MORE WIDE, PLATED OR COATED WITH CHROMIUM OXIDES OR WITH CHROMIUM AND CHROMIUM OXIDES.
721061	FLAT-ROLLED IRON OR NONALLOY STEEL 600 MM OR MORE, PLATED OR COATED WITH ALUMINUM-ZINC ALLOYS.
721069	FLAT-ROLLED IRON OR NONALLOY STEEL 600 MM OR MORE, PLATED OR COATED WITH OTHER ALUMINUM.
721070	FLAT-ROLLED IRON OR NONALLOY STEEL PRODUCTS, 600 MM OR MORE WIDE, PAINTED, VARNISHED OR COATED WITH PLASTICS.
721119	FLAT-ROLLED HIGH-STRENGTH NONALLLOY STEEL PRODUCTS NESOI, UNDER 600 MM WIDE, HOT-ROLLED, NOT CLAD, PLATED OR COATED, UNDER 4.75 MM THICK.
721123	FLAT-ROLLED PRODUCTS OF IRON OR NONALLOY STEEL, WIDTH LESS THAN 600 MM, NOT FURTHER WORKED THAN COLD-ROLLED, NOT CLAD, PLATED OR COATED, <0.25% CARBON.
721190	FLAT-ROLLED IRON OR NONALLOY STEEL PRODUCTS, UNDER 600 MM WIDE, NOT CLAD, PLATED OR COATED, NESOI.
721220	FLAT-ROLLED PRODUCTS OF IRON OR NONALLOY STEEL, WIDTH OF LESS THAN 600 MM, ELECTROLYTICALLY PLATED OR COATED WITH ZINC.
721230	FLAT-ROLLED IRON OR NONALLOY STEEL PRODUCTS, UNDER 600 MM WIDE, PLATED OR COATED WITH ZINC OTHER THAN ELECTROLYTICALLY.
721240	FLAT-ROLLED IRON OR NONALLOY STEEL PRODUCTS, UNDER 600 MM WIDE, PAINTED, VARNISHED OR COATED WITH PLASTICS.
721250	FLAT-ROLLED IRON OR NONALLOY STEEL PRODUCTS, UNDER 600 MM WIDE, PLATED OR COATED, NESOI.
721911	FLAT-ROLLED STAINLESS STEEL IN COILS, 600 MM OR MORE WIDE, HOT-ROLLED, OVER 10 MM THICK.
721912	FLAT-ROLLED STAINLESS STEEL IN COILS, 600 MM OR MORE WIDE, HOT-ROLLED, 4.75 MM BUT NOT OVER 10 MM THICK.
721913	FLAT-ROLLED STAINLESS STEEL IN COILS, 600 MM OR MORE WIDE, HOT-ROLLED, 3 MM BUT UNDER 4.75 MM THICK.
721914	FLAT-ROLLED STAINLESS STEEL IN COILS, 600 MM OR MORE WIDE, HOT-ROLLED, UNDER 3 MM THICK.
721921	FLAT-ROLLED STAINLESS STEEL NOT IN COILS, 600 MM OR MORE WIDE, HOT-ROLLED, OVER 10 MM THICK.
721922	FLAT-ROLLED STAINLESS STEEL NOT IN COILS, 600 MM OR MORE WIDE, HOT-ROLLED, 4.75 MM BUT NOT OVER 10 MM THICK.
721923	FLAT-ROLLED STAINLESS STEEL NOT IN COILS, 600 MM OR MORE WIDE, HOT-ROLLED, 3 MM BUT UNDER 4.75 MM THICK.
721924	FLAT-ROLLED STAINLESS STEEL NOT IN COILS, 600 MM OR MORE WIDE, HOT-ROLLED, UNDER 3 MM THICK.
721931	FLAT-ROLLED STAINLESS STEEL PRODUCTS, 600 MM OR MORE WIDE, COLD-ROLLED, 4.75 MM OR MORE THICK.
721932	FLAT-ROLLED STAINLESS STEEL PRODUCTS, 600 MM OR MORE WIDE, COLD-ROLLED, 3 MM BUT UNDER 4.75 MM THICK.
721933	FLAT-ROLLED STAINLESS STEEL PRODUCTS, 600 MM OR MORE WIDE, COLD-ROLLED, OVER 1 MM BUT UNDER 3 MM THICK.
721934	FLAT-ROLLED STAINLESS STEEL PRODUCTS, 600 MM OR MORE WIDE, COLD-ROLLED, 0.5 MM BUT NOT OVER 1 MM THICK.
721935	FLAT-ROLLED STAINLESS STEEL PRODUCTS, 600 MM OR MORE WIDE, COLD-ROLLED, UNDER 0.5 MM THICK.
721990	FLAT-ROLLED STAINLESS STEEL PRODUCTS, 600 MM OR MORE WIDE, NESOI.
722011	FLAT-ROLLED STAINLESS STEEL PRODUCTS, UNDER 600 MM WIDE, HOT-ROLLED, 4.75 MM OR MORE THICK.
722012	FLAT-ROLLED STAINLESS STEEL PRODUCTS, UNDER 600 MM WIDE, HOT-ROLLED, UNDER 4.75 MM THICK.
722020	FLAT-ROLLED STAINLESS STEEL PRODUCTS, UNDER 600 MM WIDE, COLD-ROLLED.
722090	FLAT-ROLLED STAINLESS STEEL PRODUCTS, UNDER 600 MM WIDE, NESOI.
722511	FLAT-ROLLED SILICON ELECTRICAL STEEL 600 MM OR MORE WIDE, GRAIN-ORIENTED.
722540	FLAT-ROLLED ALLOY STEEL (OTHER THAN STAINLESS) NOT IN COILS, 600 MM OR MORE WIDE, HOT-ROLLED, NESOI.
722550	FLAT-ROLLED ALLOY STEEL (OTHER THAN STAINLESS) PRODUCTS, 600 MM OR MORE WIDE, COLD-ROLLED, NESOI.

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722591	FLAT-ROLLED ALLOY STEEL NESOI, 600 MM OR MORE WIDE, ELECTROLYTICALLY PLATED OR COATED WITH ZINC.
722592	FLAT-ROLLED ALLOY STEEL NESOI 600 MM OR MORE WIDE PLATED OR COATED WITH ZINC, NOT ELECTROLYTICALLY.
722611	FLAT-ROLLED SILICON ELECTRICAL STEEL UNDER 600 MM WIDE, GRAIN-ORIENTED.
722619	FLAT-ROLLED SILICON ELECTRICAL STEEL UNDER 600 MM WIDE, NOT GRAIN-ORIENTED.
722620	FLAT-ROLLED HIGH-SPEED STEEL PRODUCTS, UNDER 600 MM WIDE.
722692	FLAT-ROLLED ALLOY STEEL (OTHER THAN STAINLESS) PRODUCTS, UNDER 600 MM WIDE, COLD-ROLLED, NESOI.
722699	FLAT-ROLLED ALLOY STEEL (OTHER THAN STAINLESS) PRODUCTS, UNDER 600 MM WIDE, NESOI.
730810	BRIDGES AND BRIDGE SECTIONS OF IRON OR STEEL.
730820	TOWERS AND LATTICE MASTS OF IRON OR STEEL.
730830	DOORS, WINDOWS AND FRAMES AND THRESHOLDS FOR DOORS, OF IRON OR STEEL.
730840	EQUIPMENT FOR SCAFFOLDING, SHUTTERING PROPPING OR PIT-PROPPING, OF IRON OR STEEL.
730890	STRUCTURES AND PARTS OF STRUCTURES NESOI, OF IRON OR STEEL.
730900	RESERVOIRS, TANKS, CASKS, VATS AND SIMILAR CONTAINERS NESOI, OF A CAPACITY OF MORE THAN 300 LITERS (79.25 GAL.), OF IRON OR STEEL.
731010	TANKS, DRUMS, CANS, AND SIMILAR PLAIN CONTAINERS, A CAPACITY OF 50 LITERS (13.21 GAL.) OR MORE, BUT NOT OVER 300 LITERS (79.25 GAL.), OF IRON OR STEEL.
731021	CANS, PLAIN, UNFITTED, OF A CAPACITY OF LESS THAN 50 LITERS (13.21 GAL.), WHICH WILL BE CLOSED BY SOLDERING OR CRIMPING, OF IRON OR STEEL.
731029	TANKS, CASKS, DRUMS, CANS, BOXES AND SIMILAR PLAIN, UNFITTED CONTAINERS NESOI, OF A CAPACITY OF LESS THAN 50 LITERS (13.21 GAL.), OF IRON OR STEEL.
761010	ALUMINUM DOORS, WINDOWS AND THEIR FRAMES AND THRESHOLDS FOR DOORS.
761090	ALUMINUM STRUCTURES AND PARTS OF STRUCTURES, NESOI.
761210	ALUMINUM COLLAPSIBLE TUBULAR CONTAINERS, OF A CAPACITY NOT OVER 300 LITERS (79.30 GAL.).
820760	TOOLS FOR BORING OR BROACHING, AND PARTS THEREOF, OF BASE METAL.
820810	KNIVES AND CUTTING BLADES FOR METAL WORKING, AND PARTS THEREOF, OF BASE METAL.
820820	KNIVES AND CUTTING BLADES FOR WOOD WORKING, AND PARTS THEREOF, OF BASE METAL.
820830	KNIVES AND CUTTING BLADES FOR KITCHEN APPLIANCES OR FOR MACHINES USED BY THE FOOD INDUSTRY, AND PARTS THEREOF, OF BASE METAL.
820840	KNIVES AND CUTTING BLADES FOR AGRICULTURAL OR FORESTRY MACHINES, AND PARTS THEREOF, OF BASE METAL.
820890	KNIVES AND CUTTING BLADES FOR MACHINES OR MECHANICAL APPLIANCES NESOI, AND PARTS THEREOF, OF BASE METAL.
840212	WATERTUBE BOILERS WITH A STEAM PRODUCTION NOT EXCEEDING 45 T PER HOUR.
840219	VAPOR GENERATING BOILERS, NESOI, INCLUDING HYBRID BOILERS.
840220	SUPER-HEATED WATER BOILERS.
840290	PARTS FOR SUPER-HEATED WATER BOILERS AND STEAM OR OTHER VAPOR GENERATION BOILERS (OTHER THAN CENTRAL HEATING HOT WATER BOILERS).
840410	AUXILIARY PLANT FOR USE WITH STEAM OR OTHER VAPOR GENERATING BOILERS, SUPER-HEATED WATER BOILERS AND CENTRAL HEATING BOILERS.
840420	CONDENSERS FOR STEAM OR OTHER VAPOR POWER UNITS.
840490	PARTS FOR AUXILIARY PLANT FOR USE WITH STEAM OR OTHER VAPOR GENERATING BOILERS AND CONDENSER POWER UNITS, SUPER-HEATED AND CENTRAL HEATING BOILERS.
840510	PRODUCER GAS AND WATER GAS GENERATORS, ACTYLENE GAS AND SIMILAR WATER PROCESS GAS GENERATORS, WITH OR WITHOUT THEIR PURIFIERS.
840590	PARTS FOR PRODUCER GAS AND WATER GAS GENERATORS, ACTYLENE GAS AND SIMILAR PROCESS GAS GENERATORS.
840681	TURBINES, STEAM AND OTHER VAPOR TYPES, OF AN OUTPUT EXCEEDING 40 MW, EXCEPT FOR MARINE PROPULSION.
840682	TURBINES, STEAM AND OTHER VAPOR TYPES, OF AN OUTPUT NOT EXCEEDING 40 MW, EXCEPT FOR MARINE PROPULSION.
840690	PARTS FOR STEAM AND OTHER VAPOR TURBINES.
840721	OUTBOARD ENGINES FOR MARINE PROPULSION.
840729	INBOARD ENGINES FOR MARINE PROPULSION.
840810	MARINE COMPRESSION-IGNITION INTERNAL COMBUSTION PISTON ENGINES (DIESEL OR SEMI-DIESEL ENGINES).
840820	COMPRESSION-IGNITION INTERNAL COMBUSTION PISTON ENGINES (DIESEL OR SEMI-DIESEL), FOR THE PROPULSION OF VEHICLES EXCEPT RAILWAY OR TRAMWAY STOCK.
840890	COMPRESSION-IGNITION INTERNAL COMBUSTION PISTON ENGINES (DIESEL OR SEMI-DIESEL ENGINES), NESOI.
840999	PARTS FOR USE WITH COMPRESSION-IGNITION INTERNAL COMBUSTION PISTON ENGINES, NESOI.
841090	PARTS, INCLUDING REGULATORS, FOR HYDRAULIC TURBINES AND WATER WHEELS.
841111	TURBOJETS OF A THRUST NOT EXCEEDING 25 KN.
841112	TURBOJETS OF A THRUST EXCEEDING 25 KN.
841121	TURBOPROPELLERS OF A POWER NOT EXCEEDING 1,100 KW.
841122	TURBOPROPELLERS OF A POWER EXCEEDING 1,100 KW.
841191	PARTS OF TURBOJETS OR TURBOPROPELLERS.
841210	REACTION ENGINES OTHER THAN TURBOJETS.
841221	HYDRAULIC POWER ENGINES AND MOTORS, LINEAR ACTING (CYLINDERS).
841229	HYDRAULIC POWER ENGINES AND MOTORS, EXCEPT LINEAR ACTING (CYLINDERS).
841239	PNEUMATIC POWER ENGINES AND MOTORS, EXCEPT LINEAR ACTING (CYLINDERS).
841280	ENGINES AND MOTORS, NESOI.
841311	PUMPS FOR DISPENSING FUEL OR LUBRICANTS, OF A TYPE USED IN FILLING-STATIONS OR GARAGES.
841319	PUMPS FITTED OR DESIGNED TO BE FITTED WITH A MEASURING DEVISE, NESOI.
841330	FUEL, LUBRICATING OR COOLING MEDIUM PUMPS FOR INTERNAL COMBUSTION PISTON ENGINES.
841350	RECIPROCATING POSITIVE DISPLACEMENT PUMPS, NESOI.
841360	ROTARY POSITIVE DISPLACEMENT PUMPS, NESOI.
841381	PUMPS FOR LIQUIDS, NESOI.
841410	VACUUM PUMPS.
841490	PARTS FOR AIR OR VACUUM PUMPS, AIR OR OTHER GAS COMPRESSORS AND FANS; PARTS OF VENTILATING OR RECYCLING HOODS INCORPORATING A FAN, NESOI.
841520	AUTOMOTIVE AIR CONDITIONERS.
841583	AIR CONDITIONING MACHINES NESOI, NOT INCORPORATING A REFRIGERATING UNIT.
841610	FURNACE BURNERS FOR LIQUID FUEL.
841620	FURNACE BURNERS FOR PULVERIZED SOLID FUEL OR FOR GAS, INCLUDING COMBINATION BURNERS.
841630	MECHANICAL STOKERS INCLUDING THEIR MECHANICAL GRATES, MECHANICAL ASH DISCHARGERS AND SIMILAR APPLIANCES.
841690	PARTS OF FURNACE BURNERS FOR LIQUID FUEL, PULVERIZED SOLID FUEL OR GAS; PARTS OF MECHANICAL STOKERS, GRATES, ASH DISCHARGERS AND SIMILAR APPLIANCES.
841720	BAKERY OVENS, INCLUDING BISCUIT OVENS, NONELECTRIC.
841861	COMPRESSION TYPE HEAT PUMP UNITS WHOSE CONDENSERS ARE HEAT EXCHANGERS (EXCLUDING REVERSIBLE HEAT PUMPS CAPABLE OF CHANGING TEMPERATURE AND HUMIDITY).

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841869	REFRIGERATING OR FREEZING EQUIPMENT, NESOI.
841919	INSTANTANEOUS OR STORAGE WATER HEATERS, EXCEPT INSTANTANEOUS GAS WATER HEATERS, NONELECTRIC.
841940	DISTILLING OR RECTIFYING PLANT.
841950	HEAT EXCHANGE UNITS, INDUSTRIAL TYPE.
841960	MACHINERY FOR LIQUEFYING AIR OR OTHER GASES.
841989	MACHINERY, PLANT OR LABORATORY EQUIPMENT FOR THE TREATMENT OF MATERIAL INVOLVING TEMPERATURE CHANGE (EXCEPT DOMESTIC MACHINERY), NESOI.
841990	PARTS FOR MACHINERY, PLANT OR LABORATORY EQUIPMENT FOR THE TREATMENT OF MATERIAL INVOLVING TEMPERATURE CHANGE (EXCEPT DOMESTIC MACHINERY), NESOI.
842091	CYLINDERS FOR CALENDERING OR OTHER ROLLING MACHINES, OTHER THAN FOR METALS OR GLASS.
842099	PARTS, EXCEPT CYLINDERS, FOR CALENDERING OR OTHER ROLLING MACHINES, OTHER THAN FOR METALS OR GLASS.
842111	CREAM SEPARATORS, CENTRIFUGAL.
842119	CENTRIFUGES, INCLUDING CENTRIFUGAL DRYERS (OTHER THAN CLOTHES DRYERS), NESOI.
842123	OIL OR FUEL FILTERS FOR INTERNAL COMBUSTION ENGINES.
842129	FILTERING OR PURIFYING MACHINERY AND APPARATUS FOR LIQUIDS, NESOI.
842131	INTAKE AIR FILTERS FOR INTERNAL COMBUSTION ENGINES.
842139	FILTERING OR PURIFYING MACHINERY AND APPARATUS FOR GASES, NESOI.
842191	PARTS OF CENTRIFUGES, INCLUDING CENTRIFUGAL DRYERS.
842199	PARTS FOR FILTERING OR PURIFYING MACHINERY AND APPARATUS FOR LIQUIDS OR GASES.
842410	FIRE EXTINGUISHERS, WHETHER OR NOT CHARGED.
842489	MECHANICAL APPLIANCES FOR PROJECTING, DISPERSING OR SPRAYING LIQUIDS OR POWDERS, NESOI.
842490	PARTS FOR MECHANICAL APPLIANCES FOR PROJECTING, DISPERSING OR SPRAYING, FIRE EXTINGUISHERS, SPRAY GUNS, AND STEAM OR SAND BLASTING MACHINES.
842511	PULLEY TACKLE AND HOISTS, OTHER THAN SKIP HOISTS OR HOISTS OF A KIND USED FOR RAISING VEHICLES, POWERED BY ELECTRIC MOTOR.
842531	WINCHES AND CAPSTANS POWERED BY ELECTRIC MOTORS.
842611	OVERHEAD TRAVELING CRANES ON FIXED SUPPORT.
842612	MOBILE LIFTING FRAMES ON TIRES AND STRADDLE CARRIERS.
842619	OVERHEAD TRAVELING CRANES, TRANSPORTER CRANES, GANTRY AND BRIDGE CRANES, MOBILE LIFTING FRAMES AND STRADDLE CARRIES, NESOI.
842620	TOWER CRANES.
842630	PORTAL OR PEDESTAL JIB CRANES.
842641	DERRICKS, CRANES, NESOI AND WORKS TRUCKS FITTED WITH A CRANE, SELF-PROPELLED, ON TIRES.
842649	DERRICKS, CRANES, NESOI AND WORKS TRUCKS FITTED WITH A CRANE, SELF-PROPELLED, NOT ON TIRES.
842691	LIFTING OR HANDLING MACHINERY DESIGNED FOR MOUNTING ON ROAD VEHICLES.
842699	LIFTING OR HANDLING MACHINERY, NESOI.
842710	SELF-PROPELLED LIFTING OR HANDLING TRUCKS POWERED BY AN ELECTRIC MOTOR.
842720	SELF-PROPELLED LIFTING OR HANDLING TRUCKS POWERED BY OTHER THAN AN ELECTRIC MOTOR.
842790	FORK-LIFT AND OTHER WORKS TRUCKS FITTED WITH LIFTING OR HANDLING EQUIPMENT, OTHER THAN SELF-PROPELLED, NESOI.
842820	PNEUMATIC ELEVATORS AND CONVEYORS.
842831	CONTINUOUS-ACTION ELEVATORS AND CONVEYORS, FOR GOODS OR MATERIALS, SPECIALLY DESIGNED FOR UNDERGROUND USE.
842832	CONTINUOUS-ACTION ELEVATORS AND CONVEYORS, FOR GOODS OR MATERIALS, OTHER THAN FOR UNDERGROUND USE, BUCKET TYPE.
842833	CONTINUOUS-ACTION ELEVATORS AND CONVEYORS, FOR GOODS OR MATERIALS, OTHER THAN FOR UNDERGROUND USE, BELT TYPE.
842839	CONTINUOUS-ACTION ELEVATORS AND CONVEYORS, FOR GOODS OR MATERIALS, OTHER THAN FOR UNDERGROUND USE, NESOI.
842870	LIFTING, HANDLING, LOADING OR UNLOADING MACHINERY NESOI.
842890	LIFTING, HANDLING, LOADING OR UNLOADING MACHINERY NESOI.
842911	BULLDOZERS AND ANGLEDOZERS, SELF-PROPELLED, TRACK LAYING.
842919	BULLDOZERS AND ANGLEDOZERS, SELF-PROPELLED, OTHER THAN TRACK LAYING.
842920	GRADERS AND LEVELERS, SELF-PROPELLED.
842930	SCRAPERS, SELF-PROPELLED.
842940	TAMPING MACHINES AND ROAD ROLLERS, SELF-PROPELLED.
842951	MECHANICAL FRONT-END SHOVEL LOADERS, SELF-PROPELLED.
842952	MECHANICAL SHOVELS, EXCAVATORS AND SHOVEL LOADERS WITH 360 DEGREE REVOLVING SUPERSTRUCTURE, SELF-PROPELLED.
842959	MECHANICAL SHOVELS, EXCAVATORS AND SHOVEL LOADERS NESOI, SELF-PROPELLED.
843010	PILE-DRIVERS AND PILE-EXTRACTORS.
843039	COAL OR ROCK CUTTERS AND TUNNELING MACHINERY, OTHER THAN SELF-PROPELLED.
843049	BORING OR SINKING MACHINERY, NESOI, OTHER THAN SELF-PROPELLED.
843050	MOVING, GRADING, LEVELING, SCRAPING, EXCAVATING, TAMPING, COMPACTING OR EXTRACTING MACHINERY FOR EARTH, MINERALS OR ORES, NESOI, SELF-PROPELLED.
843069	MOVING, GRADING, LEVELING, EXCAVATING, EXTRACTING MACHINERY FOR EARTH, MINERALS OR ORES, NESOI, NOT SELF-PROPELLED.
843120	PARTS FOR FORK-LIFT TRUCKS AND OTHER WORKS TRUCKS FITTED WITH LIFTING OR HANDLING EQUIPMENT.
843139	PARTS FOR LIFTING, HANDLING, LOADING OR UNLOADING MACHINERY, NESOI.
843141	BUCKETS, SHOVELS, GRABS AND GRIPS FOR DERRICKS, CRANES, BULLDOZERS, ANGLEDOZERS, GRADERS, SCRAPERS, BORERS, EXTRACTING, ETC. MACHINERY.
843149	PARTS AND ATTACHMENTS, NESOI, FOR DERRICKS, CRANES, SELF-PROPELLED BULLDOZERS, GRADERS ETC. AND OTHER GRADING, SCRAPING, ETC. MACHINERY.
843910	MACHINERY FOR MAKING PULP OF FIBROUS CELLULOSIC MATERIAL.
843930	MACHINERY FOR FINISHING PAPER OR PAPERBOARD.
844090	PARTS FOR BOOKBINDING MACHINERY, INCLUDING PARTS FOR BOOK-SEWING MACHINES.
844130	MACHINES FOR MAKING PAPER CARTONS, BOXES, CASES, DRUMS AND SIMILAR CONTAINERS, OTHER THAN BY MOLDING.
844230	MACHINERY, APPARATUS AND EQUIPMENT, NESOI, FOR PREPARING OR MAKING PRINTING BLOCKS, PLATES, CYLINDERS OR OTHER PRINTING COMPONENTS.
844240	PARTS OF MACHINERY, APPARATUS AND EQUIPMENT, NESOI, FOR TYPESETTING ETC. AND PREPARING OR MAKING PRINTING BLOCKS OR OTHER PRINTING COMPONENTS.
844311	OFFSET PRINTING MACHINERY, REEL-FED.
844313	OFFSET PRINTING MACHINERY, NESOI.
844315	LETTERPRESS PRINTING MACHINERY, OTHER THAN REEL FED, EXCLUDING FLEXOGRAPHIC PRINTING.

HTS–6 code	HTS description
844316	FLEXOGRAPHIC PRINTING MACHINERY.
844317	GRAVURE PRINTING MACHINERY.
844319	OFFSET PRINTING MACHINERY, NESOI.
844391	PARTS AND ACCESSORIES OF PRINTING MACHINERY USED FOR PRINTING BY MEANS OF PLATES, CYLINDERS AND OTHER PRINTING COMPONENTS OF HEAD. 8442.
844400	MACHINES FOR EXTRUDING, DRAWING, TEXTURING OR CUTTING MANMADE TEXTILE MATERIALS.
844621	POWER LOOMS FOR WEAVING FABRICS OF A WIDTH EXCEEDING 30 CM, SHUTTLE TYPE.
844629	WEAVING MACHINES (LOOMS) FOR WEAVING FABRICS OF A WIDTH EXCEEDING 30 CM, SHUTTLE TYPE, NESOI.
844811	AUXILIARY MACHINERY FOR TEXTILE MACHINES (HEADINGS 8444 TO 8447), DOBBIES AND JACQUARDS, CARD REDUCING, COPYING, PUNCHING OR ASSEMBLING MACHINES.
844819	AUXILIARY MACHINERY FOR TEXTILE MACHINES (HEADINGS 8444 TO 8447), NESOI.
844820	PARTS AND ACCESSORIES FOR MACHINES FOR EXTRUDING, DRAWING, TEXTURING OR CUTTING MANMADE TEXTILE MATERIALS, OR OF THEIR AUXILIARY MACHINERY.
844833	SPINDLES, SPINDLE FLYERS, SPINNING RINGS AND RING TRAVELLERS, FOR MACHINERY USED FOR PREPARING OR PRODUCING TEXTILE YARNS, ETC.
844839	PARTS AND ACCESSORIES FOR TEXTILE SPINNING, DOUBLING OR TWISTING, WINDING OR REELING AND YARN PRODUCING MACHINES, ETC., NESOI.
844842	REEDS FOR LOOMS, HEALDS AND HEALD-FRAMES.
844849	PARTS AND ACCESSORIES OF WEAVING MACHINES (LOOMS) OR OF THEIR AUXILIARY MACHINERY, NESOI.
844851	SINKERS, NEEDLES AND OTHER ARTICLES USED IN FORMING STITCHES FOR KNITTING MACHINES, STITCH-BONDING AND GIMPED YARN ETC. MACHINES.
845110	DRY-CLEANING MACHINES FOR TEXTILES YARNS, FABRICS OR MADE UP TEXTILE ARTICLES.
845129	DRYING MACHINES (EXCEPT CENTRIFUGAL TYPE) FOR TEXTILE YARNS, FABRICS OR MADE UP TEXTILE ARTICLES, WITH A DRY LINEN CAPACITY EXCEEDING 10 KG.
845130	IRONING MACHINES AND PRESSES (INCLUDING FUSING PRESSES) FOR TEXTILE YARNS, FABRICS OR MADE UP TEXTILE ARTICLES.
845190	PARTS FOR MACHINERY FOR WASHING, CLEANING, WRINGING ETC. TEXTILE YARNS AND FABRICS, APPLYING PASTE TO BASE FABRIC ETC. AND REELING ETC. TEXTILE FABRIC.
845230	SEWING MACHINE NEEDLES.
845310	MACHINES FOR PREPARING, TANNING OR WORKING HIDES, SKINS OR LEATHER.
845380	MACHINERY (OTHER THAN SEWING MACHINES), FOR MAKING OR REPAIRING ARTICLES OF HIDES, SKINS OR LEATHER, EXCEPT FOOTWEAR.
845390	PARTS OF MACHINERY (EXCEPT SEWING MACHINES) FOR TANNING ETC. HIDES, SKINS OR LEATHER OR FOR MAKING OR REPAIRING ARTICLES OF HIDES, SKINS OR LEATHER.
845410	CONVERTERS USED IN METALLURGY OR METAL FOUNDRIES.
845420	INGOT MOLDS AND LADLES USED IN METALLURGY OR METAL FOUNDRIES.
845490	PARTS FOR CONVERTERS, LADLES, INGOT MOLDS AND CASTING MACHINES USED IN METALLURGY OR METAL FOUNDRIES.
845522	COLD METAL-ROLLING MILLS, EXCEPT TUBE MILLS.
845530	ROLLS FOR METAL-ROLLING MILLS.
845620	MACHINE TOOLS FOR WORKING ANY MATERIAL BY REMOVAL OF MATERIAL, BY ULTRASONIC PROCESSES.
845640	MACHINE TOOLS FOR WORKING ANY MATERIAL BY REMOVAL OF MATERIAL OPERATED BY PLASMA ARC PROCESSES.
845690	MACHINE TOOLS FOR REMOVAL OF MATERIAL BY ELECTRO-CHEMICAL, ELECTRON-BEAM, IONIC-BEAM OR PLASMA ARC PROCESSES, N.E.S.O.I.
845710	MACHINING CENTERS FOR WORKING METAL.
845730	MULTISTATION TRANSFER MACHINES FOR WORKING METAL.
845811	HORIZONTAL LATHES FOR REMOVING METAL, NUMERICALLY CONTROLLED.
845819	HORIZONTAL LATHES FOR REMOVING METAL, NOT NUMERICALLY CONTROLLED.
845891	LATHES, EXCLUDING HORIZONTAL, FOR REMOVING METAL, NUMERICALLY CONTROLLED.
845899	LATHES, EXCLUDING HORIZONTAL, FOR REMOVING METAL, NOT NUMERICALLY CONTROLLED.
845910	WAY-TYPE UNIT HEAD MACHINES FOR REMOVING METAL.
845921	DRILLING MACHINES FOR REMOVING METAL NESOI, NUMERICALLY CONTROLLED.
845931	BORING-MILLING MACHINES FOR REMOVING METAL NESOI, NUMERICALLY CONTROLLED.
845941	NUMERICALLY CONTROLLED BORING MACHINES, NESOI.
845949	OTHER BORING MACHINES, NESOI.
845961	MILLING MACHINES, NOT KNEE TYPE, FOR REMOVING METAL, NUMERICALLY CONTROLLED.
845970	THREADING OR TAPPING MACHINES, FOR REMOVING METAL.
846012	FLAT-SURFACE GRINDING MACHINES, NUMERICALLY CONTROLLED.
846019	FLAT-SURFACE GRINDING MACHINES FOR REMOVING METAL, AXIS ACCURACY OF 0.01 MM OR MORE, NOT NUMERICALLY CONTROLLED.
846022	CENTERLESS GRINDING MACHINES, NUMERICALLY CONTROLLED.
846023	OTHER CYLINDRICAL GRINDING MACHINES, NUMERICALLY CONTROLLED.
846024	OTHER GRINDING MACHINES, NESOI, NUMERICALLY CONTROLLED.
846029	GRINDING MACHINES FOR REMOVING METAL, EXCEPT FLAT-SURFACE, AXIS ACCURACY OF 0.01 MM OR MORE, NOT NUMERICALLY CONTROLLED.
846031	SHARPENING (TOOL OR CUTTER GRINDING) MACHINES FOR REMOVING METAL, NUMERICALLY CONTROLLED.
846039	SHARPENING (TOOL OR CUTTER GRINDING) MACHINES FOR REMOVING METAL, NOT NUMERICALLY CONTROLLED.
846040	HONING OR LAPPING MACHINES FOR REMOVING METAL.
846090	MACHINE TOOLS FOR DEBURRING, POLISHING METAL, SINTERED METAL CARBIDES, ABRASIVES OR POLISHING PRODUCTS, OTHER THAN GEAR CUTTING, ETC., NESOI.
846120	SHAPING OR SLOTTING MACHINES FOR REMOVING METAL.
846130	BROACHING MACHINES FOR REMOVING METAL.
846140	GEAR CUTTING, GEAR GRINDING OR GEAR FINISHING MACHINES.
846150	SAWING OR CUTTING-OFF MACHINES FOR REMOVING METAL.
846190	MACHINE TOOLS WORKING BY REMOVING METAL, SINTERED METAL CARBIDES OR CERMETS, NESOI.
846211	FORGING OR DIE-STAMPING MACHINES (INCLUDING PRESSES) AND HAMMERS FOR WORKING METAL.
846219	FORGING OR DIE-STAMPING MACHINES (INCLUDING PRESSES) AND HAMMERS FOR WORKING METAL.
846222	BENDING, FOLDING, STRAIGHTENING OR FLATTENING MACHINES (INCLUDING PRESSES) FOR WORKING METAL, NOT NUMERICALLY CONTROLLED.
846223	BENDING, FOLDING, STRAIGHTENING OR FLATTENING MACHINES (INCLUDING PRESSES) FOR WORKING METAL, NUMERICALLY CONTROLLED.
846224	BENDING, FOLDING, STRAIGHTENING OR FLATTENING MACHINES (INCLUDING PRESSES) FOR WORKING METAL, NUMERICALLY CONTROLLED.
846225	BENDING, FOLDING, STRAIGHTENING OR FLATTENING MACHINES (INCLUDING PRESSES) FOR WORKING METAL, NUMERICALLY CONTROLLED.

HTS–6 code	HTS description
846226	BENDING, FOLDING, STRAIGHTENING OR FLATTENING MACHINES (INCLUDING PRESSES) FOR WORKING METAL, NUMERICALLY CONTROLLED.
846229	BENDING, FOLDING, STRAIGHTENING OR FLATTENING MACHINES (INCLUDING PRESSES) FOR WORKING METAL, NOT NUMERICALLY CONTROLLED.
846232	SHEARING MACHINES (INCLUDING PRESSES) FOR WORKING METAL, OTHER THAN COMBINED PUNCHING AND SHEARING MACHINES, NUMERICALLY CONTROLLED.
846233	SHEARING MACHINES (INCLUDING PRESSES) FOR WORKING METAL, OTHER THAN COMBINED PUNCHING AND SHEARING MACHINES, NUMERICALLY CONTROLLED.
846239	SHEARING MACHINES (INCLUDING PRESSES) FOR WORKING METAL, OTHER THAN COMBINED PUNCHING AND SHEARING MACHINES, NOT NUMERICALLY CONTROLLED.
846242	PUNCHING OR NOTCHING MACHINES (INCLUDING PRESSES) FOR WORKING METAL, INCLUDING COMBINED PUNCHING AND SHEARING MACHINES, NUMERICALLY CONTROLLED.
846249	PUNCHING OR NOTCHING MACHINES (INCLUDING PRESSES) FOR WORKING METAL, INCLUDING COMBINED PUNCHING AND SHEARING MACHINES, NOT NUMERICALLY CONTROLLED.
846251	PUNCHING OR NOTCHING MACHINES (INCLUDING PRESSES) FOR WORKING METAL, INCLUDING COMBINED PUNCHING AND SHEARING MACHINES, NUMERICALLY CONTROLLED.
846259	PUNCHING OR NOTCHING MACHINES (INCLUDING PRESSES) FOR WORKING METAL, INCLUDING COMBINED PUNCHING AND SHEARING MACHINES, NOT NUMERICALLY CONTROLLED.
846261	HYDRAULIC PRESSES FOR WORKING METAL.
846262	MACHINE TOOLS (INCLUDING PRESSES) FOR WORKING METAL BY FORGING, HAMMERING, DIE-CASTING, BENDING, FOLDING, FLATTENING, WORKING METAL CARBIDES, NESOI.
846263	MACHINE TOOLS (INCLUDING PRESSES) FOR WORKING METAL BY FORGING, HAMMERING, DIE-CASTING, BENDING, FOLDING, FLATTENING, WORKING METAL CARBIDES, NESOI.
846269	MACHINE TOOLS (INCLUDING PRESSES) FOR WORKING METAL BY FORGING, HAMMERING, DIE-CASTING, BENDING, FOLDING, FLATTENING, WORKING METAL CARBIDES, NESOI.
846290	MACHINE TOOLS (INCLUDING PRESSES) FOR WORKING METAL BY FORGING, HAMMERING, DIE-CASTING, BENDING, FOLDING, FLATTENING, WORKING METAL CARBIDES, NESOI.
846310	DRAW-BENCHES FOR BARS, TUBES, PROFILES, WIRE OR THE LIKE FOR WORKING METAL WITHOUT REMOVING MATERIAL.
846320	THREAD ROLLING MACHINES FOR WORKING METAL WITHOUT REMOVING MATERIAL.
846330	MACHINES FOR WORKING WIRE WITHOUT REMOVING MATERIAL.
846390	MACHINE TOOLS FOR WORKING METAL, SINTERED METAL CARBIDES OR CERMETS, WITHOUT REMOVING MATERIAL, NESOI.
846410	SAWING MACHINES FOR WORKING STONE, CERAMICS, CONCRETE, ASBESTOS-CEMENT OR LIKE MINERAL MATERIALS OR FOR COLD WORKING GLASS.
846420	GRINDING OR POLISHING MACHINES FOR WORKING STONE, CERAMICS, CONCRETE, ASBESTOS-CEMENT OR LIKE MINERAL MATERIALS OR FOR COLD WORKING GLASS.
846490	MACHINE TOOLS FOR WORKING STONE, CERAMICS, CONCRETE, ASBESTOS-CEMENT OR LIKE MINERAL MATERIALS OR FOR COLD WORKING GLASS, NESOI.
846520	MACHINING CENTERS FOR WORKING CORK, BONE, HARD RUBBER, HARD PLASTICS OR SIMILIAR HARD MATERALS.
846593	GRINDING, SANDING OR POLISHING MACHINES FOR WORKING WOOD, CORK, BONE, HARD RUBBER, HARD PLASTICS OR SIMILAR HARD MATERIALS.
846594	BENDING OR ASSEMBLING MACHINES FOR WORKING WOOD, CORK, BONE, HARD RUBBER, HARD PLASTICS OR SIMILAR HARD MATERIALS.
846596	SPLITTING, SLICING OR PARING MACHINES FOR WORKING WOOD, CORK, BONE, HARD RUBBER, HARD PLASTICS OR SIMILAR HARD MATERIALS.
846610	TOOL HOLDERS AND SELF-OPENING DIEHEADS FOR MACHINES OR ANY TYPE OF TOOL FOR WORKING IN THE HAND.
846620	WORK HOLDERS FOR MACHINE TOOLS.
846691	PARTS AND ACCESSORIES FOR MACHINE TOOLS FOR WORKING STONE, CERAMICS, CONCRETE, ASBESTOS-CEMENT OR LIKE MATERIALS OR FOR COLD WORKING GLASS, NESOI.
846692	PARTS AND ACCESSORIES FOR MACHINE TOOLS FOR WORKING WOOD, CORK, BONE, HARD RUBBER, HARD PLASTICS OR SIMILAR HARD MATERIALS, NESOI.
846693	PARTS AND ACCESSORIES FOR MACHINE TOOLS, FOR LASER OPERATION, METALWORKING MACHINING CENTERS, LATHES AND DRILLING MACHINES, ETC., NESOI.
846694	PARTS AND ACCESSORIES FOR MACHINES TOOLS, FOR FORGING, DIE-STAMPING, SHEARING, ETC. METAL AND THOSE FOR WORKING METAL WITHOUT REMOVING MATERIAL, NESOI.
846810	HAND-HELD BLOW TORCHES.
846820	GAS OPERATED MACHINERY AND APPARATUS FOR SOLDERING, BRAZING OR WELDING, OTHER THAN HAND-HELD BLOW TORCHES.
846880	MACHINERY AND APPARATUS FOR SOLDERING, BRAZING OR WELDING, NESOI.
846890	PARTS OF MACHINERY AND APPARATUS FOR SOLDERING, BRAZING OR WELDING, NESOI.
847210	DUPLICATING MACHINES.
847230	MACHINES FOR SORTING OR FOLDING MAIL, FOR INSERTING MAIL IN ENVELOPES, OR FOR OPENING OR SEALING MAIL AND MACHINES FOR AFFIXING OR CANCELLING POSTAGE.
847321	PARTS AND ACCESSORIES FOR ELECTRONIC CALCULATORS AND CALCULATING MACHINES.
847330	PARTS AND ACCESSORIES FOR AUTOMATIC DATA PROCESSING MACHINES AND UNITS THEREOF, MAGNETIC OR OPTICAL READERS, TRANSCRIBING MACHINES, ETC., NESOI.
847410	MACHINES FOR SORTING, SCREENING, SEPARATING OR WASHING EARTH, STONE, ORE OR OTHER MINERAL SUBSTANCES, IN SOLID FORM.
847431	CONCRETE OR MORTAR MIXERS.
847439	MACHINES FOR MIXING OR KNEADING EARTH, STONE, ORE OR OTHER MINERAL SUBSTANCES IN SOLID FORM, NESOI.
847480	MACHINERY FOR AGGLOMERATING ETC. SOLID MINERAL FUELS, CERAMIC PASTE OR OTHER MINERAL PRODUCTS; MACHINES FOR FORMING FOUNDRY MOLDS OF SAND.
847521	MACHINES FOR MAKING OPTICAL FIBERS AND PREFORMS THEREOF.
847529	MACHINES FOR MANUFACTURING OR HOT WORKING GLASS OR GLASSWARE, NESOI.
847590	PARTS OF MACHINES FOR ASSEMBLING ELECTRIC OR ELECTRONIC LAMPS, TUBES ETC., IN GLASS ENVELOPES AND FOR MANUFACTURING OR HOT WORKING GLASS OR GLASSWARE.
847730	BLOW-MOLDING MACHINES FOR WORKING RUBBER OR PLASTIC.
847740	VACUUM-MOLDING MACHINES AND OTHER THERMOFORMING MACHINES, FOR MOLDING OR FORMING RUBBER OR PLASTICS.
847751	MACHINERY FOR MOLDING OR RETREADING PNEUMATIC TIRES OR FOR MOLDING OR OTHERWISE FORMING INNER TUBES.
847759	MACHINERY FOR MOLDING OR OTHERWISE FORMING RUBBER OR PLASTICS, NESOI.
847790	PARTS OF MACHINERY FOR WORKING RUBBER OR PLASTICS OR PARTS OF MACHINERY USED IN THE MANUFACTURE OF PRODUCTS FROM RUBBER OR PLASTICS MATERIALS, NESOI.
847910	MACHINERY FOR PUBLIC WORKS, BUILDING OR THE LIKE.
847930	PRESSES FOR MANUFACTURING PARTICLE BOARD OR FIBER BUILDING BOARD OF WOOD OR OTHER LIGNEOUS MATERIALS AND OTHER MACHINERY FOR TREATING WOOD OR CORK.

HTS–6 code	HTS description
847950	INDUSTRIAL ROBOTS FOR MULTIPLE USES.
847981	MACHINES AND MECHANICAL APPLIANCES FOR TREATING METAL, INCLUDING ELECTRIC WIRE COIL-WINDERS.
847982	MACHINES AND MECHANICAL APPLIANCES FOR MIXING, KNEADING, CRUSHING, GRINDING, SCREENING, SIFTING, HOMOGENIZING, EMULSIFYING OR STIRRING, NESOI.
847989	MACHINES AND MECHANICAL APPLIANCES HAVING INDIVIDUAL FUNCTIONS, NESOI.
847990	PARTS OF MACHINES AND MECHANICAL APPLIANCES HAVING INDIVIDUAL FUNCTIONS, NESOI.
848020	MOLD BASES.
848030	MOLDING PATTERNS.
848060	MOLDS FOR MINERAL MATERIALS.
848110	PRESSURE-REDUCING VALVES.
848120	VALVES FOR OLEOHYDRAULIC OR PNEUMATIC TRANSMISSIONS.
848130	CHECK VALVES.
848140	SAFETY OR RELIEF VALVES.
848210	BALL BEARINGS.
848220	TAPERED ROLLER BEARINGS, INCLUDING CONE AND TAPERED ROLLER ASSEMBLIES.
848230	SPHERICAL ROLLER BEARINGS.
848240	NEEDLE ROLLER BEARINGS.
848250	CYLINDRICAL ROLLER BEARINGS NESOI.
848280	BALL OR ROLLER BEARINGS NESOI, INCLUDING COMBINED BALL/ROLLER BEARINGS.
848291	BALLS, NEEDLES AND ROLLERS FOR BALL OR ROLLER BEARINGS.
848299	PARTS OF BALL OR ROLLER BEARINGS, NESOI.
848310	TRANSMISSION SHAFTS (INCLUDING CAMSHAFTS AND CRANKSHAFTS) AND CRANKS.
848320	HOUSED BEARINGS, INCORPORATING BALL OR ROLLER BEARINGS.
848330	BEARING HOUSINGS; PLAIN SHAFT BEARINGS.
848340	GEARS AND GEARING (EXCEPT TOOTHED WHEELS, CHAIN SPROCKETS, ETC.); BALL OR ROLLER SCREWS; GEAR BOXES AND OTHER SPEED CHANGERS, INCL TORQUE CONVERTERS.
848350	FLYWHEELS AND PULLEYS, INCLUDING PULLEY BLOCKS.
848360	CLUTCHES AND SHAFT COUPLINGS (INCLUDING UNIVERSAL JOINTS).
848390	TOOTHED WHEELS, CHAIN SPROCKETS AND OTHER TRANSMISSION ELEMENTS PRESENTED SEPARATELY; PARTS.
848410	GASKETS AND SIMILAR JOINTS OF METAL SHEETING COMBINED WITH OTHER MATERIAL OR OF TWO OR MORE LAYERS OF METAL.
848420	MECHANICAL SEALS.
848490	SETS OR ASSORTMENTS OF GASKETS AND SIMILAR JOINTS, DISSIMILAR IN COMPOSITION, PUT UP IN POUCHES, ENVELOPES OR SIMILAR PACKINGS.
848520	MACHINERY FOR WORKING RUBBER OR PLASTICS OR FOR THE MANUFACTURE OF PRODUCTS FROM THESE MATERIALS, NESOI.
848530	MACHINES AND MECHANICAL APPLIANCES HAVING INDIVIDUAL FUNCTIONS, NESOI.
848590	MACHINERY PARTS, NOT CONTAINING ELECTRICAL CONNECTORS, INSULATORS, COILS, CONTACTS OR OTHER ELECTRICAL FEATURES, NESOI.
848610	MACHINES AND APPARATUS FOR THE MANUFACTURE OF BOULES OR WAFERS.
848620	MACHINES AND APPARATUS FOR THE MANUFACTURE OF SEMICONDUCTOR DEVICES OR OF ELECTRONIC INTEGRATES CIRCUITS.
848630	MACHINES AND APPARATUS FOR THE MANUFACTURE OF FLAT PANEL DISPLAYS.
848640	MACHINES AND APPARATUS SPECIFIED IN NOTE 9(C) TO CHAPTER 84.
848690	MACHINES AND APPARATUS OF A KIND USED FOR THE MANUFACTURE OF SEMICONDUCTOR BOULES OR WAFERS, ETC, PARTS AND ACCESSORITES.
848710	SHIPS' OR BOATS' PROPELLERS AND BLADES THEREOF.
848790	MACHINERY PARTS, NON ELECTRIC, NESOI.
850120	UNIVERSAL AC/DC MOTORS OF AN OUTPUT EXCEEDING 37.5 W.
850131	DC MOTORS NESOI AND GENERATORS OF AN OUTPUT NOT EXCEEDING 750 W.
850133	DC MOTORS NESOI AND GENERATORS OF AN OUTPUT EXCEEDING 75 KW BUT NOT EXCEEDING 375 KW.
850153	AC MOTORS NESOI, MULTI-PHASE, OF AN OUTPUT EXCEEDING 75 KW.
850161	AC GENERATORS (ALTERNATORS), OF AN OUTPUT NOT EXCEEDING 75 KVA.
850162	AC GENERATORS (ALTERNATORS), OF AN OUTPUT EXCEEDING 75 KVA BUT NOT EXCEEDING 375 KVA.
850163	AC GENERATORS (ALTERNATORS), OF AN OUTPUT EXCEEDING 375 KVA BUT NOT EXCEEDING 750 KVA.
850164	AC GENERATORS (ALTERNATORS), OF AN OUTPUT EXCEEDING 750 KVA.
850211	GENERATING SETS WITH COMPRESSION-IGNITION INTERNAL COMBUSTION PISTON (DIESEL OR SEMI-DIESEL) ENGINES, OF AN OUTPUT NOT EXCEEDING 75 KVA.
850212	GENERATING SETS WITH COMPRESSION-IGNITION INTERNAL COMBUSTION PISTON (DIESEL ETC.) ENGINES, OF AN OUTPUT EXCEEDING 75 KVA NOT EXCEEDING 375 KVA.
850213	GENERATING SETS WITH COMPRESSION-IGNITION INTERNAL COMBUSTION PISTON (DIESEL OR SEMI-DIESEL) ENGINES, OF AN OUTPUT EXCEEDING 375 KVA.
850220	GENERATING SETS WITH SPARK-IGNITION INTERNAL COMBUSTION PISTON ENGINES.
850231	GENERATING SETS, ELECTRIC, WIND-POWERED.
850239	GENERATING SETS, ELECTRIC, NESOI.
850240	ELECTRIC ROTARY CONVERTERS.
850300	PARTS OF ELECTRIC MOTORS, GENERATORS, GENERATING SETS AND ROTARY CONVERTERS.
850432	ELECTRICAL TRANSFORMERS NESOI, HAVING A POWER HANDING CAPACITY EXCEEDING 1 KVA BUT NOT EXCEEDING 16 KVA.
850433	ELECTRICAL TRANSFORMERS NESOI, HAVING A POWER HANDING CAPACITY EXCEEDING 16 KVA BUT NOT EXCEEDING 500 KVA.
850434	ELECTRICAL TRANSFORMERS NESOI, HAVING A POWER HANDLING CAPACITY EXCEEDING 500 KVA.
850511	PERMANENT MAGNETS AND ARTICLES INTENDED TO BECOME PERMANENT MAGNETS AFTER MAGNETIZATION, MADE OF METAL.
850520	ELECTROMAGNETIC COUPLINGS, CLUTCHES AND BRAKES.
850590	ELECTROMAGNETS; ELECTROMAGNETIC OR PERMANENT MAGNET CHUCKS, CLAMPS AND SIMILAR HOLDING DEVICES; AND PARTS OF ELECTROMAGNETIC ARTICLES, NESOI.
850660	PRIMARY CELLS AND PRIMARY BATTERIES, AIR-ZINC.
850690	PARTS OF PRIMARY CELLS AND PRIMARY BATTERIES.
850710	LEAD-ACID STORAGE BATTERIES OF A KIND USED FOR STARTING PISTON ENGINES.
850720	LEAD-ACID STORAGE BATTERIES NESOI.
850730	NICKEL-CADMIUM STORAGE BATTERIES.
851110	INTERNAL COMBUSTION ENGINE SPARK PLUGS.
851120	INTERNAL COMBUSTION ENGINE IGNITION MAGNETOS, MAGNETO-DYNAMOS AND MAGNETIC FLYWHEELS.
851130	INTERNAL COMBUSTION ENGINE DISTRIBUTORS AND IGNITION COILS.
851140	INTERNAL COMBUSTION ENGINE STARTER MOTORS AND DUAL PURPOSE STARTER-GENERATORS.
851150	INTERNAL COMBUSTION ENGINE GENERATORS, NESOI.
851180	ELECTRICAL IGNITION OR STARTING EQUIPMENT USED FOR INTERNAL COMBUSTION ENGINES, NESOI, AND EQUIPMENT USED IN CONJUNCTION WITH SUCH ENGINES, NESOI.

HTS–6 code	HTS description
851190	PARTS FOR ELECTRICAL IGNITION OR STARTING EQUIPMENT USED FOR INTERNAL COMBUSTION ENGINES; PARTS FOR GENERATORS AND CUT-OUTS USED WITH SUCH EQUIPMENT.
851220	ELECTRICAL LIGHTING OR VISUAL SIGNALING EQUIPMENT, FOR USE ON CYCLES OR MOTOR VEHICLES, EXCEPT FOR USE ON BICYCLES.
851290	PARTS OF ELECTRICAL LIGHTING OR SIGNALING EQUIPMENT, WINDSHIELD WIPERS, DEFROSTERS AND DEMISTERS, USED FOR CYCLES OR MOTOR VEHICLES.
851411	INDUSTRIAL OR LABORATORY ELECTRIC FURNACES AND OVENS, RESISTANCE TYPE.
851419	INDUSTRIAL OR LABORATORY ELECTRIC FURNACES AND OVENS, RESISTANCE TYPE.
851420	INDUSTRIAL OR LABORATORY ELECTRIC FURNACES AND OVENS, INDUCTION OR DIELECTRIC TYPE.
851431	INDUSTRIAL OR LABORATORY ELECTRIC FURNACES AND OVENS, NESOI.
851432	INDUSTRIAL OR LABORATORY ELECTRIC FURNACES AND OVENS, NESOI.
851439	INDUSTRIAL OR LABORATORY ELECTRIC FURNACES AND OVENS, NESOI.
851490	PARTS FOR INDUSTRIAL OR LABORATORY ELECTRIC FURNACES AND OVENS; PARTS FOR INDUSTRIAL OR LABORATORY INDUCTION OR DIELECTRIC HEATING EQUIPMENT, NESOI.
851511	ELECTRIC SOLDERING IRONS AND GUNS.
851519	ELECTRIC BRAZING OR SOLDERING MACHINES OR APPARTAUS, NESOI.
851521	ELECTRIC MACHINES AND APPARATUS FOR RESISTANCE WELDING OF METAL, FULLY OR PARTY AUTOMATIC.
851529	ELECTRIC MACHINES AND APPARATUS FOR RESISTANCE WELDING OF METAL, OTHER THAN FULLY OR PARTLY AUTOMATIC.
851621	ELECTRIC STORAGE HEATING RADIATORS.
851680	ELECTRIC HEATING RESISTORS.
851771	PARTS OF TELEPHONE SETS AND OTHER APPARATUS FOR THE TRANSMISSION OR RECEPTION OF VOICE, IMAGES OR OTHER DATA.
851779	PARTS OF TELEPHONE SETS AND OTHER APPARATUS FOR THE TRANSMISSION OR RECEPTION OF VOICE, IMAGES OR OTHER DATA.
852351	SOLID-STATE NON-VOLATILE SEMICONDUCTOR STORAGE DEVICES.
852550	TRANSMISSION APPARATUS FOR RADIO-BROADCASTING OR TELEVISION.
852581	TELEVISION CAMERAS, DIGITAL CAMERAS AND VIDEO CAMERA RECORDERS.
852582	TELEVISION CAMERAS, DIGITAL CAMERAS AND VIDEO CAMERA RECORDERS.
852583	TELEVISION CAMERAS, DIGITAL CAMERAS AND VIDEO CAMERA RECORDERS.
852589	TELEVISION CAMERAS, DIGITAL CAMERAS AND VIDEO CAMERA RECORDERS.
852610	RADAR APPARATUS.
852692	RADIO REMOTE CONTROL APPARATUS.
852721	RADIOBROADCAST RECEIVERS FOR MOTOR VEHICLES, COMBINED WITH SOUND RECORDING OR REPRODUCING APPARATUS, NOT CAPABLE OF OPERATING WITHOUT OUTSIDE POWER.
852849	CATHODE-RAY TUBE MONITORS, NOT INCORPORATING TELEVISION RECEPTION APPARATUS, NESOI.
852910	ANTENNAS AND ANTENNA REFLECTORS AND PARTS THEREOF.
853010	ELECTRICAL SIGNALING, SAFETY OR TRAFFIC CONTROL EQUIPMENT FOR RAILWAYS, STREETCAR LINES OR SUBWAYS.
853080	ELECTRICAL SIGNALING, SAFETY OR TRAFFIC CONTROL EQUIPMENT FOR ROADS, INLAND WATERWAYS, PARKING FACILITIES, PORT INSTALLATIONS OR AIRFIELDS.
853090	PARTS FOR ELECTRICAL SIGNALING, SAFETY OR TRAFFIC CONTROL EQUIPMENT FOR RAIL LINES, ROADS, WATERWAYS, PARKING AREAS, PORT INSTALLATIONS OR AIRFIELDS.
853210	FIXED CAPACITORS, DESIGNED FOR USE IN 50/60 HZ CIRCUITS, WITH REACTIVE POWER CAPACITY NOT LESS THAN 0.5 KVAR (POWER CAPACITORS).
853221	TANTALUM CAPACITORS.
853224	FIXED CAPACITORS NESOI, MULTILAYER CERAMIC DIELECTRIC.
853229	FIXED CAPACITORS, NESOI.
853230	VARIABLE OR ADJUSTABLE (PRE-SET) CAPACITORS.
853290	PARTS FOR ELECTRICAL CAPACITORS.
853329	FIXED RESISTORS, NESOI, FOR A POWER HANDLING CAPACITY EXCEEDING 20 W.
853390	PARTS FOR ELECTRICAL RESISTORS, INCLUDING PARTS FOR RHEOSTATS AND POTENTIOMETERS.
853400	PRINTED CIRCUITS.
853510	FUSES FOR ELECTRICAL APPARATUS FOR A VOLTAGE EXCEEDING 1,000 V.
853521	AUTOMATIC CIRCUIT BREAKERS FOR A VOLTAGE EXCEEDING 1,000 V BUT LESS THAN 72.5 KV.
853529	AUTOMATIC CIRCUIT BREAKERS FOR A VOLTAGE OF 72.5 KV OR MORE.
853530	ISOLATING SWITCHES AND MAKE-AND-BREAK SWITCHES FOR A VOLTAGE EXCEEDING 1,000 V.
853540	LIGHTNING ARRESTERS, VOLTAGE LIMITERS, AND SURGE SUPPRESSORS FOR A VOLTAGE EXCEEDING 1,000 V.
853590	ELECTRICAL APPARATUS FOR SWITCHING, PROTECTING OR MAKING CONNECTIONS TO OR IN ELECTRICAL CIRCUITS, FOR A VOLTAGE EXCEEDING 1,000 V, NESOI.
853650	ELECTRICAL SWITCHES FOR A VOLTAGE NOT EXCEEDING 1,000 V, NESOI.
853669	ELECTRICAL PLUGS AND SOCKETS FOR A VOLTAGE NOT EXCEEDING 1,000 V.
853690	ELECTRICAL APPARATUS FOR SWITCHING, PROTECTING OR MAKING CONNECTIONS TO OR IN ELECTRICAL CIRCUITS, FOR A VOLTAGE NOT EXCEEDING 1,000 V, NESOI.
853710	BOARDS, PANELS, CONSOLES, ETC. WITH ELECTRICAL APPARATUS, FOR ELECTRIC CONTROL OR DISTRIBUTION OF ELECTRICITY, FOR A VOLTAGE NOT EXCEEDING 1,000 V.
853810	BOARDS, PANELS, CONSOLES, DESKS, CABINETS, AND OTHER BASES FOR ELECTRIC CONTROL ETC. EQUIPMENT, NOT EQUIPPED WITH ELECTRICAL APPARATUS.
853890	PARTS FOR ELECTRICAL APPARATUS FOR ELECTRICAL CIRCUITS, BOARDS, PANELS ETC. FOR ELECTRIC CONTROL OR DISTRIBUTION OF ELECTRICITY, NESOI.
853929	ELECTRIC FILAMENT LAMPS, NESOI.
853939	ELECTRIC DISCHARGE LAMPS (OTHER THAN ULTRAVIOLET OR FLUORESCENT, HOT CATHODE LAMPS), NESOI.
853941	ARC LAMPS.
853951	ELECTRIC LAMPS AND LIGHTING FITTINGS, NESOI.
853952	LIGHT-EMITTING DIODE (LED) LAMPS.
854020	TELEVISION CAMERA TUBES; IMAGE CONVERTERS AND INTENSIFIERS; OTHER PHOTOCATHODE TUBES.
854060	CATHODE-RAY TUBES, N.E.S.O.I.
854071	MAGNETRON MICROWAVE TUBES.
854079	MICROWAVE TUBES, NESOI.
854081	RECEIVER OR AMPLIFIER TUBES.
854089	THERMIONIC AND OTHER CATHODE TUBES, NESOI.
854091	PARTS OF CATHODE-RAY TUBES.
854099	PARTS OF CATHODE TUBES, NESOI.
854110	DIODES, OTHER THAN PHOTOSENSITIVE OR LIGHT-EMITTING DIODES.
854121	TRANSISTORS, OTHER THAN PHOTOSENSITIVE, WITH A DISSIPATION RATE OF LESS THAN 1 W.

HTS–6 code	HTS description
854129	TRANSISTORS, OTHER THAN PHOTOSENSITIVE, NESOI.
854130	THYRISTORS, DIACS AND TRIACS, OTHER THAN PHOTOSENSITIVE DEVICES.
854141	PHOTOSENSITIVE SEMICONDUCTOR DEVICES, INCLUDING PHOTOVOLTAIC CELLS; LIGHT-EMITTING DIODES.
854142	PHOTOSENSITIVE SEMICONDUCTOR DEVICES, INCLUDING PHOTOVOLTAIC CELLS; LIGHT-EMITTING DIODES.
854143	PHOTOSENSITIVE SEMICONDUCTOR DEVICES, INCLUDING PHOTOVOLTAIC CELLS; LIGHT-EMITTING DIODES.
854149	PHOTOSENSITIVE SEMICONDUCTOR DEVICES, INCLUDING PHOTOVOLTAIC CELLS; LIGHT-EMITTING DIODES.
854151	SEMICONDUCTOR DEVICES, EXCEPT PHOTOSENSITIVE AND PHOTOVOLTAIC CELLS, NESOI.
854159	SEMICONDUCTOR DEVICES, EXCEPT PHOTOSENSITIVE AND PHOTOVOLTAIC CELLS, NESOI.
854160	MOUNTED PIEZOELECTRIC CRYSTALS.
854190	PARTS FOR DIODES, TRANSISTORS AND SIMILAR SEMICONDUCTOR DEVICES; PARTS FOR PHOTOSENSITIVE SEMICONDUCTOR DEVICES AND MOUNTED PIEZOELECTRIC CRYSTALS.
854231	PROCESSORS AND CONTROLLERS, ELECTRONIC INTEGRATED CIRCUITS.
854232	MEMORIES, ELECTRONIC INTEGRATED CIRCUITS.
854233	AMPLIFIERS, ELECTRONIC INTEGRATED CIRCUITS.
854239	ELECTRONIC INTEGRATED CIRCUITS, NESOI.
854290	PARTS FOR ELECTRONIC INTEGRATED CIRCUITS AND MICROASSEMBLIES.
854310	PARTICLE ACCELERATORS.
854320	ELECTRICAL SIGNAL GENERATORS.
854330	ELECTRICAL MACHINES AND APPARATUS FOR ELECTROPLATING, ELECTROLYSIS OR ELECTROPHORESIS.
854370	ELECTRICAL MACHINES AND APPARATUS, HAVING INDIVIDUAL FUNCTIONS, NESOI.
854411	INSULATED WINDING WIRE OF COPPER.
854430	INSULATED IGNITION WIRING SETS AND OTHER WIRING SETS FOR VEHICLES, AIRCRAFT AND SHIPS.
854449	INSULATED ELECTRIC CONDUCTORS, FOR A VOLTAGE NOT EXCEEDING 80 V, NOT FITTED WITH CONNECTORS.
854460	INSULATED ELECTRIC CONDUCTORS, FOR A VOLTAGE EXCEEDING 1,000 V.
854470	INSULATED OPTICAL FIBER CABLES, MADE UP OF INDIVIDUALLY SHEATHED FIBERS.
854520	ELECTRICAL CARBON OR GRAPHITE BRUSHES.
854710	INSULATING FITTINGS OF CERAMICS, FOR ELECTRICAL MACHINES OR APPLIANCES.
854720	INSULATING FITTINGS OF PLASTICS, FOR ELECTRICAL MACHINES OR APPLIANCES.
854790	INSULATING FITTINGS NESOI, FOR ELECTRICAL MACHINES OR APPLIANCES; ELECTRICAL CONDUIT TUBING AND JOINTS, OF BASE METAL LINED WITH INSULATING MATERIAL.
854800	ELECTRICAL PARTS OF MACHINERY OR APPARATUS, NESOI.
854911	WASTE AND SCRAP OF PRIMARY CELLS, PRIMARY BATTERIES AND ELECTRIC STORAGE BATTERIES; SPENT PRIMARY CELLS, SPENT PRIMARY AND ELECTRIC STORAGE BATTERIES.
854912	WASTE AND SCRAP OF PRIMARY CELLS, PRIMARY BATTERIES AND ELECTRIC STORAGE BATTERIES; SPENT PRIMARY CELLS, SPENT PRIMARY AND ELECTRIC STORAGE BATTERIES.
854913	WASTE AND SCRAP OF PRIMARY CELLS, PRIMARY BATTERIES AND ELECTRIC STORAGE BATTERIES; SPENT PRIMARY CELLS, SPENT PRIMARY AND ELECTRIC STORAGE BATTERIES.
854914	WASTE AND SCRAP OF PRIMARY CELLS, PRIMARY BATTERIES AND ELECTRIC STORAGE BATTERIES; SPENT PRIMARY CELLS, SPENT PRIMARY AND ELECTRIC STORAGE BATTERIES.
854919	WASTE AND SCRAP OF PRIMARY CELLS, PRIMARY BATTERIES AND ELECTRIC STORAGE BATTERIES; SPENT PRIMARY CELLS, SPENT PRIMARY AND ELECTRIC STORAGE BATTERIES.
854921	MUNICIPAL WASTE.
854929	WASTE AS SPECIFIED IN CHAPTER 38 NOTES, NESOI.
854931	CULLET AND OTHER WASTE AND SCRAP OF GLASS; GLASS IN THE MASS.
854939	WASTE AND SCRAP OF PRECIOUS METAL, NESOI.
854991	CULLET AND OTHER WASTE AND SCRAP OF GLASS; GLASS IN THE MASS.
854999	WASTE AND SCRAP OF PRECIOUS METAL, NESOI.
860110	RAIL LOCOMOTIVES POWERED FROM AN EXTERNAL SOURCE OF ELECTRICITY.
860290	RAIL LOCOMOTIVES, NESOI; LOCOMOTIVE TENDERS.
860400	RAILWAY OR TRAMWAY MAINTENANCE OR SERVICE VEHICLES, WHETHER OR NOT SELF-PROPELLED (FOR EXAMPLE, WORK-SHOPS, CRANES, BALLAST TAMPERS, TRACKLINERS, ETC.).
860692	RAILWAY OR TRAMWAY FREIGHT CARS, OPEN, WITH NON-REMOVABLE SIDES OF A HEIGHT EXCEEDING 60 CM, NOT SELF-PROPELLED, NESOI.
870310	PASSENGER MOTOR VEHICLES SPECIALLY DESIGNEED FOR TRAVELING ON SNOW; GOLF CARTS AND SIMILAR VEHICLES.
870410	DUMPERS (DUMP TRUCKS) DESIGNED FOR OFF-HIGHWAY USE.
870421	MOTOR VEHICLES FOR GOODS TRANSPORT NESOI, WITH COMPRESSION-IGNITION INTERNAL COMBUSTION PISTON ENGINE (DIESEL), GVW NOT OVER 5 METRIC TONS.
870422	MOTOR VEHICLES FOR GOODS TRANSPORT NESOI, WITH COMPRESSION-IGNITION INTERNAL COMBUSTION PISTON ENGINE (DIESEL), GVW OVER 5 BUT NOT OVER 20 METRIC TONS.
870423	MOTOR VEHICLES FOR GOODS TRANSPORT NESOI, WITH COMPRESSION-IGNITION INTERNAL COMBUSTION PISTON ENGINE (DIESEL), GVW OVER 20 METRIC TONS.
870432	MOTOR VEHICLES FOR GOODS TRANSPORT NESOI, WITH SPARK-IGNITION INTERNAL COMBUSTION PISTON ENGINE, GVW OVER 5 METRIC TONS.
870510	MOBILE CRANES.
870540	CONCRETE MIXERS, SPECIAL PURPOSE VEHICLES.
870590	SPECIAL PURPOSE VEHICLES, OTHER THAN THOSE PRINCIPALLY DESIGNED FOR THE TRANSPORT OF PERSONS OR GOODS, NESOI.
870911	WORKS TRUCKS (NOT LIFTING OR HANDLING) USED IN FACTORIES ETC. AND TRACTORS USED ON RAILWAY STATION PLATFORMS, ELECTRICAL.
870990	PARTS FOR WORKS TRUCKS (NOT LIFTING OR HANDLING) USED IN FACTORIES ETC. AND PARTS OF TRACTORS OF THE TYPE USED ON RAILWAY STATION PLATFORMS.
871620	SELF-LOADING OR SELF-UNLOADING TRAILERS AND SEMI-TRAILERS FOR AGRICULTURAL PURPOSES.
871639	TRAILERS AND SEMI-TRAILERS FOR THE TRANSPORT OF GOODS, NESOI.
871690	PARTS OF TRAILERS, SEMI-TRAILERS AND OTHER VEHICLES, NOT MECHANICALLY PROPELLED.
900110	OPTICAL FIBERS, OPTICAL FIBER BUNDLES AND CABLES, OTHER THAN OPTICAL FIBER CABLES MADE UP OF INDIVIDUALLY SHEATHED FIBERS.
900510	BINOCULARS.
900580	MONOCULARS, OTHER OPTICAL TELESCOPES AND MOUNTINGS; OTHER ASTRONOMICAL INSTRUMENTS AND MOUNTINGS, EXCLUDING INSTRUMENTS FOR RADIO-ASTRONOMY.
900590	PARTS AND ACCESSORIES (INCLUDING MOUNTINGS) OF BINOCULARS, MONOCULARS, OTHEROTHER OPTICAL TELECOPES AND ASTRONOMICAL INSTRUMENTS NESOI.
900630	CAMERAS DESIGNED FOR UNDERWATER USE, FOR AERIAL SURVEY, OR MEDICAL/SURGICAL EXAMINATION OF INTERNAL ORGANS; CAMERAS FOR FORENSIC OR CRIMINOLOGICAL USE.

HTS–6 code	HTS description
900640	INSTANT PRINT CAMERAS.
900653	CAMERAS (STILL) NESOI, FOR ROLL FILM OF A WIDTH OF 35 MM (1.4 INCH).
900659	PHOTOGRAPHIC CAMERAS (OTHER THAN CINEMATOGRAPHIC), NESOI.
900661	PHOTOGRAPHIC DISCHARGE LAMP (ELECTRONIC) FLASHLIGHT APPARATUS.
900669	PHOTOGRAPHIC FLASHLIGHT APPARATUS, NESOI.
900691	PARTS AND ACCESSORIES FOR PHOTOGRAPHIC (OTHER THAN CINEMATOGRAPHIC) CAMERAS.
900699	PARTS AND ACCESSORIES FOR PHOTOGRAPHIC FLASHLIGHT APPARATUS AND FLASHBULBS, NESOI.
901010	PHOTOGRAPHIC EQUIPMENT FOR THE AUTOMATIC DEVELOPMENT OF FILM OR PAPER IN ROLLS OR AUTOMATICALLY EXPOSING DEVELOPED FILM TO ROLLS OF PHOTOGRAPHIC PAPER.
901380	OPTICAL DEVICES, APPLIANCES AND INSTRUMENTS, NESOI.
901410	DIRECTION FINDING COMPASSES.
901420	INSTRUMENTS AND APPLIANCES FOR AERONAUTICAL OR SPACE NAVIGATION (OTHER THAN COMPASSES).
901480	NAVIGATIONAL INSTRUMENTS AND APPLIANCES, NESOI.
901490	PARTS AND ACCESSORIES FOR DIRECTION FINDING COMPASSES AND OTHER NAVIGATIONAL INSTRUMENTS AND APPLIANCES.
901510	RANGEFINDERS.
901520	THEODOLITES AND TACHYOMETERS.
901540	PHOTOGRAMMETRICAL SURVEYING INSTRUMENTS AND APPLIANCES.
901580	SURVEYING INSTRUMENTS AND APPLIANCES, NESOI, HYDROGRAPHIC, OCEANOGRAPHIC, HYDROLOGICAL, METEOROLOGICAL OR GEOPHYSICAL INSTRUMENTS AND APPLIANCES NESOI.
901590	PARTS ETC. FOR RANGEFINDERS AND SURVEYING, HYDROGRAPHIC, OCEAN OGRAPHIC, HYDROLOGICAL, METEOROLOGICAL OR GEOPHYSICAL INSTRUMENTS AND APPLIANCES NESOI.
902480	MACHINES AND APPLIANCES NESOI FOR TESTING THE HARDNESS, STRENGTH, COMPRESSIBILITY, ELASTICITY OR OTHER SPECIFIC PROPERTIES OF MATERIALS.
902519	THERMOMETERS AND PYROMETERS, NOT COMBINED WITH OTHER INSTRUMENTS, NESOI.
902590	PARTS AND ACCESSORIES FOR HYDROMETERS AND SIMILAR FLOATING INSTRUMENTS, THERMOMETERS, PYROMETERS, BAROMETERS, HYGROMETERS AND PSYCHROMETERS.
902610	INSTRUMENTS AND APPARATUS FOR MEASURING OR CHECKING THE FLOW OR LEVEL OF LIQUIDS, NESOI.
902620	INSTRUMENTS AND APPARATUS FOR MEASURING OR CHECKING PRESSURE OF LIQUIDS OR GASES, NESOI.
902680	INSTRUMENTS AND APPARATUS FOR MEASURING OR CHECKING OTHER VARIABLES OF LIQUIDS OR GASES, NESOI.
902690	PARTS AND ACCESSORIES FOR INSTRUMENTS AND APPARATUS FOR MEASURING OR CHECKING THE FLOW, LEVEL, PRESSURE OR OTHER VARIABLES OF LIQUIDS OR GASES, NESOI.
902710	GAS OR SMOKE ANALYSIS APPARATUS.
902781	INSTRUMENTS AND APPARATUS FOR PHYSICAL OR CHEMICAL ANALYSIS, NESOI.
902789	INSTRUMENTS AND APPARATUS FOR PHYSICAL OR CHEMICAL ANALYSIS, NESOI.
902910	REVOLUTION COUNTERS, PRODUCTION COUNTERS, TAXIMETERS, ODOMETERS, PEDOMETERS AND THE LIKE.
902920	SPEEDOMETERS AND TACHOMETERS; STROBOSCOPES.
902990	PARTS AND ACCESSORIES FOR REVOLUTION COUNTERS, PRODUCTION COUNTERS, TAXIMETERS, ODOMETERS, PEDOMETERS ETC., SPEEDOMETERS, TACHOMETERS AND STROBOSOPES.
903032	MULTIMETERS WITH A RECORDING DEVICE.
903039	INSTRUMENTS AND APPARATUS FOR MEASURING OR CHECKING VOLTAGE, CURRENT, RESISTANCE OR POWER, WITHOUT A RECORDING DEVICE (EXCLUDING MULTIMETERS), NESOI.
903040	INSTRUMENTS AND APPARATUS NESOI, SPECIALLY DESIGNED FOR TELECOMMUNICATIONS (FOR EXAMPLE, CROSS-TALK METERS, GAIN MEASURING INSTRUMENTS ETC.).
903082	INST & APP W/A RECORDING DEVICE DESIGNED TO CHECK OR MEASURE SEMICONDUCTOR WAFERS & DEVICES (SUCH AS PROBE TESTERS, RESISTIVITY CHECKERS, LOGIC ANALYZERS.
903089	INSTRUMENTS AND APPARATUS NESOI, WITHOUT A RECORDING DEVICE FOR MEASURING OR CHECKING ELECTRICAL QUANTITIES.
903120	TEST BENCHES.
903149	MEASURING OR CHECKING INSTRUMENTS, APPLIANCES AND MACHINES, N.E.S.O.I.
903180	MEASURING OR CHECKING INSTRUMENTS, APPLIANCES AND MACHINES, NESOI.
903281	HYDRAULIC OR PNEUMATIC AUTOMATIC REGULATING OR CONTROLLING INSTRUMENTS AND APPARATUS.
903289	AUTOMATIC REGULATING OR CONTROLLING INSTRUMENTS AND APPARATUS (EXCLUDING THERMOSTATS, MANOSTATS AND HYDRAULIC TYPES), NESOI.

■ 10. Supplement No. 5 to part 746 is amended by:

■ a. Revising the heading of the supplement; and

■ b. Adding in numerical order the following entries to the table:

''8407100020,'' ''8407100040,'' ''8407100060,'' ''8407100090,'' ''8407310000,'' ''8407322000,'' ''8407325000,'' ''8407332000,'' ''8407335000,'' ''8407342030,'' ''8407342090,'' ''8407345000,'' ''8407901010,'' ''8407901050,'' ''8407909010,'' ''8407909030,'' ''8407909050,'' ''8408100030,'' ''8408100040,'' ''8408100050,'' ''8408202000,'' ''8408205000,'' ''8408901000,'' ''8408909010,'' ''8408909020,'' ''8408909030,'' ''8408909040,'' ''8408909050,'' ''8409100040,'' ''8409100080,'' ''8409914000,'' ''8409918000,'' ''8409994000,'' ''8409996000,'' ''8409998000,'' ''8411114010,'' ''8411114050,'' ''8411118000,'' ''8411124010,'' ''8411124050,'' ''8411128000,'' ''8411214010,'' ''8411214050,'' ''8411218000,'' ''8411224010,'' ''8411224050,'' ''8411228000,'' ''8411814010,'' ''8411814050,'' ''8411818000,'' ''8411824010,'' ''8411824050,'' ''8411828000,'' ''8411914000,'' ''8411917010,'' ''8411917050,'' ''8411994000,'' ''8411997010,'' ''8411997050,'' ''8414510010,'' ''8414510090,'' ''8414593000,'' ''8414596040,'' ''8414599080,'' ''8414600000,'' ''8415103040,'' ''8415103060,'' ''8415103080,'' ''8415106000,'' ''8415109000,'' ''8418100010,'' ''8418100020,'' ''8418100030,'' ''8418100040,'' ''8418100090,'' ''8418210010,'' ''8418210020,'' ''8418210030,'' ''8418210090,'' ''8418291000,'' ''8418292000,'' ''8418300000,'' ''8418400000,'' ''8419815000,'' ''8419819040,'' ''8419819080,'' ''8422110000,'' ''8423100010,'' ''8423100050,'' ''8428600000,'' ''8431390010,'' ''8431390090,'' ''8443120000,'' ''8443310000,'' ''8443321010,'' ''8443321020,'' ''8443321030,'' ''8443321040,'' ''8443321050,'' ''8443321060,'' ''8443321070,'' ''8443321080,'' ''8443321090,'' ''8443325000,'' ''8443391000,'' ''8443392000,'' ''8443393000,'' ''8443394000,'' ''8443395000,'' ''8443396000,'' ''8443399000,'' ''8450110010,'' ''8450110090,'' ''8450120000,'' ''8450190000,'' ''8451210010,''

''8451210090,'' ''8452100000,''
''8470100000,'' ''8470210000,''
''8470290000,'' ''8470300000,''
''8471410110,'' ''8471410150,''
''8471490000,'' ''8471500110,''
''8471500150,'' ''8471601010,''
''8471601050,'' ''8471602000,''
''8471607000,'' ''8471608000,''
''8471609030,'' ''8471609050,''
''8471701000,'' ''8471702000,''
''8471703000,'' ''8471704035,''
''8471704065,'' ''8471704095,''
''8471705035,'' ''8471705065,''
''8471705095,'' ''8471706000,''
''8471709000,'' ''8471801000,''
''8471804000,'' ''8471809000,''
''8471900000,'' ''8472900500,''
''8472901000,'' ''8472905000,''
''8472909002,'' ''8479600000,''
''8483101020,'' ''8483101050,''
''8483103010,'' ''8483103050,''
''8483105000,'' ''8483200010,''
''8483200050,'' ''8483305020,''
''8483305040,'' ''8483308055,''
''8483308065,'' ''8483308070,''
''8483308090,'' ''8483401000,''
''8483404010,'' ''8483404050,''
''8483407000,'' ''8483408000,''
''8483409000,'' ''8483508030,''
''8483508080,'' ''8483604000,''
''8483608000,'' ''8483901000,''
''8483905000,'' ''8483908010,''
''8483909500,'' ''8508110000,''
''8508190000,'' ''8508600000,''
''8509801000,'' ''8509802000,''
''8509805040,'' ''8509805060,''
''8509805091,'' ''8511100000,''
''8511200000,'' ''8511300040,''
''8511300080,'' ''8511400000,''
''8511500000,'' ''8511802000,''
''8511804000,'' ''8511806000,''
''8511906020,'' ''8511908000,''
''8512202000,'' ''8512204000,''
''8512300030,'' ''8512300050,''
''8512402000,'' ''8512404000,''
''8516310000,'' ''8516500000,''
''8516604000,'' ''8516606000,''
''8516710000,'' ''8516720000,''
''8516790000,'' ''8517110000,''
''8517130000,'' ''8517180000,''
''8517610000,'' ''8517620010,''
''8517620050,'' ''8517690000,''
''8519200000,'' ''8519301000,''
''8519302000,'' ''8519811000,''
''8519812000,'' ''8519812500,''
''8519813000,'' ''8519814105,''
''8519814110,'' ''8519814120,''
''8519814150,'' ''8519891000,''
''8519892000,'' ''8519893000,''
''8521100000,'' ''8521900000,''
''8526910010,'' ''8526910030,''
''8526910070,'' ''8527120000,''
''8527131100,'' ''8527132000,''
''8527134000,'' ''8527136000,''
''8527190000,'' ''8527210000,''
''8527290000,'' ''8527910000,''
''8527920000,'' ''8527993005,''
''8527993060,'' ''8527995030,''
''8528710000,'' ''8528723000,''
''8528726005,'' ''8528726010,''
''8528726040,'' ''8528726057,''
''8529102020,'' ''8529102050,''
''8529102090,'' ''8529104000,''
''8529109000,'' ''8531100015,''
''8531100025,'' ''8531100035,''
''8531100045,'' ''8543702000,''
''8543704000,'' ''8543706000,''
''8543707100,'' ''8543708000,''
''8543708500,'' ''8543709610,''
''8543709620,'' and ''8544300000.''

The additions read as follows:

Supplement No. 5 to Part 746—'Luxury Goods' Sanctions for Russia and Belarus Pursuant to § 746.10(a)(1) and (2)

* * * * *

Schedule B	2-Digit chapter heading	10-Digit commodity description and per unit wholesale price in the U.S. if applicable
*	* *	* * * *
8407100020	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	SPARK-IGNITION RECIPROCATING OR ROTARY INTERNAL COMBUSTION PISTON ENGINES FOR CIVIL AIRCRAFT, NEW, LESS THAN 373 KW, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8407100040	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	SPARK-IGNITION RECIPROCATING OR ROTARY INTERNAL COMBUSTION PISTON ENGINES FOR CIVIL AIRCRAFT, NEW, 373 KW OR OVER, VALUED AT $500 PER UNIT WHOLESALE PRICE IN THE US.[1]
8407100060	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	SPARK-IGNITION RECIPROCATING OR ROTARY INTERNAL COMBUSTION PISTON ENGINES FOR CIVIL AIRCRAFT, USED OR REBUILT, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8407100090	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	SPARK-IGNITION RECIPROCATING OR ROTARY INTERNAL COMBUSTION PISTON TYPE AIRCRAFT ENGINES, EXCEPT CIVIL AIRCRAFT USE, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
*	* *	* * * *
8407310000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	SPARK-IGNITION RECIPROCATING PISTON ENGINES OF A KIND USED FOR THE PROPULSION OF VEHICLES OF CHAPTER 87, NOT EXCEEDING 50 CC CYLINDER CAPACITY, VALUED AT $500 PER UNIT WHOLESALE PRICE IN THE US.[1]
8407322000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	SPARK-IGNITION PISTON ENGINES EXCEEDING 50 CC BUT NOT EXCEEDING 250 CC, TO BE INSTALLED IN ROAD TRACTORS, MOTOR BUSES, AUTOMOBILES OR TRUCKS, NEW OR USED, VALUED AT $1,000 PER UNIT WHOLESALE PRICE IN THE US.[1]
8407325000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	SPARK-IGNITION RECIPROCATING PISTON ENGINES EXCEEDING 50 CC BUT NOT EXCEEDING 250 CC, FOR VEHICLES OF CHAPTER 87, NESOI, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8407332000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	SPARK-IGNITION PISTON ENGINES EXCEEDING 250 CC BUT NOT EXCEEDING 1000 CC, TO BE INSTALLED IN ROAD TRACTORS, MOTOR BUSES, AUTOMOBILES OR TRUCKS, NEW/USED, VALUED AT $1,000 PER UNIT WHOLESALE PRICE IN THE US.[1]
8407335000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	SPARK-IGNITION RECIPROCATING PISTON ENGINES EXCEEDING 250 CC BUT NOT EXCEEDING 1000 CC, NESOI, VALUED AT $500 PER UNIT WHOLESALE PRICE IN THE US.[1]
8407342030	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	SPARK-IGNITION PISTON ENGINES EXCEEDING 1000CC AND NOT EXCEEDING 2000 CC TO BE INSTALLED IN ROAD TRUCKS, BUSES, AUTOMOBILES OR TRUCK TRACTORS, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8407342090	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	SPARK-IGNITION PISTON ENGINES EXCEEDING 2000 CC, TO BE INSTALLED IN ROAD TRACTORS, MOTOR BUSES, AUTOMOBILES OR TRUCK TRACTORS, VALUED AT $1,000 PER UNIT WHOLESALE PRICE IN THE US.[1]
8407345000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	SPARK-IGNITION RECIPROCATING PISTON ENGINES EXCEEDING 1000 CC, NESOI, VALUED AT $500 PER UNIT WHOLESALE PRICE IN THE US.[1]
8407901010	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	SPARK-IGNITION INTERNAL COMBUSTION PISTON ENGINES LESS THAN 4,476 W TO BE INSTALLED IN AGRICULTURAL OR HORTICULTURAL MACHINERY OR EQUIPMENT, VALUED AT $500 PER UNIT WHOLESALE PRICE IN THE US.[1]
8407901050	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	SPARK-IGNITION RECIPROCATING OR ROTARY INTERNAL COMBUSTION PISTON ENGINES, NESOI, TO BE INSTALLED IN AGRICULTURAL OR HORTICULTURAL MACHINERY OR EQUIP, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]

Schedule B	2-Digit chapter heading	10-Digit commodity description and per unit wholesale price in the U.S. if applicable
8407909010	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	SPARK-IGNITION INTERNAL COMBUSTION PISTON TYPE GAS (NATURAL OR LIQUID PROPANE (LP)) ENGINES, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8407909030	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	SPARK-IGNITION RECIPROCATING OR ROTARY INTERNAL COMBUSTION PISTON ENGINES, NESOI, LESS THAN 4476 W (6 HP), VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8407909050	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	SPARK-IGNITION RECIPROCATING OR ROTARY INTERNAL COMBUSTION PISTON ENGINES, NESOI, VALUED AT $500 PER UNIT WHOLESALE PRICE IN THE US.[1]
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8408100030	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	COMPRESSION-IGNITION INTERNAL COMBUSTION PISTON ENGINES FOR MARINE PROPULSION, EXCEEDING 223.8 KW BUT NOT EXCEEDING 373 KW, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8408100040	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	COMPRESSION-IGNITION INTERNAL COMBUSTION PISTON ENGINES FOR MARINE PROPULSION, EXCEEDING 373 KW BUT NOT EXCEEDING 746 KW, VALUED AT $1,000 PER UNIT WHOLESALE PRICE IN THE US.[1]
8408100050	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	COMPRESSION-IGNITION INTERNAL COMBUSTION PISTON ENGINES FOR MARINE PROPULSION, EXCEEDING 746 KW, VALUED AT $5,000 PER UNIT WHOLESALE PRICE IN THE US.[1]
8408202000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	COMPRESSION-IGNITION INTERNAL COMBUSTION PISTON ENGINES FOR PROPULSION OF VEHICLES OF CHAPTER 87, TO BE INSTALLED IN ROAD TRACTORS, BUSES, AUTOS, TRUCKS, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8408205000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	COMPRESSION-IGNITION INTERNAL COMBUSTION PISTON ENGINES (DIESEL), FOR THE PROPULSION OF VEHICLES OF CHAPTER 87, NESOI, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8408901000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	COMPRESSION-IGNITION INTERNAL COMBUSTION PISTON ENGINES (DIESEL), TO BE INSTALLED IN AGRICULTURAL OR HORTICULTURAL MACHINERY OR EQUIPMENT, VALUED AT $500 PER UNIT WHOLESALE PRICE IN THE US.[1]
8408909010	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	COMPRESSION-IGNITION INTERNAL COMBUSTION PISTON ENGINES, NESOI, NOT EXCEEDING 149.2 KW, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8408909020	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	COMPRESSION-IGNITION INTERNAL COMBUSTION PISTON ENGINES, NESOI, EXCEEDING 149.2 KW BUT NOT EXCEEDING 373 KW, VALUED AT $500 PER UNIT WHOLESALE PRICE IN THE US.[1]
8408909030	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	COMPRESSION-IGNITION INTERNAL COMBUSTION PISTON ENGINES, NESOI, EXCEEDING 373 KW NOT EXCEEDING 746 KW, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8408909040	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	COMPRESSION-IGNITION INTERNAL COMBUSTION PISTON ENGINES, NESOI, EXCEEDING 746 KW BUT NOT EXCEEDING 1,119 KW, VALUED AT $1,000 PER UNIT WHOLESALE PRICE IN THE US.[1]
8408909050	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	COMPRESSION-IGNITION INTERNAL COMBUSTION PISTON ENGINES, NESOI, EXCEEDING 1,119 KW, VALUED AT $1,000 PER UNIT WHOLESALE PRICE IN THE US.[1]
8409100040	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	PARTS FOR SPARK-IGNITION OR COMPRESSION-IGNITION INTERNAL COMBUSTION PISTON ENGINES FOR USE IN CIVIL AIRCRAFT, VALUED AT $500 PER UNIT WHOLESALE PRICE IN THE US.[1]
8409100080	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	PARTS FOR SPARK-IGNITION OR COMPRESSION-IGNITION INTERNAL COMBUSTION PISTON ENGINES FOR USE IN AIRCRAFT EXCEPT CIVIL, VALUED AT $300 PER SET OF PARTS WHOLESALE PRICE IN THE US.[1]
8409914000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	PARTS FOR SPARK-IGNITION INTERNAL COMBUSTION PISTON ENGINES FOR USE IN ROAD TRACTORS, MOTOR BUSES, AUTOMOBILES OR TRUCKS, VALUED AT $300 PER SET OF PARTS WHOLESALE PRICE IN THE US.[1]
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8409918000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	PARTS FOR SPARK-IGNITION INTERNAL COMBUSTION PISTON ENGINES, NESOI, VALUED AT $300 PER SET OF PARTS WHOLESALE PRICE IN THE US.[1]
8409994000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	PARTS FOR COMPRESSION-IGNITION INTERNAL COMBUSTION PISTON ENGINES (DIESEL) FOR USE IN ROAD TRACTORS, MOTOR BUSES, AUTOMOBILES OR TRUCKS, VALUED AT $300 PER SET OF PARTS WHOLESALE PRICE IN THE US.[1]
8409996000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	PARTS FOR COMPRESSION-IGNITION INTERNAL COMBUSTION PISTON ENGINES (DIESEL) FOR MARINE PROPULSION, VALUED AT $300 PER SET OF PARTS WHOLESALE PRICE IN THE US.[1]
8409998000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	PARTS FOR COMPRESSION-IGNITION INTERNAL COMBUSTION PISTON ENGINES (DIESEL), NESOI, VALUED AT $300 PER SET OF PARTS WHOLESALE PRICE IN THE US.[1]
8411114010	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	TURBOJET AIRCRAFT TURBINES (ENGINES) FOR USE IN CIVIL AIRCRAFT, OF A THRUST NOT EXCEEDING 25 KN, VALUED AT $5,000 PER UNIT WHOLESALE PRICE IN THE US.[1]
8411114050	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	TURBOJET AIRCRAFT TURBINES (ENGINES) OTHER THAN FOR CIVIL AIRCRAFT, OF A THRUST NOT EXCEEDING 25 KN, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8411118000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	TURBOJET TURBINES (ENGINES), EXCEPT AIRCRAFT, OF A THRUST NOT EXCEEDING 25 KN, VALUED AT $5,000 PER UNIT WHOLESALE PRICE IN THE US.[1]
8411124010	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	TURBOJET AIRCRAFT TURBINES (ENGINES) FOR USE IN CIVIL AIRCRAFT, OF A THRUST EXCEEDING 25 KN, VALUED AT $1,000 PER UNIT WHOLESALE PRICE IN THE US.[1]
8411124050	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	TURBOJET AIRCRAFT TURBINES (ENGINES) OTHER THAN FOR CIVIL AIRCRAFT, OF A THRUST EXCEEDING 25 KN, VALUED AT $1,000 PER UNIT WHOLESALE PRICE IN THE US.[1]
8411128000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	TURBOJET TURBINES (ENGINES), EXCEPT AIRCRAFT, OF A THRUST EXCEEDING 25 KN, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8411214010	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	TURBOPROPELLER AIRCRAFT TURBINES (ENGINES) FOR USE IN CIVIL AIRCRAFT, OF A POWER NOT EXCEEDING 1100 KW, VALUED AT $500 PER UNIT WHOLESALE PRICE IN THE US.[1]
8411214050	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	TURBOPROPELLER AIRCRAFT TURBINES (ENGINES) OTHER THAN FOR CIVIL AIRCRAFT, OF A POWER NOT EXCEEDING 1100 KW, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8411218000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	TURBOPROPELLER TURBINES (ENGINES), EXCEPT AIRCRAFT, OF A POWER NOT EXCEEDING 1,100 KW, VALUED AT $500 PER UNIT WHOLESALE PRICE IN THE US.[1]

Schedule B	2-Digit chapter heading	10-Digit commodity description and per unit wholesale price in the U.S. if applicable
8411224010	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	TURBOPROPELLER AIRCRAFT TURBINES (ENGINES) FOR USE IN CIVIL AIRCRAFT, OF A POWER EXCEEDING 1100 KW, VALUED AT $500 PER UNIT WHOLESALE PRICE IN THE US.[1]
8411224050	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	TURBOPROPELLER AIRCRAFT TURBINES (ENGINES) OTHER THAN FOR USE IN CIVIL AIRCRAFT, OF A POWER EXCEEDING 1100 KW, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8411228000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	TURBOPROPELLER TURBINES (ENGINES), EXCEPT AIRCRAFT, OF A POWER EXCEEDING 1,100 KW, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8411814010	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	AIRCRAFT TURBINES (ENGINES) FOR USE IN CIVIL AIRCRAFT, OF A POWER NOT EXCEEDING 5000 KW, VALUED AT $5,000 PER UNIT WHOLESALE PRICE IN THE US.[1]
8411814050	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	AIRCRAFT TURBINES (ENGINES), EXCEPT FOR USE IN CIVIL AIRCRAFT, OF A POWER NOT EXCEEDING 5000 KW, VALUED AT $5,000 PER UNIT WHOLESALE PRICE IN THE US.[1]
8411818000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	GAS TURBINE ENGINE, EXCEPT AIRCRAFT NESOI, OF A POWER NOT EXCEEDING 5,000 KW, VALUED AT $5,000 PER UNIT WHOLESALE PRICE IN THE US.[1]
8411824010	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	AIRCRAFT TURBINES (ENGINES) FOR USE IN CIVIL AIRCRAFT, OF A POWER EXCEEDING 5000 KW, VALUED AT $5,000 PER UNIT WHOLESALE PRICE IN THE US.[1]
8411824050	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	AIRCRAFT TURBINES (ENGINES), EXCEPT FOR USE IN CIVIL AIRCRAFT, OF A POWER EXCEEDING 5000 KW, VALUED AT $5,000 PER UNIT WHOLESALE PRICE IN THE US.[1]
8411828000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	GAS TURBINE ENGINES, EXCEPT AIRCRAFT NESOI, OF A POWER EXCEEDING 5,000 KW, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8411914000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	PARTS OF NONAIRCRAFT TURBOJETS AND TURBOPROPELLERS, VALUED AT $750 PER SET OF PARTS WHOLESALE PRICE IN THE US.[1]
8411917010	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	PARTS OF TURBOJETS AND TURBOPROPELLER AIRCRAFT ENGINES FOR USE IN CIVIL AIRCRAFT, VALUED AT $500 PER SET OF PARTS WHOLESALE PRICE IN THE US.[1]
8411917050	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	PARTS OF TURBOJET AND TURBOPROPELLER AIRCRAFT ENGINES, OTHER THAN FOR USE IN CIVIL AIRCRAFT, VALUED AT $1,000 PER SET OF PARTS WHOLESALE PRICE IN THE US.[1]
8411994000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	PARTS OF NONAIRCRAFT GAS TURBINES, VALUED AT $750 PER SET OF PARTS WHOLESALE PRICE IN THE US.[1]
8411997010	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	PARTS OF GAS TURBINE AIRCRAFT ENGINES FOR USE IN CIVIL AIRCRAFT, VALUED AT $750 PER SET OF PARTS WHOLESALE PRICE IN THE US.[1]
8411997050	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	PARTS OF GAS TURBINE AIRCRAFT ENGINES, OTHER THAN FOR USE IN CIVIL AIRCRAFT, VALUED AT $750 PER SET OF PARTS WHOLESALE PRICE IN THE US.[1]
8414510010	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	FLOOR, WALL, WINDOW, CEILING OR ROOF FANS, WITH A SELF-CONTAINED ELECTRIC MOTOR OF AN OUTPUT NOT EXCEEDING 125 W, FOR PERMANENT INSTALLATION, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8414510090	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	FANS, OTHER THAN FOR PERMANENT INSTALLATION, WITH A SELF CONTAINED ELECTRIC MOTOR OF AN OUTPUT NOT EXCEEDING 125 W, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8414593000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	TURBOCHARGERS AND SUPERCHARGERS, FAN TYPE, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8414596040	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	FANS, NESOI, SUITABLE FOR USE WITH MOTOR VEHICLES, VALUED AT $500 PER UNIT WHOLESALE PRICE IN THE US.[1]
8414599080	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	FANS, NESOI, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8414600000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	HOODS HAVING A MAXIMUM HORIZONTAL SIDE NOT EXCEEDING 120 CM, VALUED AT $500 PER UNIT WHOLESALE PRICE IN THE US.[1]
8415103040	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	AIR-CONDITIONERS, WINDOW OR WALL TYPE, SELF-CONTAINED, LESS THAN 2.93 KW PER HOUR (10000 BTU/HR), VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8415103060	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	AIR-CONDITIONERS, WINDOW OR WALL TYPE, SELF-CONTAINED, 2.93 KW/HR OR GREATER BUT LESS THAN 4.98 KW/HR (10000–16999BTU/HR), VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8415103080	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	AIR-CONDITIONERS, WINDOW OR WALL TYPE, SELF-CONTAINED, 4.98 KW/HR OR GREATER (17000 BTU/HR), VALUED AT $500 PER UNIT WHOLESALE PRICE IN THE US.[1]
8415106000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	AIR CONDITIONING MACHINES INCORPORATING A REFRIGERATING UNIT, AND A VALVE FOR REVERSAL OF THE COOLING/HEAT CYCLE, WINDOW OR WALL TYPES, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8415109000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	AIR CONDITIONING MACHINES, WINDOW OR WALL TYPE, NOT SELF CONTAINED, NESOI, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8418100010	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	REFRIGERATOR-FREEZERS COMBINED, FITTED WITH SEPERATE EXTERNAL DOORS, COMPRESSION TYPE, VOLUME UNDER 184 LITERS, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8418100020	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	REFRIGERATOR-FREEZERS COMBINED, FITTED WITH SEPERATE EXTERNAL DOORS, COMPRESSION TYPE, VOLUME OF 184 LITERS AND OVER BUT UNDER 269 LITERS, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8418100030	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	REFRIGERATOR-FREEZERS COMBINED, FITTED WITH SEPERATE EXTERNAL DOORS, COMPRESSION TYPE, VOLUME OF 269 LITERS AND OVER BUT UNDER 382 LITERS, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8418100040	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	REFRIGERATOR-FREEZERS COMBINED, FITTED WITH SEPERATE EXTERNAL DOORS, COMPRESSION TYPE, VOLUME OF 382 LITERS AND OVER, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8418100090	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	REFRIGERATOR-FREEZERS COMBINED, FITTED WITH SEPERATE EXTERNAL DOORS, EXCEPT COMPRESSION TYPE, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8418210010	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	REFRIGERATORS, HOUSEHOLD, COMPRESSION TYPE, VOLUME UNDER 184 LITERS, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8418210020	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	REFRIGERATORS, HOUSEHOLD, COMPRESSION TYPE, VOLUME OF 184 LITERS AND OVER BUT UNDER 269 LITERS, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]

Schedule B	2-Digit chapter heading	10-Digit commodity description and per unit wholesale price in the U.S. if applicable
8418210030	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	REFRIGERATORS, HOUSEHOLD, COMPRESSION TYPE, VOLUME OF 269 LITERS AND OVER BUT UNDER 382 LITERS, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8418210090	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	REFRIGERATORS, HOUSEHOLD, COMPRESSION TYPE, VOLUME OF 382 LITERS AND OVER, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8418291000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	REFRIGERATORS, HOUSEHOLD, ABSORPTION TYPE, ELECTRICAL, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8418292000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	REFRIGERATORS, HOUSEHOLD TYPE, NESOI, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8418300000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	FREEZERS, CHEST TYPE, CAPACITY NOT EXCEEDING 800 LITERS, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8418400000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	FREEZERS, UPRIGHT TYPE, CAPACITY NOT EXCEEDING 900 LITERS, VALUED AT $500 PER UNIT WHOLESALE PRICE IN THE US.[1]
8419815000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	COOKING STOVES, RANGES AND OVENS EXCEPT MICROWAVE OVENS, OTHER THAN OF A KIND USED FOR DOMESTIC PURPOSES, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8419819040	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	INDUSTRIAL MACHINERY OR EQUIPMENT OF A TYPE USED IN RESTAURANTS, HOTELS OR SIMILAR LOCATIONS FOR MAKING HOT DRINKS OR FOR COOKING, HEATING FOOD, NESOI, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8419819080	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	INDUSTRIAL MACHINERY OR EQUIPMENT FOR MAKING HOT DRINKS OR FOR COOKING OR HEATING FOOD, NESOI, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8422110000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	DISHWASHING MACHINES, HOUSEHOLD TYPE.[1]
8423100010	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	DIGITAL ELECTRONIC TYPE PERSONAL WEIGHING MACHINES, INCLUDING BABY AND HOUSEHOLD SCALES, VALUED AT $100 PER UNIT WHOLESALE PRICE IN THE US.[1]
8423100050	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	PERSONAL WEIGHING MACHINES, INCLUDING BABY AND HOUSEHOLD SCALES, NESOI, VALUED AT $100 PER UNIT WHOLESALE PRICE IN THE US.[1]
8428600000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	TELEFERICS, CHAIR LIFTS, SKI DRAGLINES; TRACTION MECHANISMS FOR FUNICULARS, VALUED AT $0 PER SET OF PARTS WHOLESALE PRICE IN THE US.[1]
8431390010	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	ELEVATOR AND CONVEYOR PARTS, NESOI, VALUED AT $5,000 PER SET OF PARTS WHOLESALE PRICE IN THE US.[1]
8431390090	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	PARTS FOR LIFTING, HANDLING, LOADING OR UNLOADING MACHINERY, NESOI, VALUED AT $300 PER SET OF PARTS WHOLESALE PRICE IN THE US.[1]
8443120000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	SHEET-FED, OFFICE TYPE (SHEET SIZE NOT EXCEEDING 22X36 CM), OFFSET PRINTING MACHINERY, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8443310000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	MACHINES WHICH PERFORM TWO OR MORE OF THE FUNCTIONS OF PRINTING, COPYING OR FACSIMILE TRANSMISSION, CAPABLE OF CONNECTING TO AN ADP MACHINE OR NETWORK, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8443321010	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	LASER PRINTERS, CAPABLE OF CONNECTING TO AN AUTOMATIC DATA PROCESSING MACHINE OR NETWORK, PRODUCING MORE THAN 20 PAGES PER MINUTE, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8443321020	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	LASER PRINTERS, CAPABLE OF CONNECTING TO AN AUTOMATIC DATA PROCESSING MACHINE OR NETWORK, PRODUCING LESS THAN 20 PAGES PER MINUTE, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8443321030	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	PRINTERS, LIGHT BAR ELECTRONIC TYPE, CAPABLE OF CONNECTING TO AN AUTOMATIC DATA PROCESSING MACHINE OR NETWORK, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8443321040	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	PRINTERS, INK JET, CAPABLE OF CONNECTING TO AN AUTOMATIC DATA PROCESSING MACHINE OR NETWORK, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8443321050	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	PRINTERS, THERMAL TRANSFER, CAPABLE OF CONNECTING TO AN AUTOMATIC DATA PROCESSING MACHINE OR NETWORK, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8443321060	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	PRINTERS, IONOGRAPHIC, CAPABLE OF CONNECTING TO AN AUTOMATIC DATA PROCESSING MACHINE OR NETWORK, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8443321070	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	PRINTERS, DAISY WHEEL, CAPABLE OF CONNECTING TO AN AUTOMATIC DATA PROCESSING MACHINE OR NETWORK, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8443321080	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	PRINTERS, DOT MATRIX, CAPABLE OF CONNECTING TO AN AUTOMATIC DATA PROCESSING MACHINE OR NETWORK, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8443321090	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	PRINTER UNITS, CAPABLE OF CONNECTING TO AN AUTOMATIC DATA PROCESSING MACHINE OR NETWORK, NESOI, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8443325000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	COPYING AND FACSIMILE MACHINES, CAPABLE OF CONNECTING TO AN AUTOMATIC DATA PROCESSING MACHINE OR NETWORK, NESOI, VALUED AT $500 PER UNIT WHOLESALE PRICE IN THE US.[1]
8443391000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	ELECTROSTATIC PHOTOCOPYING APPARATUS OPERATING BY REPRODUCING THE ORIGINAL IMAGE DIRECTLY ONTO THE COPY (DIRECT PROCESS), VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8443392000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	ELECTROSTATIC PHOTOCOPYING APPARATUS OPERATING BY REPRODUCING THE ORIGINAL IMAGE VIA AN INTERMEDIATE ONTO THE COPY (INDIRECT PROCESS), VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8443393000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	OTHER PHOTOCOPYING APPARATUS INCORPORATING AN OPTICAL SYSTEM, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8443394000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	OTHER PHOTOCOPYING APPARATUS OF THE CONTACT TYPE, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8443395000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	THERMOCOPYING APPARATUS, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8443396000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	COPYING MACHINES, NESOI, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]

Schedule B	2-Digit chapter heading	10-Digit commodity description and per unit wholesale price in the U.S. if applicable
8443399000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	PRINTER AND FACSIMILE MACHINES, EXCEPT COPYING, WHETHER OR NOT COMBINED, NESOI, VALUED AT $500 PER UNIT WHOLESALE PRICE IN THE US.[1]
8450110010	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	WASHING MACHINES, COIN OPERATED, FULLY AUTOMATIC, DRY LINEN CAPACITY NOT EXCEEDING 10 KG, HOUSEHOLD OR LAUNDRY TYPE, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8450110090	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	WASHING MACHINES, EXCEPT COIN OPERATED, FULLY AUTOMATIC, DRY LINEN CAPACITY NOT EXCEEDING 10 KG, HOUSEHOLD OR LAUNDRY TYPE, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8450120000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	WASHING MACHINES WITH BUILT-IN CENTRIFUGAL DRYERS, DRY LINEN CAPACITY NOT EXCEEDING 10 KG, HOUSEHOLD OR LAUNDRY TYPE, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8450190000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	WASHING MACHINES, DRY LINEN CAPACITY NOT EXCEEDING 10 KG, HOUSEHOLD OR LAUNDRY-TYPE, NESOI, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8451210010	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	DRYING MACHINES, COIN OPERATED, DRY LINEN CAPACITY NOT EXCEEDING 10 KG, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8451210090	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	DRYING MACHINES, EXCEPT COIN OPERATED, DRY LINEN CAPACITY NOT EXCEEDING 10 KG, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8452100000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	SEWING MACHINES OF THE HOUSEHOLD TYPE, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8470100000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	ELECTRONIC CALCULATORS CAPABLE OF OPERATION WITHOUT AN EXTERNAL SOURCE OF ELECTRIC POWER AND POCKET-SIZE RECORDING, REPRODUC&DISPLAY MACH W/CAL FUNCT, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8470210000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	ELECTRONIC CALCULATING MACHINES, NESOI, INCORPORATING A PRINTING DEVICE, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8470290000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	ELECTRONIC CALCULATING MACHINES, NESOI, NOT INCORPORATING A PRINTING DEVICE.[1]
8470300000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	CALCULATING MACHINES EXCEPT ELECTRONIC, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
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8471410110	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	DIGITAL ADP MACH COMPRISING IN SAME HOUSING AT LEAST A CPU AND AN INPUT AND OUPUT UNIT, WHETHER OR NOT COMBINED, W/CATHODE RAY TUBE (CRT), VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8471410150	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	DIGITAL ADP MACH COMPRISING IN SAME HOUSING AT LEAST A CPU AND AN INPUT AND OUTPUT UNIT WHETHER OR NOT COMBINED, WITHOUT CRT, NESOI, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8471490000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	AUTOMATIC DATA PROCESSING MACHINES ENTERED IN THE FORM OF SYSTEMS, NESOI, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8471500110	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	PROCESS UNITS W/CATHODE RAY TUBE, WH/NOT CONTG IN THE SAME HOUSING 1 OR 2 OF STORAGE UNITS, INPUT UNITS OR OUTPUT UNITS, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8471500150	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	DIGITAL PROCESSING UNITS EXCLUDE SUBHEADING 8471.41 OR 8471.49, MAY CONTAIN IN SAME HOUSING 1 OR 2 OF FOLLOWING: STORAGE, INPUT OR OUTPUT UNITS, NESOI, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8471601010	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	COMBINED INPUT/OUTPUT UNITS, WITH CATHODE RAY TUBE (CRT), NESOI, VALUED AT $500 PER UNIT WHOLESALE PRICE IN THE US.[1]
8471601050	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	COMBINED INPUT/OUTPUT UNITS, WITHOUT A CATHODE RAY TUBE (CRT), NESOI, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8471602000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	KEYBOARD UNITS, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8471607000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	INPUT/OUTPUT UNITS, NESOI, SUITABLE FOR PHYSICAL INCORPORATION INTO AUTOMATIC DATA PROCESSING MACHINES OR UNITS THEREOF, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8471608000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	OPTICAL SCANNERS AND MAGNETIC INK RECOGNITION DEVICES, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8471609030	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	CARD KEY AND MAGNETIC MEDIA ENTRY DEVICES, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8471609050	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	ADP INPUT/OUTPUT UNITS, NESOI, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8471701000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	MAGNETIC DISK DRIVE UNITS WITH A DISK DIAMETER GT=21 CM,WITH READ-WRITE UNITS ENTERED SEPERATELY, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8471702000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	MAGNETIC DISK DRIVE UNTS FOR DISK OF DIAMETER EXCEEDING 21 CM (8.3 INCHES), UNTS FOR PHYSICAL INCORP INTO AUTO DATA PROCESS MACH OR UNT THEREOF, NESOI, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8471703000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	MAGNETIC DISK DRIVE UNITS, NESOI, WITH A DISK DIAMETER GT=21 CM, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8471704035	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	FLEXIBLE (FLOPPY) MAGNETIC DISK DRIVE UNITS, NOT ASSEMBLED IN CABINETS, AND WITHOUT ATTACHED EXTERNAL POWER SUPPLY, NESOI, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8471704065	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	HARD MAGNETIC DISK DRIVE UNITS, NESOI, NOT ASSEMBLED IN CABINETS, AND W/OUT ATTACHED EXTERNAL POWER SUPPLY UNITS, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8471704095	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	DISK DRIVE UNITS, NESOI, NOT ASSEMBLED IN CABINETS, AND WITHOUT ATTACHED EXTERNAL POWER SUPPLY UNITS, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8471705035	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	FLEXIBLE (FLOPPY) MAGNETIC DISK DRIVE UNITS, NESOI, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8471705065	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	HARD MAGNETIC DISK DRIVE UNITS, NESOI, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8471705095	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	MAGNETIC DISK DRIVE UNITS, NESOI, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]

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8471706000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	OTHER STORAGE UNITS, NESOI, NOT ASSEMBLED IN CABINETS FOR PLACING ON A TABLE, DESK, WALL FLOOR OR SIMILAR PLACE, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8471709000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	OTHER STORAGE UNITS, NESOI, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8471801000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	CONTROL OR ADAPTER UNITS FOR AUTOMATIC DATA PROCESSING MACHINES, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8471804000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	UNITS, NESOI, SUITABLE FOR PHYSICAL INCORPORATION INTO AUTOMATIC DATA PROCESSING MACHINES OR UNITS THEREOF, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8471809000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	OTHER UNITS FOR AUTOMATIC DATA PROCESSING MACHINES, NESOI, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8471900000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	MACHINES AND UNITS THEREOF FOR PROCESSING DATA, NESOI, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8472900500	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	ADDRESSING MACHINES AND ADDRESS PLATE EMBOSSING MACHINES, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8472901000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	AUTOMATIC TELLER MACHINES, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8472905000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	TYPEWRITERS OTHER THAN PRINTERS OF HEADING 8443; WORD PROCESSING MACHINES, VALUED AT $100 PER UNIT WHOLESALE PRICE IN THE US.[1]
8472909002	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	OFFICE MACHINES, NESOI, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8479600000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	EVAPORATIVE AIR COOLERS, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8483101020	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	CAMSHAFTS AND CRANKSHAFTS FOR USE WITH SPARK-IGNITION INTERNAL COMBUSTION PISTON ENGINES OR ROTARY ENGINES, FOR VEHICLES OF CHAPTER 87, VALUED AT $500 PER SET OF PARTS WHOLESALE PRICE IN THE US.[1]
8483101050	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	CAMSHAFTS AND CRANKSHAFTS FOR USE WITH SPARK-IGNITION INTERNAL COMBUSTION PISTON ENGINES OR ROTARY ENGINES, NESOI, VALUED AT $300 PER SET OF PARTS WHOLESALE PRICE IN THE US.[1]
8483103010	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	CAMSHAFTS AND CRANKSHAFTS FOR VEHICLES OF CHAPTER 87, OTHER THAN VEHICLES WITH SPARK-IGNITION INTERNAL COMBUSTION PISTON ENGINES OR ROTARY ENGINES, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8483103050	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	CAMSHAFTS AND CRANKSHAFTS, NESOI, VALUED AT $300 PER SET OF PARTS WHOLESALE PRICE IN THE US.[1]
8483105000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	TRANSMISSION SHAFTS AND CRANKS, EXCEPT CAMSHAFTS AND CRANKSHAFTS, VALUED AT $300 SET OF PARTS UNIT WHOLESALE PRICE IN THE US.[1]
8483200010	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	HOUSED BEARINGS INCORPORATING BALL BEARINGS, VALUED AT $500 PER SET OF PARTS WHOLESALE PRICE IN THE US.[1]
8483200050	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	HOUSED BEARINGS INCORPORATING ROLLER BEARINGS, VALUED AT $300 PER SET OF PARTS WHOLESALE PRICE IN THE US.[1]
8483305020	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	BEARING HOUSINGS, BALL OR ROLLER BEARING TYPE, VALUED AT $300 PER SET OF PARTS WHOLESALE PRICE IN THE US.[1]
8483305040	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	BEARING HOUSINGS EXCEPT BALL OR ROLLER BEARING TYPE, VALUED AT $300 PER SET OF PARTS WHOLESALE PRICE IN THE US.[1]
8483308055	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	TRANSMISSION SHAFTS: BEARING HOUSINGS, PLAIN SHAFT BEARINGS WITH HOUSING, ROD END BEARINGS, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8483308065	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	TRANSMISSION SHAFTS AND CRANKS: BEARING HOUSINGS, PLAIN SHAFT BEARINGS WITH HOUSING, NESOI, VALUED AT $500 PER SET OF PARTS WHOLESALE PRICE IN THE US.[1]
8483308070	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	PLAIN SHAFT BEARINGS, WITHOUT HOUSING, SPHERICAL TYPE, VALUED AT $500 PER SET OF PARTS WHOLESALE PRICE IN THE US.[1]
8483308090	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	PLAIN SHAFT BEARINGS, WITHOUT HOUSING, EXCEPT SPHERICAL, VALUED AT $300 PER SET WHOLESALE PRICE IN THE US.[1]
8483401000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	TORQUE CONVERTERS, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8483404010	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	FIXED RATIO SPEED CHANGERS, EACH RATIO SELECTED BY MANUAL MANIPULATION, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8483404050	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	MULTIPLE AND VARIABLE RATIO SPEED CHANGERS, EACH RATIO SELECTED BY MANUAL MANIPULATION, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8483407000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	SPEED CHANGERS, NESOI, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8483408000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	BALL OR ROLLER SCREWS, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8483409000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	GEARS AND GEARING, OTHER THAN TOOTHED WHEELS, CHAIN SPROCKETS AND OTHER TRANSMISSION ELEMENTS ENTERED SEPARATELY, VALUED AT $300 PER SET OF PARTS WHOLESALE PRICE IN THE US.[1]
8483508030	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	GROOVED PULLEYS, NESOI, VALUED AT $300 PER SET OF PARTS WHOLESALE PRICE IN THE US.[1]
8483508080	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	FLYWHEELS, PULLEY BLOCKS AND PULLEYS, NESOI, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8483604000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	CLUTCHES AND UNIVERSAL JOINTS, VALUED AT $500 PER SET OF PARTS WHOLESALE PRICE IN THE US.[1]
8483608000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	SHAFT COUPLINGS, EXCEPT UNIVERSAL JOINTS, VALUED AT $300 PER SET OF PARTS WHOLESALE PRICE IN THE US.[1]
8483901000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	CHAIN SPROCKETS AND PARTS THEREOF, VALUED AT $300 PER SET OF PARTS WHOLESALE PRICE IN THE US.[1]
8483905000	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	PARTS OF GEARING, GEAR BOXES AND OTHER SPEED CHANGERS, VALUED AT $5,000 PER SET OF PARTS WHOLESALE PRICE IN THE US.[1]
8483908010	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	PARTS OF SHAFT COUPLINGS, EXCEPT UNIVERSAL JOINTS, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]

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8483909500	Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.	PARTS, NESOI, OF BEARING HOUSINGS & PLAIN SHAFT BEARINGS, HOUSED BEARINGS, CLUTCHES, UNIVERSAL JOINTS, FLYWHEELS AND TRANSMISSION SHAFTS, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8508110000	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	VACUUM CLEANERS WITH SELF-CONTAINED ELECTRIC MOTOR OF A POWER NOT EXCEEDING 1500W & HAVING A DUST BAG OR OTHER RECEPTACLE CAPACITY NOT EXCEEDING 20 L, VALUED AT $100 PER UNIT WHOLESALE PRICE IN THE US.[1]
8508190000	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	VACUUM CLEANERS, WITH SELF-CONTAINED ELECTRIC MOTOR, NESOI, VALUED AT $100 PER UNIT WHOLESALE PRICE IN THE US.[1]
8508600000	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	VACUUM CLEANERS, NESOI, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8509801000	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	ELECTRIC FLOOR POLISHERS, DOMESTIC.[1]
8509802000	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	ELECTRIC KITCHEN WASTE DISPOSALS, DOMESTIC.[1]
8509805040	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	ELECTRIC CAN OPENERS INCLUDING COMBINATION UNITS, DOMESTIC.[1]
8509805060	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	ELECTRICHUMIDIFIERS, DOMESTIC, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8509805091	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	ELECTROMECHANICAL DOMESTIC APPLIANCES WITH SELF-CONTAINED ELECTRIC MOTORS, NESOI, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8511100000	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	SPARK PLUGS FOR INTERNAL COMBUSTION ENGINES, VALUED AT $300 PER SET WHOLESALE PRICE IN THE US.[1]
8511200000	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	IGNITION MAGNETOS; MAGNETO-DYNAMOS; MAGNETIC FLYWHEELS, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8511300040	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	DISTRIBUTORS FOR INTERNAL COMBUSTION ENGINES, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8511300080	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	IGNITION COILS FOR INTERNAL COMBUSTION ENGINES, VALUED AT $300 PER SET WHOLESALE PRICE IN THE US.[1]
8511400000	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	STARTER MOTORS AND DUAL PURPOSE STARTER-GENERATORS FOR INTERNAL COMBUSTION ENGINES, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8511500000	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	GENERATORS FOR INTERNAL COMBUSTION ENGINES, NESOI, VALUED AT $500 PER UNIT WHOLESALE PRICE IN THE US.[1]
8511802000	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	VOLTAGE AND VOLTAGE-CURRENT REGULATORS WITH CUT-OUT RELAYS, DESIGNED FOR 6V, 12V, AND 24V SYSTEMS, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8511804000	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	VOLTAGE & VOLTAGE-CURRENT REGULATORS WITH CUT-OUT RELAYS, NESOI, VALUED AT $500 PER UNIT WHOLESALE PRICE IN THE US.[1]

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8511806000	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	INTERNAL COMBUSTION ENGINE IGNITION EQUIPMENT, NESOI, VALUED AT $500 PER UNIT WHOLESALE PRICE IN THE US.[1]
8511906020	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	DISTRIBUTOR CONTACT (BREAKER POINT) SETS (PARTS), VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8511908000	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	INTERNAL COMBUSTION ENGINE PARTS, NESOI, VALUED AT $300 PER SET OF PARTS WHOLESALE PRICE IN THE US.[1]
8512202000	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	LIGHTING EQUIPMENT FOR MOTOR VEHICLES, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8512204000	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	VISUAL SIGNALING EQUIPMENT FOR MOTOR VEHICLES (INCLUDING BRAKING LIGHTS AND TURNING SIGNAL LIGHTS), VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8512300030	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	RADAR DETECTORS OF A KIND USED IN MOTOR VEHICLES, .[1]
8512300050	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	SOUND SIGNALING EQUIPMENT FOR MOTOR VEHICLES AND CYCLES, VALUED AT $100 PER UNIT WHOLESALE PRICE IN THE US.[1]
8512402000	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	MOTOR VEHICLE DEFROSTERS AND DEMISTERS, VALUED AT $750 PER SET WHOLESALE PRICE IN THE US.[1]
8512404000	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	MOTOR VEHICLE WINDSHIELD WIPERS, VALUED AT $50 PER UNIT WHOLESALE PRICE IN THE US.[1]
8516310000	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	ELECTRIC HAIR DRYERS.[1]
8516500000	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	MICROWAVE OVENS, FOR DOMESTIC USE.[1]
8516604000	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	ELECTRIC COOKING STOVES, RANGES AND OVENS, FOR DOMESTIC USE, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8516606000	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	ELECTRIC COOKING PLATES, BOILING RINGS, GRILLERS, & ROASTERS, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8516710000	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	ELECTRIC COFFEE OR TEA MAKERS, DOMESTIC.[1]
8516720000	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	ELECTRIC TOASTERS.[1]
8516790000	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	ELECTROTHERMIC APPLIANCES, DOMESTIC, NESOI, VALUED AT $500 PER UNIT WHOLESALE PRICE IN THE US.[1]

Schedule B	2-Digit chapter heading	10-Digit commodity description and per unit wholesale price in the U.S. if applicable
8517110000	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	LINE TELEPHONE SETS WITH CORDLESS HANDSETS, VALUED AT $100 PER UNIT WHOLESALE PRICE IN THE US.[1]
8517130000	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	SMARTPHONES, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8517180000	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	TELEPHONE SETS, NESOI, VALUED AT $50 PER UNIT WHOLESALE PRICE IN THE US.[1]
8517610000	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	BASE STATIONS.[1]
8517620010	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	MODEMS (MODULATOR-DEMODULATOR APPARATUS) OF A KIND USED WITH DATA PROCESSING MACHINES OF HEADING 8471, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8517620050	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	MACHINES FOR THE RECEPTION, CONVERSION & TRANSMISSION OR REGENERATION OF VOICE, IMAGES OR OTHER DATA, INCLUDING SWITCHING & ROUTING APPARATUS, NESOI, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8517690000	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	APPARATUS FOR TRANSMISSION OR RECEPTION OF VOICE, IMAGES OR OTHER DATA, INCLUDING APPARATUS FOR COMMUNICATION IN A WIRED OR WIRELESS NETWORK, NESOI.[1]
8519200000	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	SOUND RECORDING/REPRODUCING APPS OPERATED BY COINS, BANKNOTES, BANK CARDS, TOKENS OR BY OTHER MEANS OF PAYMENT.[1]
8519301000	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	TURNTABLES WITH AUTOMATIC RECORD CHANGING MECHANISM.[1]
8519302000	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	TURNTABLES, NESOI.[1]
8519811000	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	TRANSCRIBING MACHINES.[1]
8519812000	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	CASSETTE TAPE PLAYERS FOR MOTOR VEHICLES.[1]
8519812500	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	CASSETTE TAPE PLAYERS.[1]
8519813000	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	MAGNETIC TAPE RECORDERS INCORPORATING SOUND REPORDUCING APPARATUS, DIGITAL AUDIO TYPE.[1]
8519814105	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	TELEPHONE ANSWERING MACHINES, VALUED AT $0 PER SET WHOLESALE PRICE IN THE US.[1]
8519814110	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	MAGNETIC TAPE RECORDERS INCORPORATING SOUND REPRODUCING APPARATUS, OTHER THAN TELEPHONE ANSWERING MACHINES, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]

Schedule B	2-Digit chapter heading	10-Digit commodity description and per unit wholesale price in the U.S. if applicable
8519814120	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	OPTICAL DISC RECORDERS, VALUED AT $500 PER UNIT WHOLESALE PRICE IN THE US.[1]
8519814150	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	SOUND RECORDING OR REPRODUCING APPARATUS, USING MAGNETIC, OPTICAL OR SEMICONDUCTOR MEDIA.[1]
8519891000	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	RECORD PLAYERS WITHOUT LOUDSPEAKERS.[1]
8519892000	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	RECORD PLAYERS, NESOI.[1]
8519893000	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	SOUND RECORDING OR REPRODUCING APPARATUS, NESOI, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8521100000	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	VIDEO RECORDING OR REPRODUCING APPARATUS, WHETHER OR NOT INCORPORATING A VIDEO TUNER, MAGNETIC TAPE-TYPE, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8521900000	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	VIDEO RECORDING OR REPRODUCING APPARATUS, WHETHER OR NOT INCORPORATING A VIDEO TUNER, EXCEPT MAGNETIC TAPE-TYPE, VALUED AT $1,000 PER UNIT WHOLESALE PRICE IN THE US.[1]
8526910010	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	RADIO NAVIGATIONAL AID APPARATUS FOR USE IN CIVIL AIRCRAFT, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8526910030	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	RADIO NAVIGATIONAL AID APPARATUS, RECEPTION ONLY TYPE, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8526910070	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	RADIO NAVIGATIONAL AID APPARATUS, NESOI, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8527120000	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	POCKET-SIZE RADIO CASSETTE PLAYERS.[1]
8527131100	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	RADIOBROADCAST RECEIVERS, BATTERY TYPE, COMBINATIONS INCORPORATING TAPE PLAYERS WHICH ARE INCAPABLE OF RECORDING.[1]
8527132000	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	RADIOBROADCAST RECEIVERS, BATTERY TYPE, RADIO-TAPE RECORDER COMBINATIONS, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8527134000	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	RADIO-PHONOGRAPH COMBINATIONS, BATTERY.[1]
8527136000	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	RADIOBROADCAST RECEIVERS, BATTERY TYPE, COMBINED WITH SOUND RECORDING/REPRODUCING APPARATUS, NESOI, VALUED AT $500 PER UNIT WHOLESALE PRICE IN THE US.[1]
8527190000	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	RADIOBROADCAST RECEIVERS, BATTERY TYPE, NESOI, VALUED AT $500 PER UNIT WHOLESALE PRICE IN THE US.[1]

Schedule B	2-Digit chapter heading	10-Digit commodity description and per unit wholesale price in the U.S. if applicable
8527210000	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	RADIOBROADCAST RECEIVERS FOR MOTOR VEHICLES, COMBINED WITH SOUND RECORDER/REPRODUCING APPARATUS, NOT CAPABLE OF OPERATING WITHOUT OUTSIDE POWER, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8527290000	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	RADIOBROADCAST RECEIVERS, FOR MOTOR VEHICLES NOT CAPABLE OF OPERATING WITHOUT OUTSIDE POWER, NESOI, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8527910000	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	RADIOBROADCAST RECEIVERS WITH SOUND RECORDERS OR PLAYERS, NESOI, VALUED AT $500 PER UNIT WHOLESALE PRICE IN THE US.[1]
8527920000	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	RADIOBROADCAST RECEIVERS, WITHOUT PLAYERS OR RECORDERS, BUT COMBO WITH CLOCK, NESOI, VALUED AT $500 PER UNIT WHOLESALE PRICE IN THE US.[1]
8527993005	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	RADIO RECEIVERS FOR USE IN CIVIL AIRCRAFT, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8527993060	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	RADIO RECEIVERS, NOT FOR USE IN CIVIL AIRCRAFT, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8527995030	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	RECEPTION APPARATUS, NESOI, VALUED AT $1,000 PER UNIT WHOLESALE PRICE IN THE US.[1]
8528710000	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	TV RECEPTION APPARATUS NOT DESIGNED TO INCORPORATE A VIDEO DISPLAY OR SCREEN, VALUED AT $500 PER UNIT WHOLESALE PRICE IN THE US.[1]
8528723000	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	TV RECEPTION APPARATUS, COLOR, INCORPORATING VIDEO RECORDING OR REPRODUCING APPARATUS, VALUED AT $500 PER UNIT WHOLESALE PRICE IN THE US.[1]
8528726005	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	TV RECEPTION APPARATUS, COLOR, WITH PICTURE TUBE, COMBINED WITH RADIOBROADCAST RECEIVERS OR SOUND RECORDING APPARATUS.[1]
8528726010	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	TV RECEPTION APPARATUS, COLOR, HAVING A PICTURE TUBE, NOT EXCEEDING 52 CM (20 INCHES), VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8528726040	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	TV RECEPTION APPARATUS, COLOR, HAVING A PICTURE TUBE, EXCEEDING 52 CM (20 INCHES).[1]
8528726057	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	TV RECEPTION APPARATUS, COLOR, WITHOUT PICTURE TUBE, NESOI.[1]
8529102020	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	TELEVISION ANTENNAS, RECEIVING ONLY & PARTS SUITABLE FOR USE THEREWITH, VALUED AT $500 PER UNIT WHOLESALE PRICE IN THE US.[1]
8529102050	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	TELEVISION ANTENNAS & PARTS SUITABLE FOR USE THEREWITH, NESOI, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8529102090	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	TELEVISION ANTENNA REFLECTORS & PARTS SUITABLE FOR USE THEREWITH, NESOI, VALUED AT $1,000 PER UNIT WHOLESALE PRICE IN THE US.[1]

Schedule B	2-Digit chapter heading	10-Digit commodity description and per unit wholesale price in the U.S. if applicable
8529104000	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	ANTENNAS & PARTS FOR RADAR, RADIO NAVIGATIONAL AIDS AND RADIO REMOTE CONTROLS, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8529109000	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	ANTENNA & ANTENNA REFLECTORS OF ALL KINDS; PARTS SUITABLE FOR USE SOLEY OR PRINCIPALLY W/APPARATUS OF HEADING 8525 TO 8528, NESOI, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8531100015	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	SMOKE DETECTORS, BATTERY POWERED, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8531100025	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	SMOKE DETECTORS, NESOI, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8531100035	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	BURGLAR ALARMS, ELECTRIC, VALUED AT $750 PER SET WHOLESALE PRICE IN THE US.[1]
8531100045	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	BURGLAR OR FIRE ALARMS AND SIMILAR APPARATUS, NESOI, VALUED AT $300 PER SET WHOLESALE PRICE IN THE US, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8543702000	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	PHYSICAL VAPOR DEPOSITION (PVD) APPARATUS, NESOI, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8543704000	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	ELECTRIC SYNCHROS AND TRANSDUCERS; FLIGHT DATA RECORDERS; DEFROSTERS AND DEMISTERS WITH ELECTRIC RESISTORS FOR AIRCRAFT, VALUED AT $5,000 PER UNIT WHOLESALE PRICE IN THE US.[1]
8543706000	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	ARTICLES DESIGNED FOR CONNECTION TO TELEGRAPHIC OR TELEPHONIC APPARATUS OR INSTRUMENTS OR TO TELEGRAPHIC OR TELEPHONIC NETWORKS, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8543707100	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	ELECTRIC LUMINESCENT LAMPS, VALUED AT $25 PER UNIT WHOLESALE PRICE IN THE US.[1]
8543708000	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	MICROWAVE AMPLIFIERS, VALUED AT $300 PER UNIT WHOLESALE PRICE IN THE US.[1]
8543708500	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	ELECTRICAL NERVE STIMULATION MACHINES AND APPARATUS, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8543709610	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	AMPLIFIERS, VALUED AT $750 PER UNIT WHOLESALE PRICE IN THE US.[1]
8543709620	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	SPECIAL EFFECTS PEDALS FOR USE WITH MUSICAL INSTRUMENTS.[1]
8544300000	Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles.	INSULATED IGNITION WIRING SETS & WIRING SETS FOR VEHICLES, AIRCRAFT OR SHIPS, VALUED AT $500 PER SET OF PARTS WHOLESALE PRICE IN THE US.[1]

[1] Entries with a footnote 1 designation were added to supplement no. 5 to part 746 of the EAR on February 24, 2023.

■ 11. Supplement No. 6 to part 746 is amended by

■ a. Revising the heading of the supplement;

■ b. Revising paragraphs (c), (d), and (e)(4) and (5);

■ c. Adding paragraphs (e)(6) and (7);

■ d. Revising paragraphs (f)(1) through (3), (11), (13) through (19), (22) and (23) and Technical Notes for paragraph (f)(23);
■ e. Adding paragraphs (f)(24) and (27);
■ f. Adding Note 6 to paragraph (f); and

The revisions and additions read as follows:

Supplement No. 6 to Part 746—Russian and Belarusian Industry Sector Sanctions Pursuant to § 746.5(a)(1)(iii)

* * * * *

(c) *Fentanyl and its derivatives Alfentanil, Sufentanil, Remifentanil, Carfentanil,* thiafentanil *and salts thereof.*

Note 1 to paragraph (c): *The items in paragraph (c) are from the EU list, as X.C.IX.002.*

Note 2 to paragraph (c): *Consistent with EU List X.C.IX.002, paragraph (c) does not control products identified as consumer goods packaged for retail sale for personal use or packaged for individual use.*

(d) *Chemical precursors to Central Nervous System Acting Chemicals, as follows:*

(1) 4-anilino-N-phenethylpiperidine (CAS 21409–26–7);

(2) N-phenethyl-4-piperidone (CAS 39742–60–4);

(3) Tert-butyl 4-(phenylamino) piperidine-1-carboxylate (CAS 125541–22–2);

(4) N-phenyl-N-(piperidin-4-yl)propionamide (Norfentanyl) (CAS 1609–66–1); or

(5) N-phenyl-4-piperidinamine (CAS 504–24–5).

Note 3 to paragraph (d): *The items in paragraph (d) are from the EU list, as X.C.IX.003.*

Note 4 to paragraph (d): *Consistent with EU List X.C.IX.003, paragraph (d) does not control ''chemical mixtures'' containing one or more of the chemicals specified in paragraph (d) (and consistent with EU List entry X.C.IX.003) in which no individually specified chemical constitutes more than 1% by the weight of the mixture.*

Note 5 to paragraph (d): *Consistent with EU List X.C.IX.003, paragraph (d) does not control products identified as consumer goods packaged for retail sale for personal use or packaged for individual use.*

(e) *Biologics.* * * *

(4) Isolated or purified nucleotides and oligonucleotides, n.e.s.;

(5) Isolated or purified amino acids, peptides and proteins, n.e.s.;

(6) Reagents and materials for oligonucleotide synthesis, n.e.s.; or

(7) Resins, reagents, and materials for peptide synthesis, n.e.s.

(f) *Equipment.*

* * * * *

(1) Reaction vessels, agitators, heat exchangers, condensers, pumps (including single seal pumps), valves, storage tanks, containers, receivers, and distillation or absorption columns, n.e.s.;

(2) Vacuum pumps with a manufacturer's specified maximum flow-rate greater than 1 m^3/h (under standard temperature and pressure conditions), casings (pump bodies), preformed casing-liners, impellers, rotors, and jet pump nozzles designed for such pumps; n.e.s.;

(3) Laboratory equipment, including ''components,'' ''parts,'' and ''accessories'' for such equipment, for the analysis or detection, destructive or non-destructive, of chemical substances, n.e.s.;

* * * * *

(11) Well plates and microarrays;

* * * * *

(13) Centrifuges and ultracentrifuges capable of separating biological samples, with a maximum capacity of 5L, ''components'' and ''accessories'' therefor, n.e.s., including centrifuge tubes and concentrators;

(14) Filtration equipment, ''components,'' ''parts,'' and ''accessories,'' capable of use in handling biological materials, n.e.s.;

(15) Nucleic acid synthesizers and assemblers, ''components,'' ''parts,'' and ''accessories,'' n.e.s.;

(16) Polymerase chain reaction (PCR) and quantitative PCR (qPCR) instruments ''components,'' ''parts,'' and ''accessories;''

(17) Robotic liquid handling instruments, ''components,'' ''parts,'' and ''accessories,'' n.e.s.;

(18) Chromatography and spectrometry ''components,'' ''parts,'' and ''accessories,'' n.e.s.;

(19) Nucleic acid sequencers, ''components,'' ''parts,'' and ''accessories;''

* * * * *

(22) Probe sonicators, cell disruptors and tissue homogenizers;

(23) 'Continuous flow reactors' and their 'modular components,' ''parts,'' and ''accessories,'' n.e.s;

Technical Notes for paragraph (f)(23):

1. Consistent with EU List X.B.X.001, for purposes of paragraph (f)(23) 'continuous flow reactors' consist of plug and play systems where reactants are continuously fed into the reactor and the resultant product is collected at the outlet.

2. Consistent with EU List X.B.X.001, for purposes of paragraph (f)(23) 'modular components' are fluidic modules, liquid pumps, valves, packed-bed modules, mixer modules, pressure gauges, liquid-liquid separators, etc.

(24) Microreactors, n.e.s;

(25) Solid and liquid aerosol generating equipment, n.e.s;

(26) Laboratory milling equipment, ''components,'' ''parts,'' and ''accessories,'' n.e.s.; *or*

(27) Peptide synthesizers, ''components,'' ''parts,'' and ''accessories.''

Note 6 to paragraph (f): *Consistent with the definitions in part 772 of the EAR,* ''*components,*'' ''*parts,*'' *and* ''*accessories*'' *include consumables.*

* * * * *

Thea D. Rozman Kendler,

Assistant Secretary for Export Administration.

[FR Doc. 2023–03927 Filed 2–24–23; 8:45 am]

BILLING CODE 3510–JT–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 232, 239, 240, and 260

[Release Nos. 33–11159; 34–96959; 39–2548]

Extending Form 144 EDGAR Filing Hours

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting an amendment to Regulation S–T to extend the filing deadline for Form 144 from 5:30 p.m. to 10 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect, on Commission business days. We are also adopting technical amendments to enhance the consistency of recently revised provisions related to the filing format of Form 144.

DATES: *Effective date:* The amendments are effective on March 20, 2023.

FOR FURTHER INFORMATION CONTACT: Mark W. Green, Senior Special Counsel, Office of Rulemaking, Division of Corporation Finance at (202) 551–3430.

SUPPLEMENTARY INFORMATION: We are adopting amendments to:

Commission reference		CFR citation (17 CFR)
Securities Act of 1933 [15 U.S.C. 77a et seq.] (''Securities Act'')	Rule 110	§ 230.110.
Regulation S–T		§§ 232.10 through 232.903.
	Rule 12	§ 232.12.
	Rule 13	§ 232.13.
	Rule 101	§ 232.101.
Securities Act	Form 144	§ 239.144.
Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.] (''Exchange Act'')	Rule 0–2	§ 240.0–2.
Trust Indenture Act of 1939 [15 U.S.C. 77aaa et seq.] (''Trust Indenture Act'')	Rule 0–5	§ 260.0–5.

I. Discussion

On June 2, 2022, the Commission adopted rule and form amendments to mandate the electronic filing on EDGAR [1] of Forms 144 [2] reporting the sale of securities of issuers subject to the reporting requirements of section 13 or 15(d) of the Exchange Act [3] (''reporting issuers'').[4] The Electronic Filing Release provides that the requirement to file Form 144 electronically regarding reporting issuers will begin six months after the date of publication in the **Federal Register** of the Commission release that adopts the version of the EDGAR Filer Manual addressing updates to Form 144. The Commission adopted that version of the EDGAR Filer Manual on September 19, 2022, and the **Federal Register** published it on October 13, 2022.[5] Accordingly, the Commission issued an announcement stating that the electronic filing requirement will begin on April 13, 2023.[6]

Under current rules, a Form 144 submitted by direct transmission after 5:30 p.m. is deemed filed the next business day.[7] Section 17 CFR 232.13(a)(2) (''Rule 13(a)(2)'' of Regulation S–T) provides that, subject to specified exceptions, a filing that meets stated basic requirements, submitted by direct transmission:

- No later than 5:30 p.m., will be deemed filed on the same business day; and
- After 5:30 p.m., will be deemed filed the next business day.[8]

Title 17 CFR 232.13(a)(4) (''Rule 13(a)(4)'') provides that, notwithstanding Rule 13(a)(2), a Form 3, 4, or 5 [9] or Schedule 14N [10] submitted by direct transmission on or before 10:00 p.m. will be deemed filed on the same business day.[11] When the Commission mandated electronic filing of Forms 3, 4, and 5 in 2003, it stated that its ''objective . . . is to create a system that insiders can use relatively easily themselves'' and ''agree[d with commenters] that extended filing hours would ease filers' administrative burdens, without impairing prompt public availability of the filed information.'' [12] Similarly, when the Commission adopted Schedule 14N in 2010, it cited administrative considerations and added Schedule 14N to the list of filing types with extended filing hours in Rule 13(a)(4).[13]

The Commission is similarly sensitive to the effort required to electronically file a Form 144.[14] Accordingly, the Commission noted in the Electronic Filing Release that Form 144 filers will benefit from ''planned changes to make [Form 144] an online fillable document that would facilitate electronic filing''.[15]

[1] The Commission receives filings through its Electronic Data Gathering, Analysis, and Retrieval (''EDGAR'') system.

[2] Form 144 is referenced in 17 CFR 239.144. Pursuant to 17 CFR 230.144(h) (''Rule 144(h)'' under the Securities Act), an affiliate who intends to resell restricted or control securities of the issuer in reliance upon 17 CFR 230.144 (''Rule 144'' under the Securities Act) during any three-month period in a transaction that exceeds either 5,000 shares or has an aggregate sales price of more than $50,000 must file a Form 144 concurrently with either the placing of an order with a broker to execute the sale or the execution of a sale directly with a market maker.

[3] 15 U.S.C. 78m or 78(*o*)(d), respectively. Specifically, 17 CFR 230.144(h)(1) (''Rule 144(h)(1)'' under the Securities Act) requires electronic filing on EDGAR of Forms 144 reporting the sale of securities of issuers that are, and have been for at least 90 days immediately before the sale, subject to the reporting requirements of section 13 or 15(d) of the Exchange Act.

[4] *See Updating EDGAR Filing Requirements and Form 144 Filings,* Release No. 33–11070 (Jun. 2, 2022) [87 FR 35393 (Jun. 10, 2022)] (''Electronic Filing Release''). The Electronic Filing Release removed and reserved then 17 CFR 232.101(b)(4) (then ''Rule 101(b)(4)'' of Regulation S–T), which permitted electronic filing of Form 144 regarding reporting issuers and added 17 CFR 232.101(a)(1)(xxvii) (''Rule 101(a)(1)(xxvii)''), which will require it. The Electronic Filing Release also adopted conforming amendments and amendments to mandate the electronic filing or submission of other documents.

[5] *See Adoption of Updated EDGAR Filer Manual,* Release No. 33–11101 (Sept. 19, 2022) [87 FR 61977 (Oct. 13, 2022)] (''EDGAR Filer Manual Release''). The updates to Form 144 included making a fillable Form 144 available on the EDGAR Online Forms website for electronic filing on EDGAR.

[6] *See Form 144 Electronic Filing Compliance Date is April 13, 2023* (modified Oct. 18, 2022) available at *https://www.sec.gov/oit/announcement/form-144-electronic-filing-compliance-date#:~:text=Announcement%20Form%20144%20electronic%20filing%20compliance%20date%20is,from%20paper%20to%20electronic%20filing%20of%20Form%20144.*

[7] All references in this release to submission times and dates are to Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect, on weekdays that are not federal holidays (''business days'').

[8] Rule 13(a)(2) expressly refers to direct transmissions ''commencing'' at these times. A direct transmission typically takes milliseconds to complete. Consequently, as a practical matter, a direct transmission begins and ends at the same time. As a result, for simplicity, this release generally omits reference to when a direct transmission begins or ends.

[9] 17 CFR 249.103, 249.104, and 249.105, respectively. In general, a reporting company's officers, directors and principal shareholders subject to section 16 of the Exchange Act (15 U.S.C. 78p), must file Forms 3, 4, and 5 to report beneficial ownership of and transactions in the company's securities.

[10] 17 CFR 240.14n–101. Generally, a shareholder or group of shareholders that submits a nominee or nominees for inclusion in a reporting company's proxy materials under the circumstances 17 CFR 240.14n–1 specifies, must file a Schedule 14N with the Commission and, simultaneously, provide it to the company.

[11] In 2022, the Commission proposed amending Rule 13(a)(4) to add references to 17 CFR 240.13d–101 and 240.13d–102 (Schedules 13D and 13G, respectively) in connection with its proposal to accelerate their filing deadlines. *See Modernization of Beneficial Ownership Reporting,* Release No. 33–11030 (Feb. 10, 2022) [87 FR 13846 (Mar. 10, 2022)]. Citing the proposed deadlines, the Commission stated that it anticipated that the proposed amendment to Rule 13(a)(4) ''would ease filers' administrative burdens.'' *Id.* We are taking no action in regard to these proposals at this time.

[12] *See Mandated Electronic Filing and website Posting for Forms 3, 4 and 5,* Release No. 33–8230 (May 7, 2003) [68 FR 25788 (May 13, 2003)]. Also in regard to easing administrative burden, the Commission noted in this release that it had made available ''a new on-line filing system [accessible through the Commission's website] to make it easier to [electronically] file Forms 3, 4 and 5.'' *Id.*

[13] *See Facilitating Shareholder Director Nominations,* Release No. 33–9136 (Aug. 25 2010) [75 FR 56668 (Sept. 16, 2010)] (The Commission adopted an amendment to Rule 13(a)(4) to add a reference to Schedule 14N ''to allow nominating shareholders additional time to file the . . . Schedule 14N and transmit [it] to the company.'').

[14] In this regard, we note that, similar to Forms 3, 4, and 5 and Schedule 14N, the obligation to file a Form 144 may be incurred by a natural person.

[15] *See* Electronic Filing Release (''An online fillable form will enable the convenient input of information, and support the electronic assembly of such information and transmission to EDGAR, without requiring a Form 144 filer to purchase or maintain additional software or technology. The

In a further effort to facilitate electronic filing of Form 144, we are now amending Rule 13(a)(4) to include Form 144.[16] As a result, upon effectiveness of these amendments, a Form 144 that otherwise complies with applicable filing requirements that is submitted by direct transmission after 5:30 p.m., but no later than 10:00 p.m., will be deemed filed the same business day.

EDGAR will be updated to include Forms 144 and 144/A [17] among the submission types that EDGAR will accept and disseminate on the same day if the submissions are made from 6:00 a.m. to 10:00 p.m. We expect these updates to be completed on or about March 20, 2023, and disclosed in the Commission release that adopts the version of the EDGAR Filer Manual addressing the extended filing hours for Form 144.

In addition to amending the Form 144 filing deadline, we are making two technical amendments. First, we are amending three provisions to correct errors about the time period during which filings made by direct submission may be submitted to the Commission. In particular, we are correcting errors in 17 CFR 230.110(c) (''Rule 110'' under the Securities Act), 240.0–2(c) (''Rule 0–2(c)'' under the Exchange Act), and 260.0–5(c) (''Rule 0–5(c)'' under the Trust Indenture Act) by conforming them to 17 CFR 232.12(c) (''Rule 12(c)'' of Regulation S–T) and Section 2.3.1 of the EDGAR Filer Manual.[18] Rules 110(c), 0–2(c), and 0–5(c) currently provide that filings made by direct transmission may be submitted to the Commission each business day, from ''8 a.m. to 10 p.m.'' In fact, filings may be submitted starting at 6 a.m. Consequently, we are revising Rules 110(c), 0–2(c), and 0–5(c) to replace ''8 a.m.'' with ''6 a.m.''

Second, we are reinstating the Regulation S–T-based requirement for paper filings of Form 144 for non-reporting issuers that was inadvertently removed in the Electronic Filing Release.[19] Before the Commission issued the Electronic Filing Release, then 17 CFR 232.101(c)(6) (''Rule 101(c)(6)'' of Regulation S–T) provided that a filer must file in paper ''[f]ilings on Form 144 . . . where the issuer is [a non-reporting issuer].'' The preamble of the Electronic Filing Release noted that the Commission was not adopting an earlier proposal to eliminate the Form 144 filing requirement in regard to non-reporting issuers [20] and ''[a]s such affiliates relying on Rule 144 [in regard to a non-reporting issuer] will still be required to file a notice of sale on Form 144 in paper form pursuant to Rule 101(c)(6) of Regulation S–T and Rule 144.'' The regulatory text section of the Electronic Filing Release, however, inadvertently removed and reserved Rule 101(c)(6). Consequently, we are reinstating it in this release to correct this inadvertent omission.[21] In addition, the regulatory text section of the Electronic Filing Release amended 17 CFR 239.144 to provide for electronic filing of Form 144 and inadvertently failed to provide for the continued paper filing for non-reporting issuers. Accordingly, we are amending paragraph (a) of 17 CFR 239.144 to clarify that Form 144 must be filed electronically in regard to reporting issuers and in paper in regard to non-reporting issuers.[22]

II. Procedural and Other Matters

The Administrative Procedure Act (''APA'') generally requires an agency to publish notice of a rulemaking in the **Federal Register** and provide an opportunity for public comment.[23] This requirement does not apply, however, to rules of agency organization, procedure, or practice,[24] or if the agency ''for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' [25] We find that these amendments relate to agency procedures or practice and do not substantially alter the rights and obligations of non-agency parties. We also find that notice and comment are unnecessary because the amendments merely (i) extend from 5:30 p.m. to 10:00 p.m. the latest time by which a Form 144 submitted by direct transmission is deemed filed the same business day; and (ii) make technical corrections. It follows that the amendments do not require analysis under the Regulatory Flexibility Act or a Report to Congress under the Small Business Regulatory Enforcement Fairness Act.[26]

The APA generally requires that an agency publish an adopted rule in the **Federal Register** at least 30 days before it becomes effective.[27] This requirement, however, does not apply if the agency finds good cause for making the rule effective sooner.[28] For the same reasons as we are forgoing notice and comment, we find good cause to make these amendments effective on March 20, 2023. We believe that as soon as practicable (i) electronic filers should be able to submit a direct transmission of a Form 144 as late as 10:00 p.m. and have it deemed filed the same business day; and (ii) technical corrections should be in place. We therefore find there is good cause for these amendments to take effect on March 20, 2023. We also believe that the amendments regarding the submission timing for Form 144 relieve a restriction on an electronic filer by providing more time for a direct transmission of a Form

fillable form will be similar to other fillable forms that are currently available to file other Form-specific . . . filings . . . such as Forms . . . 3, 4, and 5.''). An online fillable Form 144 is now available. *See* the EDGAR Filer Manual Release.

[16] To make the language within Rule 13(a) more consistent, we also are amending Rule 13(a)(4) by adding ''commencing'' between ''transmission'' and ''on'' in the current phrase ''submitted by direction transmission on or before 10 p.m.''

[17] We use the term ''144/A'' in this context to refer to an amended Form 144.

[18] To make the language within Rule 12 more consistent, we also are amending Rule 12(c) by replacing the term ''Eastern Time'' with the term ''Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect.''

[19] Reinstating the Regulation S–T based-requirement is also consistent with the Electronic Filing Release adding Rule 144(h)(2), which requires three copies of Form 144 for non-reporting issuers.

[20] *See Rule 144 Holding Period and Form 144 Filings,* Release No. 33–10911 (Dec. 23, 2020) [86 FR 5063 (Jan. 19, 2021)] (proposing, among other actions, eliminating the requirement to file Form 144 regarding a non-reporting issuer).

[21] Relatedly, we are conforming Rule 101(a)(1)(xxvii) to Rule 144(h)(1) by adding a reference to issuers that have been reporting companies for at least 90 days before the sale.

[22] As described in the Electronic Filing Release, in April 2020, in recognition of several logistical difficulties related to the submission of Form 144 in paper pursuant to then Rule 101(b)(4) and (c)(6), as well as ongoing health and safety concerns related to COVID–19, the Division of Corporation Finance issued a statement announcing a temporary no-action position that it would not recommend enforcement action to the Commission if Forms 144 for the period from and including April 10, 2020 to June 30, 2020 were submitted as a complete PDF attachment and emailed to the Commission in lieu of filing the form in paper. As also described in the Electronic Filing release, subsequently, on June 25, 2020, the Division of Corporation Finance indefinitely extended this statement from the period beginning on April 10, 2020. See Division of Corporation Finance Statement Regarding Requirements for Form 144 Paper Filings in Light of COVID–19 Concerns, U.S. Sec. & Exch. Comm'n (June 25, 2020), available at *https://www.sec.gov/corpfin/announcement/form-144-paper-filings-email-option-update.* The Electronic Filing Release went on to note that the 2020 statement would be withdrawn upon the compliance date of amended Rules 144(h)(2) and 101(a)(1)(xxvii), later established as April 13, 2023, because ''it [was] no longer necessary due to the rule amendments.''

[23] *See* 5 U.S.C. 553(b) and (c).

[24] 5 U.S.C. 553(b)(3)(A).

[25] 5 U.S.C. 553(b)(3)(B).

[26] *See* 5 U.S.C. 601(2) (for purposes of a Regulatory Flexibility Act analysis, the term ''rule'' means any rule for which the agency publishes a general notice of proposed rulemaking) and 5 U.S.C. 804(3)(C) (for purposes of Congressional review of agency rulemaking, the term ''rule'' does not include any rule of agency organization, procedure, or practice that does not substantially alter the rights or obligations of non-agency parties).

[27] *See* 5 U.S.C. 553(d)(3).

[28] *Id.*

144 to be deemed filed the same business day.[29]

If any of the provisions of these rules, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

III. Paperwork Reduction Act

Certain provisions of our rules and forms contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[30] An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information requirement unless it displays a currently valid Office of Management and Budget (OMB) control number. Compliance with the information collections is mandatory. Responses to the information collections are not kept confidential and there is no mandatory retention period for the information disclosed.

As noted above, the amendments do not substantively alter the Form 144 (OMB Control Number 3235–0328) electronic filing requirements, but rather merely (i) extend from 5:30 p.m. to 10:00 p.m. the latest time by which a filer can submit a direct transmission of a Form 144 to have it be deemed filed the same business day; and (ii) make technical corrections. This change in timing does not change the information collection burden and therefore we are not revising any burden and cost estimates in connection with these amendments.

IV. Economic Analysis

We are mindful of the costs imposed by, and the benefits to be obtained from, our rules. Section 2(b) of the Securities Act[31] and section 3(f) of the Exchange Act[32] require the Commission, whenever it engages in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation. Section 23(a)(2) of the Exchange Act[33] also requires the Commission to consider the impact that the rules would have on competition and prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the Exchange Act.

On June 2, 2022, the Commission adopted rule and form amendments to mandate the electronic filing on EDGAR of Form 144 in regard to the sale of securities of reporting issuers.[34] To further facilitate electronic filing of Form 144, we are now adopting amendments that will—in addition to making certain technical corrections[35]—deem a Form 144 that is submitted by direct transmission after 5:30 p.m. but not later than 10:00 p.m. to be filed the same business day, rather than on the following business day (''same-day filing amendment''). The same-day filing amendment will apply to all electronic filings of Form 144,[36] though many of these filings may be submitted on or before 5:30 p.m. on the filing date. Although we believe the impact of the same-day filing amendment on Form 144 is likely to be marginal, we expect that this amendment will result in some benefits to market participants, including Form 144 filers and those who use information disclosed in Form 144, without imposing substantial costs. In addition, we do not expect any significant changes to efficiency, competition, or capital formation as a result of the extended hours for same-day filing treatment.

We believe that the same-day filing amendment will provide some benefits to market participants. Extending the filing hours to 10:00 p.m. could benefit those involved with the filing process as they will gain extra time to prepare and submit filings, without impacting the filing date. The Commission stated in the Electronic Filing Release its understanding that most filers prepare and file Form 144 individually or with assistance of a broker or personal counsel.[37] The extended filing hours could also limit these filing process participants' need to outsource the filing process to other parties, which may add costs to the filing process. Additionally, extending the filing hours could improve the quality of filings by reducing the need to rush to complete them. The likely improved quality of filings could benefit those who use the information disclosed in Form 144.

We also do not believe that the same-day filing amendment will impose substantial costs on market participants that use the information disclosed in the forms. As discussed in the Electronic Filing Release,[38] a benefit of electronic filings is faster and more efficient access to the filed documents, which facilitates the flow of information to market participants from affiliates of reporting issuers. Allowing filers more time to file (four and a half hours longer) each day might create some delay in some market participants' access to these documents. However, we do not expect this extension will reduce these benefits significantly. First, this extension extends the filing deadline only from 5:30 p.m. to 10:00 p.m. Not all of the filers are likely to take the option to file after 5:30 p.m. Second, to the extent that filers take advantage of the extended filing hours, we do not believe that the delay in access to the filed documents will lead to a loss in information or significant reduction in the value of the information for investors because the extension of the filing deadline to 10:00 p.m. at the latest, still allows investors to review the filings well before the stock exchanges open the next day. We do not believe investors who may use the information from these filings to trade will be negatively affected by the delay. In fact, the extra time might provide filers with opportunities to check their filings carefully, thus improving the accuracy of the submitted information.

V. Statutory Authority

The amendments contained in this document are being adopted under the authority set forth in sections 4, 6, 7, 8, 10, 19(a), and 28 of the Securities Act,[39] sections 3, 12, 13, 14, 15, 15B, 16, 23, and 35A of the Exchange Act,[40] and section 319 of the Trust Indenture Act of 1939.[41]

List of Subjects in 17 CFR Parts 230, 232, 239, 240, and 260

Reporting and recordkeeping requirements, Securities.

[29] *See* 5 U.S.C. 553(d)(1).

[30] 44 U.S.C. 3501 *et seq.*

[31] 15 U.S.C. 77b(b).

[32] 15 U.S.C. 78c(f).

[33] 15 U.S.C. 78w(a)(2).

[34] *See generally* Electronic Filing Release.

[35] Because of the limited nature of the technical amendments, *see supra* Section I, we do not expect them to have significant economic effects.

[36] In 2021, the Commission received approximately 30,000 Form 144 filings, of which approximately 99% (or 29,700) were in regard to the sale of securities of reporting issuers.

[37] *See* Electronic Filing Release, n.74 (citing letter from Jesse Brill (Dec. 18, 2013), *available at https://www.sec.gov/rules/petitions/2013/petn4-671.pdf*; letter from Securities Industry and Financial Markets Association (Mar. 22, 2021), available at *https://www.sec.gov/comments/s7-24-20/s72420-8530175-230264.pdf.*

[38] *See* Electronic Filing Release (''[T]he public may be able to find and review [an EDGAR] filing more quickly, as a result of the amendments, than they are able to access paper filings.'').

[39] 15 U.S.C. 77d, 77f, 77g, 77h, 77j, 77s(a), and 77z–3.

[40] 15 U.S.C. 78c, 78*l,* 78m, 78n, 78*o,* 78*o*–4, 78p, 78w, and 78*ll.*

[41] 15 U.S.C. 77sss.

Text of Final Rule and Form Amendments

In accordance with the foregoing, the Commission amends title 17, chapter II of the Code of Federal Regulations as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 1. The general authority citation for part 230 continues to read as follows:

Authority: 15 U.S.C. 77b, 77b note, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l,* 78m, 78n, 78*o,* 78*o*–7 note, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, and Pub. L. 112–106, sec. 201(a), sec. 401, 126 Stat. 313 (2012), unless otherwise noted.

* * * * *

■ 2. Amend § 230.110 by revising paragraph (c) to read as follows:

§ 230.110 Business hours of the Commission.

* * * * *

(c) *Filings by direct transmission.* Filings made by direct transmission may be submitted to the Commission each day, except Saturdays, Sundays, and Federal holidays, from 6 a.m. to 10 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect.

* * * * *

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 3. The general authority citation for part 232 continues to read as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78*l,* 78m, 78n, 78*o*(d), 78w(a), 78*ll,* 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, 80b–4, 80b–6a, 80b–10, 80b–11, 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 4. Amend § 232.12 by revising paragraph (c) to read as follows:

§ 232.12 Business hours of the Commission.

* * * * *

(c) *Submissions by direct transmission.* Electronic filings and other documents may be submitted to the Commission each day, except Saturdays, Sundays, and Federal holidays, from 6 a.m. to 10 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect.

■ 5. Amend § 232.13 by revising paragraph (a)(4) to read as follows:

§ 232.13 Date of filing; adjustment of filing date.

(a) * * *

(4) Notwithstanding paragraph (a)(2) of this section, a Form 3, 4, or 5 (§§ 249.103, 249.104, and 249.105 of this chapter, respectively), a Schedule 14N (§ 240.14n–101 of this chapter), or a Form 144 (§ 239.144 of this chapter) submitted by direct transmission commencing on or before 10 p.m. Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect, shall be deemed filed on the same business day.

* * * * *

■ 6. Amend § 232.101 by revising paragraph (a)(1)(xxvii) and adding paragraph (c)(6) to read as follows:

§ 232.101 Mandated electronic submissions and exceptions.

(a) * * *

(1) * * *

(xxvii) Form 144 (§ 239.144 of this chapter), where the issuer of the securities is, and has been for a period of at least 90 days immediately before the sale, subject to the reporting requirements of section 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78*o*(d), respectively);

* * * * *

(c) * * *

(6) Filings on Form 144 (§ 239.144 of this chapter) where the issuer of the securities is not subject to the reporting requirements of section 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78*o*(d), respectively);

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 7. The general authority citation for part 239 continues to read as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78*l,* 78m, 78n, 78*o*(d), 78*o*–7 note, 78u–5, 78w(a), 78*ll,* 78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, 80a–37, and sec. 71003 and sec. 84001, Pub. L. 114–94, 129 Stat. 1321, unless otherwise noted.

* * * * *

■ 8. Amend § 239.144 by revising paragraph (a) to read as follows:

§ 239.144 Form 144, for notice of proposed sale of securities pursuant to § 230.144 of this chapter.

(a) Except as indicated in paragraph (b) of this section, each person who intends to sell securities in reliance upon § 230.144 of this chapter, where the issuer of the securities:

(1) Is, and has been for a period of at least 90 days immediately before the sale, subject to the reporting requirements of section 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78*o*(d), respectively), shall file this form in electronic format by means of the Commission's Electronic Data, Gathering, Analysis, and Retrieval system (EDGAR) in accordance with the EDGAR rules set forth in part 232 of this chapter (Regulation S–T).

(2) Is not subject to the reporting requirements of section 13 or 15(d) of the Exchange Act (15 U.S.C. 78m or 78*o*(d), respectively), shall file three copies of this form in paper format.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 9. The general authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5,78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78j–4, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78o, 78o–4, 78o–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78dd, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7201 *et seq.,* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; and Pub. L. 111–203, 939A, 124 Stat.1376 (2010); and Pub. L. 112–106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

■ 10. Amend § 240.0–2 by revising paragraph (c) to read as follows:

§ 240.0–2 Business hours of the Commission.

* * * * *

(c) *Electronic filings.* Filings made by direct transmission may be submitted to the Commission each day, except Saturdays, Sundays, and Federal holidays, from 6 a.m. to 10 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect.

* * * * *

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

■ 11. The authority citation for part 260 continues to read as follows:

Authority: 15 U.S.C. 77c, 77ddd, 77eee, 77ggg, 77nnn, 77sss, 78*ll* (d), 80b–3, 80b–4, and 80b–11, unless otherwise noted.

* * * * *

■ 12. Amend § 260.0–5 by revising paragraph (c) to read as follows:

§ 260.0–5 Business hours of the Commission.

* * * * *

(c) *Electronic filings.* Filings made by direct transmission may be submitted to the Commission each day, except Saturdays, Sundays, and Federal holidays, from 6 a.m. to 10 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect.

By the Commission.

Dated: February 21, 2023.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2023–03931 Filed 2–24–23; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

22 CFR Parts 120 and 121

[Public Notice: 11918]

RIN 1400–AE27

International Traffic in Arms Regulations: Consolidation and Restructuring of Purposes and Definitions—Final

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State published an interim final rule on March 23, 2022, effective September 6, 2022, amending the International Traffic in Arms Regulations (ITAR) to better organize the purposes and definitions of the regulations. After reviewing the comments received in response to that interim final rule, the Department is now responding to public comments and finalizing the interim final rule, including making minor amendments.

DATES: This rule is effective February 27, 2023.

FOR FURTHER INFORMATION CONTACT: Sarah Heidema, Director, Office of Defense Trade Controls Policy, Department of State, telephone (202) 663–1282; email *DDTCCustomerService@state.gov.* ATTN: Regulatory Change, Consolidation of Definitions and Restructuring of Part 120—Final.

SUPPLEMENTARY INFORMATION: The Directorate of Defense Trade Controls (DDTC), U.S. Department of State, administers the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130). The regulations, codified as subchapter M of chapter I, title 22 of the Code of Federal Regulations (''the subchapter'') implement those authorities of the Arms Export Control Act (AECA) (22 U.S.C. 2751 *et seq.*) delegated to the Secretary of State pursuant to Executive Order 13637. On March 23, 2022, the Department published an interim final rule at 87 FR 16396, with an effective date of September 6, 2022 (the interim final rule), to restructure part 120 of the ITAR to better organize the definitions previously found in that part and other locations throughout the ITAR and to consolidate provisions that provide background information or otherwise apply throughout the regulations. In addition, the interim final rule added text not previously found in the ITAR and made clarifying revisions to existing text. In that interim final rule, the Department requested comments from the interested community. The Department now provides responses to those comments and amends the ITAR through this final rulemaking.

Before the Department addresses comments received in response to the interim final rule, it notes that beginning with 85 FR 25287, May 1, 2020, as warranted by ''the exceptional and undue hardships and risks to safety caused by the public health emergency related to the SARS–COV2 pandemic,'' DDTC provided, via a series of notices in the **Federal Register**, for certain temporary suspensions, modifications, and exceptions to facilitate telework. The final document in that series, 86 FR 30778, June 10, 2021, provided, pursuant to ITAR §§ 126.2 and 126.3, ''a temporary suspension, modification, and exception to the requirement that a regular employee, for purposes of ITAR § 120.39(a)(2), work at the company's facilities, to allow the individual to work at a remote work location, so long as the individual is not located in a country listed in ITAR § 126.1'' and ''a temporary suspension, modification, and exception to authorize regular employees of licensed entities who are working remotely in a country not currently authorized by a technical assistance agreement, manufacturing license agreement, or exemption to send, receive, or access any technical data authorized for export, reexport, or retransfer to their employer via a technical assistance agreement, manufacturing license agreement, or exemption so long as the regular employee is not located in a country listed in ITAR § 126.1.'' DDTC confirms that the temporary suspensions, modifications, and exceptions provided in 86 FR 30778, June 10, 2021, remain in effect until such time as a document is published in the **Federal Register** explicitly terminating each, notwithstanding the movement of former ITAR § 120.39 to new § 120.64 by republication of ITAR part 120 in the interim final rule.

Response to Comments

One commenter expressed appreciation for the Department's efforts and anticipates a positive impact on compliance and the security and foreign policy interests of the Department. Another commenter noted the changes make the regulations noticeably more accessible to readers.

One commenter requested that the policy statement regarding registration requirements at new § 120.13 be amended to include in paragraph (b) specific reference to available exemptions to registration at §§ 129.2 and 129.3. The commenter further suggested such inclusion would better harmonize the language of § 120.13(b) with § 120.14(c). The Department believes that it would enhance the clarity of § 120.13 to include reference to available exemptions to the registration requirement in part 129, as per the commenter's suggestion, as well as in part 122, and includes a new paragraph (c) to § 120.13 noting the availability of exemptions to the registration requirements.

One commenter recommended the Department include definitions of end-use and end-user in Subpart C to part 120 and stated that ''[u]nderstanding how DOS defines the terms used in the ITAR is imperative to complying with the ITAR's requirements.'' The Department will take the recommendation under consideration. Because the Department's stated aim in the interim final rule was focused on movement and consolidation, it is not adding the proposed definitions at this time.

One commenter noted that new § 120.12, describing the procedure by which a requestor can obtain a commodity jurisdiction (CJ) determination as to whether a particular article or service is covered by the USML, consistently uses the term ''determination''. The commenter further noted the distinction between determination in the CJ process and designation as used regarding identification of defense articles and services on the USML. The commenter recommended additional revisions, including to §§ 120.2 and 120.3, to similarly distinguish between designations and determinations. The Department notes that it is working to increase clarity regarding terms designation and determination, and did so where possible in the interim final rule. The preamble discussion to new § 120.12 in the interim final rule refers to that effort. The Department notes its expressed intent to limit substantive amendments and to focus on

restructuring and consolidation of existing text in this rulemaking. DDTC will make note of the recommendation for consideration in future rulemaking.

One commenter requested that the second use of the term Arms Export Control Act in § 120.5 be replaced with the initialism AECA. The Department notes that the preamble to the interim final rule states the policy that acronyms (or initialisms) and parentheticals will be used where a single term capable of shortening appears ''on more than two occasions within any one section.'' In this case, the term only appears twice, so the policy was not applied.

One commenter suggested the Department replace the word ''you'' where used in § 120.11 with the term ''reviewer'' and make other minor conforming revisions. The Department notes that while § 120.11 is the only section of the ITAR where the word ''you'' appears, the word is regularly used in regulation, see *e.g.,* the Export Administration Regulations (EAR) (15 CFR parts 730–774) and Bureau of Alcohol, Tobacco, Firearms and Explosives (ATFE) regulations, (27 CFR parts 447, 478, 479, 555, and 771), and that the text of new § 120.11(a)(2) was moved directly from prior § 121.1(b). In light of the Department's stated aims to keep revisions to existing text to a minimum and because it is not aware of any confusion caused by the term since adoption, no change is being made at this time.

One commenter recommended revision to the statement of policy regarding incorporation or integration of controlled items into any non-controlled item. The commenter recommended: (1) stating specifically that such items are subject to ITAR authorization requirements; and (2) where multiple controlled items are incorporated or integrated into a non-controlled item, that the item must be licensed under each applicable category. The Department notes that § 120.11(c) is a general statement of policy and not intended to provide guidance on how to structure licenses in specific scenarios. The statement of policy is that such items do not lose controlled status because of incorporation or integration and that the items are subject to the subchapter, and all the requirements therein, including the requirement to obtain a license or other approval prior to transfer.

One commenter recommended the Department either define the term ''unfavorable finding'' when used in relation to Blue Lantern end-use monitoring in new § 120.18(a)(9), or otherwise remove the paragraph. The commenter stated that the significant action of denial, revocation, etc. of an authorization should not be predicated on the use of an undefined term and that the previous list of reasons for denial, revocation, etc. at former § 120.27 are sufficient to address determinations based on end-use monitoring. The Department notes that in the supporting information to the interim final rule and posted on the DDTC website there is the statement that new § 120.18(a)(9) is a ''[g]eneral statement of existing policy not previously explicit.'' The Department confirms here that paragraph (a)(9) is an accurate statement of existing practice and is memorializing the policy as one of the factors the Department may consider when implementing its broad discretionary authority to disapprove, deny, revoke, suspend, or amend without prior notice licenses or approvals, as described in paragraphs (a)(1) and (a)(2). The term ''unfavorable finding'' is adequate to express the finding of an end-use monitoring check in which the Department lacks the assurances necessary to issue a license or other approval or to otherwise modify or halt controlled transactions under such an authorization. The Department's annual ''Report to Congress on End-Use Monitoring of Defense Articles and Defense Services'' is publicly available on the DDTC website at *pmddtc.state.gov* and provides additional information regarding unfavorable Blue Lantern findings.

One commenter recommended the Department add the terms executables, source code, and object code to the definition of software at § 120.40(g). The Department notes its expressed intent to limit substantive amendments and to focus on restructuring and consolidation of existing text in this rulemaking. DDTC will make note of the recommendation for consideration in future rulemaking.

One commenter recommended the Department revise the numbering of notes to § 120.41 from notes 2 and 3 to paragraph (b) to notes 1 and 2 to paragraph (b). The Department notes that it has revised the numbering of notes in § 120.41 in accordance with the Office of the Federal Register publication requirement that all notes to a section be numbered sequentially. Similar revisions to notes to other ITAR sections can be expected in future rulemakings.

One commenter recommended the Department provide additional commentary regarding the movement of definitions of development and production from § 120.41 (specially designed) to stand alone definitions applicable to the ITAR entirely. The commenter suggested there may be unintended consequences resulting from this transition. The commenter raised two specific concerns. First, ''that a party engaged only in the 'assembly and testing of prototypes' ('development') may not trigger the registration requirement in ITAR § 122.1, which requires 'only one occasion of manufacturing' for registration ('manufacture' is a subset of 'production').'' DDTC acknowledges that not all persons in the United States that may come into contact with defense articles and technical data are required to register with the Department. Persons who are not engaged in the business of manufacturing, exporting, or temporarily importing defense articles are not required by § 122.1 to register. The Department, however, believes that the clarity of the expanded definition outweighs the risk that a person solely engaged in assembly of products in development, and no other controlled activity, would no longer register with the Department.

Second, the commenter suggested that there may be an unintended reduction in the scope of technical data designated as Significant Military Equipment (SME). The commenter was concerned that ''technical data associated with 'development' activities such as 'assembly and testing of prototypes' would not be treated as SME, even if virtually indistinguishable from the data eventually used in 'production' activities, including manufacture.'' The Department notes that it considered the impact of movement of definitions to universal application and that the language of new § 120.10(c) is not new or revised. The same language appears in the former § 121.1(a)(2) and has been included in various sections of the ITAR since at least 1993. The movement of the definition of development from Note 2 to paragraph (b) of § 120.41, where it was limited to ''specially designed'', to a single instance definition applicable to the entire subchapter at § 120.43 does not alter the relationship between the language of § 120.10(c) (formerly § 121.1(a)(2)) and the definition of technical data at § 120.33 (formerly § 120.10). The Department notes that the limitation to manufacture and production in § 120.33 (formerly § 120.10) is unchanged by this rulemaking. Technical data that is not directly related to the manufacture or production of a defense article designated as SME is not designated as SME. In this respect, however, the Department notes that technical data

associated with development activities, such as assembly and testing of prototypes, that is indistinguishable from technical data used in manufacturing or production activities would be directly related to the manufacture or production of a defense article and therefore would be designated as SME if the defense article is SME. The Department further notes that the definitions of development and production identify the point at which a commodity transitions from development to production, and the point at which it subsequently re-enters development, as those terms are used in multiple locations within the regulation to reference specific points in the manufacturing process. The Department is not defining manufacture at this time. For these reasons, the Department is not revising the text of the interim final rule.

One commenter requested the Department provide notice through **Federal Register** document or an FAQ that existing authorizations do not require an immediate update but can be updated at the next ''major revision'' and that DDTC allow submissions with citations to outdated sections where the intent of the reference is clear for at least six months after the effective date of this rule. The Department notes that it provided a six-month delayed effective date for this rule to allow regulated entities time to accommodate the revisions. The Department further notes that it is aware that existing agreements may have citations to ITAR sections effective at time of approval and had DDTC intended to require immediate amendments to revise outdated citations in all existing agreements, it would have so instructed in the interim final rule. Therefore, while the Department is not requiring existing authorizations to be amended merely to effect citation revisions, it expects submissions for licenses and other approvals received after the effective date of the rule to reference the ITAR as effective at the time of submission.

In addition to comments addressed above, the Department received comments outside the scope of this rulemaking, including comments proposing substantive revisions to existing text, including text not otherwise moved or amended by this rule. As the rule ''moves and reorganizes existing regulatory text without revision'' wherever possible for the purpose of organizational clarity, the Department takes note of these comments, but is not entertaining substantive revisions to existing text in this rulemaking.

Amendments

In § 120.13, for the reasons described above, the Department adds a new paragraph (c) to provided notice of the availability of exemptions to registration.

In § 120.40(g) (formerly found at § 120.45(f)), the Department amends the final clause of the second sentence to revise reference from ''a technical data license'' to ''a license.'' This revision is in accordance with a future rulemaking, RIN 1400–AE26, to revise descriptions of licenses in order to bring usage into better conformity with the definition of license at § 120.57(a) (formerly found at § 120.20) and the approved information collections from which licenses are issued, and which was not included in that rulemaking. In § 121.1, the Department amends Category XIII(l), by correcting the closing parenthetical to the paragraph by removing an errant close parenthesis within the parenthetical.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department of State is of the opinion that controlling the import and export of defense articles and services is a military or foreign affairs function of the United States Government and that rules implementing this function are exempt from sections 553 (rulemaking) and 554 (adjudications) of the Administrative Procedure Act (APA), pursuant to 5 U.S.C. 553(a)(1). Since the Department is of the opinion that this rule is exempt from 5 U.S.C 553, it is the view of the Department that the provisions of section 553 do not apply to this rulemaking.

Regulatory Flexibility Act

Since this rule is exempt from the notice-and-comment provisions of 5 U.S.C. 553(b), it does not require analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This rulemaking does not involve a mandate that will result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

The Department does not believe this rulemaking is a major rule within the definition of 5 U.S.C. 804.

Executive Orders 12372 and 13132

This rulemaking will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this amendment does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rulemaking.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributed impacts, and equity). Because the scope of this rule does not impose additional regulatory requirements or obligations, the Department believes costs associated with this rule will be minimal. This rule has been designated a ''significant regulatory action'' by the Office and Information and Regulatory Affairs under Executive Order 12866.

Executive Order 12988

The Department of State reviewed this rulemaking in light of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175

The Department determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

Paperwork Reduction Act

This rule does not impose or revise any information collections subject to 44 U.S.C. chapter 35.

List of Subjects in 22 CFR Parts 120 and 121

Arms and munitions, Classified information, Exports.

Accordingly, for the reasons set forth in the preamble and under the authority of 22 U.S.C. 2778, the interim final rule

amending title 22, chapter I, subchapter M, which was published at 87 FR 16396 on March 23, 2022, is adopted as final with the following changes:

PART 120—PURPOSE AND DEFINITIONS

■ 1. The authority citation for part 120 continues to read as follows:

Authority: 22 U.S.C. 2651a, 2752, 2753, 2776, 2778, 2779, 2779a, 2785, 2794, 2797; E.O. 13637, 78 FR 16129, 3 CFR, 2013 Comp., p. 223.

■ 2. Amend § 120.13 by adding paragraph (c) to read:

§ 120.13 Registration.

* * * * *

(c) The registration requirements as set forth in parts 122 and 129 of this subchapter include limited exemptions.

§ 120.40 [Amended]

■ 3. In § 120.40 paragraph (g), remove the phrase ''a technical data license'' and add in its place ''a license''.

PART 121—THE UNITED STATES MUNITIONS LIST

■ 4. The authority citation for part 121 continues to read as follows:

Authority: 22 U.S.C. 2752, 2778, 2797; 22 U.S.C. 2651a; Sec. 1514, Pub. L. 105–261, 112 Stat. 2175; E.O. 13637, 78 FR 16129, 3 CFR, 2013 Comp., p. 223.

§ 121.1 [Amended]

■ 5. In § 121.1, Category XIII, paragraph (l), remove the phrase ''(see § 120.32) of this subchapter)'' and add in its place ''(see § 120.32 of this subchapter)''.

Bonnie Jenkins,

Under Secretary, Arms Controls and International Security, Department of State.

[FR Doc. 2023–03828 Filed 2–24–23; 8:45 am]

BILLING CODE 4710–25–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2022–0935; FRL–10656–01–OCSPP]

Propanoic Acid, 3-hydroxy-(hydroxymethyl)-2-methyl-, Polymer With 2-amino-2-methyl-1-propanol, α-hydro-ω-hydroxypoly[oxy(methyl-1,2-ethanediyl)], 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane and Methyloxirane Polymer With Oxirane Ether With 4,4′-(1-methylethylidene)bis[phenol] (2:1), Polyethylene-Polypropylene Glycol 2-aminopropyl Me Ether-Blocked, Compds. With 2-amino-2-methyl-1-propanol; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of propanoic acid, 3-hydroxy-(hydroxymethyl)-2-methyl-, polymer with 2-amino-2-methyl-1-propanol, α-hydro-ω-hydroxypoly[oxy(methyl-1,2-ethanediyl)], 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane and methyloxirane polymer with oxirane ether with 4,4′-(1-methylethylidene)bis[phenol] (2:1), polyethylene-polypropylene glycol 2-aminopropyl Me ether-blocked, compds. with 2-amino-2-methyl-1-propanol (IN–11729) when used as an inert ingredient in a pesticide chemical formulation. Nouryon Surface Chemistry LLC submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of propanoic acid, 3-hydroxy-(hydroxymethyl)-2-methyl-, polymer with 2-amino-2-methyl-1-propanol, α-hydro-ω-hydroxypoly[oxy(methyl-1,2-ethanediyl)], 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane and methyloxirane polymer with oxirane ether with 4,4′-(1-methylethylidene)bis[phenol] (2:1), polyethylene-polypropylene glycol 2-aminopropyl Me ether-blocked, compds. with 2-amino-2-methyl-1-propanol on food or feed commodities when used in accordance with these exemptions.

DATES: This regulation is effective February 27, 2023. Objections and requests for hearings must be received on or before April 28, 2023, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2022–0935, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and the OPP Docket is (202) 566–1744. For the latest status information on EPA/DC services, docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Daniel Rosenblatt, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (202) 566–2875; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Office of the Federal Register's e-CFR site at *https://www.ecfr.gov/current/title-40.*

C. Can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an

objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2022–0935 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before April 28, 2023. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b), although the Office of the Administrative Law Judges, which houses the Hearing Clerk, encourages parties to file objections and hearing requests electronically. *See https://www.epa.gov/sites/default/files/2020-05/documents/2020-04-10_-_order_urging_electronic_service_and_filing.pdf.*

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2022–0935, by one of the following methods.

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov/dockets/where-send-comments-epa-dockets.*

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

II. Background and Statutory Findings

In the **Federal Register** of January 3, 2023 (88 FR 38) (FRL–9410–08–OCSPP), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the receipt of a pesticide petition (PP IN–11729) filed by Nouryon Chemicals LLC, c/o Keller and Heckman LLP, 1001 G Street NW, Suite 500 West, Washington DC, 20001. The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of propanoic acid, 3-hydroxy-(hydroxymethyl)-2-methyl-, polymer with 2-amino-2-methyl-1-propanol, α-hydro-ω-hydroxypoly[oxy(methyl-1,2-ethanediyl)], 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane and methyloxirane polymer with oxirane ether with 4,4′-(1-methylethylidene)bis[phenol] (2:1), polyethylene-polypropylene glycol 2-aminopropyl Me ether-blocked, compds. with 2-amino-2-methyl-1-propanol (CAS Reg. No. 515152–49–5). That document included a summary of the petition prepared by the petitioner and solicited comments on the petitioner's request. The Agency did not receive any comments.

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

III. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be shown that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers expected to present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b) and the exclusion criteria for identifying these low-risk polymers are described in 40 CFR 723.250(d). propanoic acid, 3-hydroxy-(hydroxymethyl)-2-methyl-, polymer with 2-amino-2-methyl-1-propanol, α-hydro-ω-hydroxypoly[oxy(methyl-1,2-ethanediyl)], 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane and methyloxirane polymer with oxirane ether with 4,4′-(1-methylethylidene)bis[phenol] (2:1), polyethylene-polypropylene glycol 2-aminopropyl Me ether-blocked, compds. with 2-amino-2-methyl-1-propanol conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low-risk polymers.

1. The polymer is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymer does contain as an integral part of its composition at least two of the atomic elements carbon, hydrogen, nitrogen, oxygen, silicon, and sulfur.

3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize. An available biodegradation study supports that propanoic acid, 3-hydroxy-(hydroxymethyl)-2-methyl-, polymer

with 2-amino-2-methyl-1-propanol, α-hydro-ω-hydroxypoly[oxy(methyl-1,2-ethanediyl)], 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane and methyloxirane polymer with oxirane ether with 4,4′-(1-methylethylidene)bis[phenol] (2:1), polyethylene-polypropylene glycol 2-aminopropyl Me ether-blocked, compds. with 2-amino-2-methyl-1-propanol is not readily biodegradable (MRID 52014302).

5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 Daltons.

7. The polymer does not contain certain perfluoroalkyl moieties consisting of a CF3- or longer chain length as listed in 40 CFR 723.250(d)(6).

Additionally, the polymer also meets as required the following exemption criteria: specified in 40 CFR 723.250(e):

The polymer's number average MW of 6,800 Daltons is greater than 1,000 and less than 10,000 Daltons. The polymer contains less than 10% oligomeric material below MW 500 and less than 25% oligomeric material below MW 1,000, and the polymer contains only reactive functional groups listed in 40 CFR 723.250(e)(1)(ii)(A).

Thus, propanoic acid, 3-hydroxy-(hydroxymethyl)-2-methyl-, polymer with 2-amino-2-methyl-1-propanol, α-hydro-ω-hydroxypoly[oxy(methyl-1,2-ethanediyl)], 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane and methyloxirane polymer with oxirane ether with 4,4′-(1-methylethylidene)bis[phenol] (2:1), polyethylene-polypropylene glycol 2-aminopropyl Me ether-blocked, compds. with 2-amino-2-methyl-1-propanol meets the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the criteria in this unit, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to propanoic acid, 3-hydroxy-(hydroxymethyl)-2-methyl-, polymer with 2-amino-2-methyl-1-propanol, α-hydro-ω-hydroxypoly[oxy(methyl-1,2-ethanediyl)], 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane and methyloxirane polymer with oxirane ether with 4,4′-(1-methylethylidene)bis[phenol] (2:1), polyethylene-polypropylene glycol 2-aminopropyl Me ether-blocked, compds. with 2-amino-2-methyl-1-propanol (CAS Reg. No. 515152–49–5).

IV. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that propanoic acid, 3-hydroxy-(hydroxymethyl)-2-methyl-, polymer with 2-amino-2-methyl-1-propanol, α-hydro-ω-hydroxypoly[oxy(methyl-1,2-ethanediyl)], 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane and methyloxirane polymer with oxirane ether with 4,4′-(1-methylethylidene)bis[phenol] (2:1), polyethylene-polypropylene glycol 2-aminopropyl Me ether-blocked, compds. with 2-amino-2-methyl-1-propanol could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW of propanoic acid, 3-hydroxy-(hydroxymethyl)-2-methyl-, polymer with 2-amino-2-methyl-1-propanol, α-hydro-ω-hydroxypoly[oxy(methyl-1,2-ethanediyl)], 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane and methyloxirane polymer with oxirane ether with 4,4′-(1-methylethylidene)bis[phenol] (2:1), polyethylene-polypropylene glycol 2-aminopropyl Me ether-blocked, compds. with 2-amino-2-methyl-1-propanol is 6,800 Daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since propanoic acid, 3-hydroxy-(hydroxymethyl)-2-methyl-, polymer with 2-amino-2-methyl-1-propanol, α-hydro-ω-hydroxypoly[oxy(methyl-1,2-ethanediyl)], 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane and methyloxirane polymer with oxirane ether with 4,4′-(1-methylethylidene)bis[phenol] (2:1), polyethylene-polypropylene glycol 2-aminopropyl Me ether-blocked, compds. with 2-amino-2-methyl-1-propanol conform to the criteria that identify a low-risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

V. Cumulative Effects From Substances With a Common Mechanism of Toxicity

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found propanoic acid, 3-hydroxy-(hydroxymethyl)-2-methyl-, polymer with 2-amino-2-methyl-1-propanol, α-hydro-ω-hydroxypoly[oxy(methyl-1,2-ethanediyl)], 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane and methyloxirane polymer with oxirane ether with 4,4′-(1-methylethylidene)bis[phenol] (2:1), polyethylene-polypropylene glycol 2-aminopropyl Me ether-blocked, compds. with 2-amino-2-methyl-1-propanol to share a common mechanism of toxicity with any other substances, and propanoic acid, 3-hydroxy-(hydroxymethyl)-2-methyl-, polymer with 2-amino-2-methyl-1-propanol, α-hydro-ω-hydroxypoly[oxy(methyl-1,2-ethanediyl)], 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane and methyloxirane polymer with oxirane ether with 4,4′-(1-methylethylidene)bis[phenol] (2:1), polyethylene-polypropylene glycol 2-aminopropyl Me ether-blocked, compds. with 2-amino-2-methyl-1-propanol does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance exemption, therefore, EPA has assumed that propanoic acid, 3-hydroxy-(hydroxymethyl)-2-methyl-, polymer with 2-amino-2-methyl-1-propanol, α-hydro-ω-hydroxypoly[oxy(methyl-1,2-ethanediyl)], 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane and methyloxirane polymer with oxirane ether with 4,4′-(1-methylethylidene)bis[phenol] (2:1), polyethylene-polypropylene glycol 2-aminopropyl Me ether-blocked, compds. with 2-amino-2-methyl-1-propanol does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

VI. Additional Safety Factor for the Protection of Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of

threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act (FQPA) Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor. Due to the expected low toxicity of propanoic acid, 3-hydroxy-(hydroxymethyl)-2-methyl-, polymer with 2-amino-2-methyl-1-propanol, α-hydro-ω-hydroxypoly[oxy(methyl-1,2-ethanediyl)], 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane and methyloxirane polymer with oxirane ether with 4,4′-(1-methylethylidene)bis[phenol] (2:1), polyethylene-polypropylene glycol 2-aminopropyl Me ether-blocked, compds. with 2-amino-2-methyl-1-propanol, EPA has not used a safety factor analysis to assess the risk. For the same reasons no additional safety factor is needed for assessing risk to infants and children.

VII. Determination of Safety

Based on the conformance to the criteria used to identify a low-risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of propanoic acid, 3-hydroxy-(hydroxymethyl)-2-methyl-, polymer with 2-amino-2-methyl-1-propanol, α-hydro-ω-hydroxypoly[oxy(methyl-1,2-ethanediyl)], 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane and methyloxirane polymer with oxirane ether with 4,4′-(1-methylethylidene)bis[phenol] (2:1), polyethylene-polypropylene glycol 2-aminopropyl Me ether-blocked, compds. with 2-amino-2-methyl-1-propanol.

VIII. Other Considerations

Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

IX. Conclusion

Accordingly, EPA finds that exempting residues of propanoic acid, 3-hydroxy-(hydroxymethyl)-2-methyl-, polymer with 2-amino-2-methyl-1-propanol, α-hydro-ω-hydroxypoly[oxy(methyl-1,2-ethanediyl)], 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane and methyloxirane polymer with oxirane ether with 4,4′-(1-methylethylidene)bis[phenol] (2:1), polyethylene-polypropylene glycol 2-aminopropyl Me ether-blocked, compds. with 2-amino-2-methyl-1-propanol from the requirement of a tolerance will be safe.

X. Statutory and Executive Order Reviews

This action establishes a tolerance exemption under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal Governments, on the relationship between the National Government and the States or Tribal Governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

XI. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 17, 2023.

Daniel Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, for the reasons stated in the preamble, EPA is amending 40 CFR chapter I as follows:

PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

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

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.960, amend table 1 to the section by adding, in alphabetical order, the polymer ''Propanoic acid, 3-hydroxy-(hydroxymethyl)-2-methyl-, polymer with 2-amino-2-methyl-1-propanol, α-hydro-ω-hydroxypoly[oxy(methyl-1,2-ethanediyl)], 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane and

methyloxirane polymer with oxirane ether with 4,4′-(1-methylethylidene)bis[phenol] (2:1), polyethylene-polypropylene glycol 2-aminopropyl Me ether-blocked, compds. with 2-amino-2-methyl-1-propanol, minimum number average molecular weight (in amu), 6,800'' to read as follows:

§ 180.960 Polymers; exemptions from the requirement of a tolerance.

* * * * *

TABLE 1 TO § 180.960

Polymer	CAS No.
* * * * * * *	
Propanoic acid, 3-hydroxy-(hydroxymethyl)-2-methyl-, polymer with 2-amino-2-methyl-1-propanol, α-hydro-ω-hydroxypoly[oxy(methyl-1,2-ethanediyl)], 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane and methyloxirane polymer with oxirane ether with 4,4′-(1-methylethylidene)bis[phenol] (2:1), polyethylene-polypropylene glycol 2-aminopropyl Me ether-blocked, compds. with 2-amino-2-methyl-1-propanol, minimum number average molecular weight (in amu), 6,800	515152–49–5
* * * * * * *	

[FR Doc. 2023–03866 Filed 2–24–23; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2022–0931; FRL–10650–01–OCSPP]

2-Propenoic Acid, Methyl-, Polymer With Butyl 2-Propenoate and Methyl 2-Methyl-2-Propenoate Compd. With 2-Amino-2-Methyl-1-Propanol; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of 2-propenoic acid, methyl-, polymer with butyl 2-propenoate and methyl 2-methyl-2-propenoate compd. with 2-amino-2-methyl-1-propanol when used as an inert ingredient in a pesticide chemical formulation. Nouryon Chemicals LLC submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of 2-propenoic acid, methyl-, polymer with butyl 2-propenoate and methyl 2-methyl-2-propenoate compd. with 2-amino-2-methyl-1-propanol on food or feed commodities when used in accordance with these exemptions.

DATES: This regulation is effective February 27, 2023. Objections and requests for hearings must be received on or before April 28, 2023 and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2022–0931, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and the OPP Docket is (202) 566–1744. For the latest status information on EPA/DC services, docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Daniel Rosenblatt, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (202) 566–2875; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Office of the Federal Register's e-CFR site at *https://www.ecfr.gov/current/title-40.*

C. Can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2022–0931 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before April 28, 2023. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b), although the Office of the Administrative Law Judges, which houses the Hearing Clerk, encourages parties to file objections and hearing requests electronically. *See https://www.epa.gov/sites/default/files/2020-05/documents/2020-04-10_-_order_urging_electronic_service_and_filing.pdf.*

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be

disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2022–0931, by one of the following methods.

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov/dockets/where-send-comments-epa-dockets.*

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

II. Background and Statutory Findings

In the **Federal Register** of January 3, 2023 (88 FR 38) (FRL–9410–08–OCSPP), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the receipt of a pesticide petition (PP IN–11727) filed by Nouryon Chemicals LLC, c/o Keller and Heckman LLP, 1001 G Street NW, Suite 500 West, Washington, DC 20001. The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of 2-propenoic acid, methyl-, polymer with butyl 2-propenoate and methyl 2-methyl-2-propenoate compd. with 2-amino-2-methyl-1-propanol (CAS Reg. No. 1203962–19–9). That document included a summary of the petition prepared by the petitioner and solicited comments on the petitioner's request. The Agency did not receive any comments.

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

III. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be shown that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers expected to present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b) and the exclusion criteria for identifying these low-risk polymers are described in 40 CFR 723.250(d). 2-Propenoic acid, methyl-, polymer with butyl 2-propenoate and methyl 2-methyl-2-propenoate compd. with 2-amino-2-methyl-1-propanol conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low-risk polymers.

1. The polymer is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymer does contain as an integral part of its composition at least two of the atomic elements carbon, hydrogen, nitrogen, oxygen, silicon, and sulfur.

3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize. An available biodegradation study supports that 2-propenoic acid, methyl-, polymer with butyl 2-propenoate and methyl 2-methyl-2-propenoate compd. with 2-amino-2-methyl-1-propanol is not readily biodegradable (MRID 52014202).

5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 Daltons.

7. The polymer does not contain certain perfluoroalkyl moieties consisting of a CF3- or longer chain length as listed in 40 CFR 723.250(d)(6).

Additionally, the polymer also meets as required the following exemption criteria: specified in 40 CFR 723.250(e):

The polymer's number average MW of 22,700 Daltons is greater than or equal to 10,000 Daltons. The polymer contains less than 2% oligomeric material below MW 500 and less than 5% oligomeric material below MW 1,000.

Thus, 2-propenoic acid, methyl-, polymer with butyl 2-propenoate and methyl 2-methyl-2-propenoate compd. with 2-amino-2-methyl-1-propanol meets the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the criteria in this unit, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to 2-propenoic acid, methyl-, polymer with butyl 2-propenoate and methyl 2-methyl-2-propenoate compd. with 2-amino-2-methyl-1-propanol (CAS Reg. No. 1203962–19–9).

IV. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that 2-propenoic acid, methyl-, polymer with butyl 2-propenoate and methyl 2-methyl-2-propenoate compd. with 2-amino-2-methyl-1-propanol could be present in all raw and processed

agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW of 2-propenoic acid, methyl-, polymer with butyl 2-propenoate and methyl 2-methyl-2-propenoate compd. with 2-amino-2-methyl-1-propanol is 22,700 Daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since 2-propenoic acid, methyl-, polymer with butyl 2-propenoate and methyl 2-methyl-2-propenoate compd. with 2-amino-2-methyl-1-propanol conform to the criteria that identify a low-risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

V. Cumulative Effects From Substances With a Common Mechanism of Toxicity

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found 2-propenoic acid, methyl-, polymer with butyl 2-propenoate and methyl 2-methyl-2-propenoate compd. with 2-amino-2-methyl-1-propanol to share a common mechanism of toxicity with any other substances, and 2-propenoic acid, methyl-, polymer with butyl 2-propenoate and methyl 2-methyl-2-propenoate compd. with 2-amino-2-methyl-1-propanol does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance exemption, therefore, EPA has assumed that 2-propenoic acid, methyl-, polymer with butyl 2-propenoate and methyl 2-methyl-2-propenoate compd. with 2-amino-2-methyl-1-propanol does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

VI. Additional Safety Factor for the Protection of Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of 2-propenoic acid, methyl-, polymer with butyl 2-propenoate and methyl 2-methyl-2-propenoate compd. with 2-amino-2-methyl-1-propanol, EPA has not used a safety factor analysis to assess the risk. For the same reasons no additional safety factor is needed for assessing risk to infants and children.

VII. Determination of Safety

Based on the conformance to the criteria used to identify a low-risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of 2-propenoic acid, methyl-, polymer with butyl 2-propenoate and methyl 2-methyl-2-propenoate compd. with 2-amino-2-methyl-1-propanol.

VIII. Other Considerations

Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

IX. Conclusion

Accordingly, EPA finds that exempting residues of 2-propenoic acid, methyl-, polymer with butyl 2-propenoate and methyl 2-methyl-2-propenoate compd. with 2-amino-2-methyl-1-propanol from the requirement of a tolerance will be safe.

X. Statutory and Executive Order Reviews

This action establishes a tolerance exemption under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal Governments, on the relationship between the National Government and the States or Tribal Governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

XI. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 17, 2023.

Daniel Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, for the reasons stated in the preamble, EPA is amending 40 CFR chapter I as follows:

PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

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

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.960, amend table 1 to the section by adding, in alphabetical order, the polymer ''2-Propenoic acid, methyl-, polymer with butyl 2-propenoate and methyl 2-methyl-2-propenoate compd. with 2-amino-2-methyl-1-propanol, minimum number average molecular weight (in amu), 22,700'' to read as follows:

§ 180.960 Polymers; exemptions from the requirement of a tolerance.

* * * * *

TABLE 1 TO § 180.960

Polymer	CAS No.
* * * * * * *	
2-Propenoic acid, methyl-, polymer with butyl 2-propenoate and methyl 2-methyl-2-propenoate compd. with 2-amino-2-methyl-1-propanol, minimum number average molecular weight (in amu), 22,700	1203962–19–9
* * * * * * *	

[FR Doc. 2023–03858 Filed 2–24–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2022–0364; FRL–10641–01–OCSPP]

Zein; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of zein (CAS Reg. No. 9010–66–6) when used as an inert ingredient (stabilizing agent) in pesticide formulations applied to animals. The United States Department of Agriculture, Animal and Plant Health Inspection Service (USDA APHIS), submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting establishment of an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of zein when used in accordance with the terms of the exemption.

DATES: This regulation is effective February 27, 2023. Objections and requests for hearings must be received on or before April 28, 2023, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2022–0364, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and OPP Docket is (202) 566–1744. For the latest status information on EPA/DC services, docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Daniel Rosenblatt, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (202) 566–2875; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Office of the Federal Register's e-CFR site at *https://www.ecfr.gov/current/title-40.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2022–0364 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before April 28, 2023. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b), although the Office of the Administrative Law Judges, which houses the Hearing Clerk, encourages parties to file objections and hearing

requests electronically. *See https://www.epa.gov/sites/default/files/2020-05/documents/2020-04-10_-_order_urging_electronic_service_and_filing.pdf.*

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2022–0364, by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov/dockets/where-send-comments-epa-dockets.*

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

II. Petition for Exemption

In the **Federal Register** of May 20, 2022 (87 FR 30855) (FRL–9410–13), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP IN–11660) by USDA APHIS, 4700 River Road, Unit 149, Riverdale, MD 20737. The petition requested that 40 CFR 180.930 be amended by establishing an exemption from the requirement of a tolerance for residues of zein (CAS Reg. No. 9010–66–6) when used as an inert ingredient (stabilizing agent) in pesticide formulations applied to animals, limited to not more than 10,000 ppm in the pesticide formulation. That document referenced a summary of the petition prepared by the USDA APHIS, which is available in the docket, *https://www.regulations.gov.* There were no comments received in response to the notice of filing.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. When making a safety determination for an exemption for the requirement of a tolerance FFDCA section 408(c)(2)(B) directs EPA to consider the considerations in section 408(b)(2)(C) and (D). Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance or exemption and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .'' Section 408(b)(2)(D) lists other factors for EPA's consideration in making safety determinations, *e.g.,* the validity, completeness, and reliability of available data, nature of toxic effects, available information concerning the cumulative effects of the pesticide chemical and other substances with a common mechanism of toxicity, and available information concerning aggregate exposure levels to the pesticide chemical and other related substances, among other factors.

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no harm to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

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

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by zein as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in this unit.

There are no acute or repeated dose toxicity studies available for zein. However, zein is naturally occurring in food consumed by humans, as it is the primary storage protein in corn. Zein is a prolamine protein and is degraded into amino acids when consumed by mammals. Zein is classified as ''generally recognized as safe'' (GRAS) by the United States Food and Drug

Administration (FDA) as a direct human food ingredient for use as a surface finishing agent (21 CFR 184.1984) and when used as a component of food-packaging adhesives (21 CFR 175.105). Further, zein is an inactive ingredient in FDA-approved oral drug tablets (*https://precision.fda.gov/uniisearch/srs/unii/80N308T1NN*). Also, zein is used as an alternative to gluten because it is not considered a major food allergen and not expected to result in sensitization. Although allergic reactions to corn can occur, the major allergen is the lipid transfer protein (LTP) rather than the storage protein (*i.e.,* zein).

Corn gluten meal, also known as corn gluten, is the principal protein in corn and consists of mainly zein and glutelin. Corn gluten meal is exempted from the requirement of a tolerance as an animal feed item under 40 CFR 180.950(b).

Since zein is one of the major constituents of corn gluten meal, its toxicity is expected to be low, similar to that of corn gluten meal, due to being commonly found in food consumed by humans. Further, zein is expected to be of low toxicity based on its history of safe use as an inactive ingredient in drugs administered orally and its degradation into amino acids when consumed.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/overview-risk-assessment-pesticide-program.*

Zein toxicity is expected to be low, similar to that of corn gluten meal, because zein is commonly found in food consumed by humans and it is a major component of corn gluten meal. Additionally, zein is expected to be of low toxicity based on its history of safe use as an inactive ingredient in drugs administered orally and its degradation into amino acids when consumed. Therefore, no toxicological endpoints of concern were identified for zein.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to zein, EPA considered exposure under the proposed exemption from the requirement of a tolerance and from existing uses. EPA assessed dietary exposures from zein in food as follows:

Dietary exposure (food and drinking water) may occur from the current pesticidal uses of corn gluten meal as well as the proposed use of zein in/on animals (*e.g.,* indirect exposure by consuming meat from animals treated with pesticide formulations containing zein and drinking water exposures). Zein will be used in pesticide products formulated as baits to attract feral swine only for the use in control programs operated by USDA APHIS Wildlife Services or persons under their authority. In addition, a concentration limit of 10,000 ppm (approximately 1% by weight) is being requested for use of zein as an inert ingredient in pesticide products applied to/on animals. Given the anticipated restricted use pattern and low concentration limit, as well as zein's degradation into amino acids when consumed by mammals, dietary exposure to zein from the proposed use is expected to be low. Dietary exposure may also occur from non-pesticidal exposure (*e.g.,* pharmaceutical uses, consumption of corn products). However, a quantitative dietary exposure assessment was not conducted since a toxicological endpoint for risk assessment was not identified.

2. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* textiles (clothing and diapers), carpets, swimming pools, for lawn and garden pest control, indoor pest control, termiticides, flea and tick control on pets and hard surface disinfection on walls, floors, tables).

A restricted use pattern is anticipated (*i.e.,* use in feral swine baits). Therefore, residential exposure is not expected from this proposed use. Residential exposure may occur from current pesticidal uses of corn gluten meal and non-pesticidal uses of zein (*e.g.,* pharmaceutical products). However, no toxicological endpoint of concern was identified. Therefore, a quantitative assessment for residential exposure was not performed.

3. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Based on the lack of toxicity in the available database, EPA has not found zein to share a common mechanism of toxicity with any other substances, and zein does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance exemption, therefore, EPA has assumed that zein does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

D. Additional Safety Factor for the Protection of Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act (FQPA) Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

Based on an assessment of zein, EPA has concluded that there are no toxicological endpoints of concern for the U.S. population, including infants and children. Because there are no threshold effects associated with zein, EPA conducted a qualitative assessment. As part of that assessment, the Agency did not use safety factors for

assessing risk, and no additional safety factor is needed for assessing risk to infants and children.

E. Aggregate Risks and Determination of Safety

Because no toxicological endpoints of concern were identified, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to zein residues.

V. Other Considerations

Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is not establishing a numerical tolerance for residues of zein in or on any food commodities. EPA is establishing a limitation on the amount of zein that may be used in pesticide formulations. This limitation will be enforced through the pesticide registration process under the Federal Insecticide, Fungicide, and Rodenticide Act (''FIFRA''), 7 U.S.C. 136 *et seq.* EPA will not register any pesticide formulation for food use that exceeds 10,000 ppm zein in the final pesticide formulation.

VI. Conclusions

Therefore, an exemption from the requirement of a tolerance is established for residues of zein (CAS Reg. No. 9010–66–6) when used as an inert ingredient (stabilizing agent) in pesticide formulations applied to animals under 40 CFR 180.930, limited to not more than 10,000 ppm in the pesticide formulation.

VII. Statutory and Executive Order Reviews

This action establishes a tolerance exemption under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal Governments, on the relationship between the National Government and the States or Tribal Governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VIII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 17, 2023.

Daniel Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, for the reasons stated in the preamble, EPA is amending 40 CFR chapter I as follows:

PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

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

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.930, amend table 1 to 180.930 by adding, in alphabetical order, an entry for ''Zein (CAS Reg. No. 9010–66–6)'' to read as follows:

§ 180.930 Inert ingredients applied to animals; exemptions from the requirement of a tolerance.

* * * * *

TABLE 1 TO 180.930

Inert ingredients	Limits	Uses
* * * * * * *		
Zein (CAS Reg. No. 9010–66–6)	Not more than 10,000 ppm in the pesticide formulation	Stabilizing agent.
* * * * * * *		

[FR Doc. 2023–03831 Filed 2–24–23; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1336

RIN 0970–AC88

Native American Programs

AGENCY: Administration for Native Americans (ANA), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: This final rule provides a process for ANA grant recipients to request a waiver for part or all of their non-Federal cost share or match (NFS) during a budget period due to emergency circumstances.

DATES: This rule is effective on April 28, 2023.

FOR FURTHER INFORMATION CONTACT: Carmelia Strickland, Administration for Native Americans, 202–401–6741. Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m. Eastern Time.

SUPPLEMENTARY INFORMATION:

Contents

I. Background

Native American Programs Act of 1974

The Native American Programs Act of 1974 (NAPA), Public Law 93–644, was first enacted on January 4, 1975. The last time substantial amendments to the NAPA regulations were made was 1996. Section 802 of the NAPA establishes as its broad statutory purpose the promotion of ''the goal of economic and social self-sufficiency for American Indians, Native Hawaiians, other Native American Pacific Islanders (including American Samoan Natives), and Alaska Natives.'' ANA executes this purpose through the provision of project-based financial assistance to Native Americans authorized under sections 803 and 803C of the NAPA, as well as through advocacy on behalf of Native Americans within HHS and with other departments and agencies of the Federal Government ''regarding all Federal policies affecting Native Americans,'' under section 803B(c) of the NAPA.

Goal of This Final Rule: Incorporation of Emergency Waiver Provision

On December 7, 2021, ANA published a notice of proposed rulemaking (NPRM) to update existing waiver requirements to allow an opportunity to request a waiver of the non-Federal cost share (NFS) in the event of an emergency. 86 FR 69215. The NAPA requires applicants and recipients to provide an NFS of 20 percent of project costs, unless waived by the Commissioner of ANA pursuant to objective criteria established by regulation. Current regulations (45 CFR 1336.50) only permit ''applicants'' to apply for a waiver of the NFS, which ANA has interpreted as applicants for the initial awards and applicants for non-competing continuation (NCC) awards. The on-going public health emergency has greatly impacted ANA recipients. The pandemic has greatly increased the risk of language and cultural decline among Native communities with many Elders dying from the COVID–19 virus. As tribes began closing their revenue-generating businesses and other governmental operations due to the COVID–19 pandemic, they lost income and in-kind contributions they needed to fund Federal projects requiring a NFS. In addition, planned sources of match support, such as use of tribal-owned facilities from which to operate the project, as part of the NFS, also diminished. ANA's current cost-share waiver does not allow for a process to address a recipient's inability to meet the cost-share due to an emergency in the middle of a budget period. This final rule adds a provision (45 CFR 1336.50(b)(2)(ii)) allowing grant recipients to apply for an emergency waiver within the current budget period to remedy this burden.

II. Statutory Authority

Pursuant to 42 U.S.C. 2991b of the NAPA, ANA is authorized to allow applicants the ability to submit a request for a waiver of the required 20 percent non-Federal cost share or match, subject to ANA regulations.

III. Discussion of Changes From the NPRM to Final Rule

The changes made in this final regulation, as compared with the proposed rule, are as follows:

1. The final rule amends the word ''follow'' to the word ''following'' in 45 CFR 1336.50(b)(2). The change fixes a typographical error in the NPRM.

2. The final rule removes the word ''temporarily'' in 45 CFR 1336.50(b)(2)(i). The word had been added to the regulation in the proposed rule to indicate that applicants who sought a waiver would have to apply for the waiver again when applying for the NCC award. But upon further review, ANA believes the word adds confusion rather than clarity. The removal does not change ANA's process or the substance of the rule.

3. The final rule adds the word ''recipient(s)'' in 45 CFR 1336.50(b)(2) and (3). The NPRM proposed to add an option for recipients to apply for a waiver but did not add the word recipient to the other paragraphs that cover waiver applications. The final rule adds the word ''recipient'' to make clear that these sections on waivers cover both applicants and recipients.

4. The final rule adds text in 45 CFR 1336.50(b)(2)(i) that both an applicant for an initial award and an applicant for an NCC award can apply for a waiver. The final rule adds this text to set out explicitly ANA's interpretation of the current rule and the intention of the NPRM.

5. The final rule changes the NPRM use of the word ''should'' to ''can'' in 45 CFR 1336.50(b)(3)(ii). The current regulations use the word ''can'' in § 1336.50(b)(3)(ii). Changing the word to ''should'' was a drafting error that inadvertently changed the meaning of one of the criteria of the waiver. ANA never intended to change the criteria for the waiver and the final rule ensures that the criteria remain unchanged.

IV. Discussion of the Final Rule

This final rule makes changes to 45 CFR part 1336, subpart E, Financial Assistance Provisions, in § 1336.50. These changes will have no regulatory burden impact but will provide a waiver provision and ensure programmatic success of American Indian, Native Hawaiian, other Native American Pacific Islander (including American Samoan Natives), and Alaska Native-based recipients.

Section 1336.50 Financial and Administrative Requirements

Recipients of financial assistance under sections 803, 804, and 805 of NAPA are required to provide a matching share of 20 percent of the approved cost of the assisted project. Title 45 CFR 1335.50(b)(2) and (3) provide a process for requesting a waiver for the match. The final rule makes several changes to the language in these paragraphs.

The final rule amends the existing language and application requirements under § 1336.50(b)(2) to provide additional detail. Specifically, § 1336.50(b)(2)(i) will require that if an applicant anticipates that they will be unable to meet the cost-sharing or matching requirement and wishes to request a waiver of the requirement, they must include with the application for funding a written justification that clearly explains why the applicant cannot provide the matching share, including the amount of non-Federal share to be waived and supporting evidence for how it meets the criteria indicated in the revised § 1336.50(b)(3)(ii). The request for a waiver must be submitted at the time of the initial application or NCC application.

The final rule makes two changes from the current version of § 1336.50(b)(2)(i). The final rule adds that the written justification for the waiver must include the amount of the NFS to be waived. This addition reflects how the agency handles waiver requests in practice because not every applicant will need a waiver of the full 20 percent match requirement. The final rule also states that either an applicant for the initial award or an applicant for the NCC can apply for the waiver, which is how ANA currently interprets the regulations. All these additions are statements of current practice and not substantive amendments to the waiver procedure.

The final rule adds a provision for an emergency waiver in § 1336.50(b)(2)(ii) to include the ability to request a waiver during the budget period. If a recipient is unable to contribute part or all of the required non-Federal matching share during a budget period due to an emergency such as a natural disaster, man-made disaster, act of terrorism, public health emergency, or other qualifying event, the recipient may request a waiver of all or part of the requirement for a 20 percent non-Federal matching share specified under § 1336.50(b)(1). ANA has included ''other qualifying event'' to encompass events, like the pandemic, that cannot be foreseen by ANA at this time but could abruptly cause the recipient to be unable to meet the match requirement.

Finally, this final rule amends the language in § 1336.50(b)(3)(ii). The criteria to be approved for a waiver is not changed by this rule. Recipients document that reasonable efforts to obtain cash or in-kind contributions for the purposes of the project from third parties have been unsuccessful, including evidence and the results of such attempts. Evidence of such efforts can include letters from possible sources of funding or any relevant correspondence, indicating that the requested resources are not available for that project. The requests must be appropriate to the source in terms of project purpose, applicant eligibility, and reasonableness of the request. This section added ''any relevant correspondence'' to indicate that relevant correspondence can be sent in any form other than a letter.

V. Comments Received and Response

ANA received comments from a federally recognized tribe, an individual, and an anonymous commenter. All comments were positive in support of the amended regulation to allow for a process for recipients to request a NFS waiver during the budget period if they are experiencing an emergency such as the COVID–19 pandemic.

Comment: An emergency waiver ''would encourage tribes to continue language, cultural and unique economic development programs that would otherwise be postponed or cancelled.''

Response: ANA concurs.

Comment: Two comments opposed the requirement that applicants or recipients seeking a waiver provide documentation of unsuccessful efforts to obtain cash or in-kind contributions for the project.

Response: This requirement is an existing criteria for NFS waiver. The final rule does not modify the existing criteria in the regulations.

VI. Regulatory Process Matters

Paperwork Reduction Act of 1995

Section 1336.50(b) does not contain new information collection requirements. This action does not include any information collection requirements, only an additional circumstance that would allow for the submission of the information already outlined in the regulation.

Regulatory Flexibility Act

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this rule will not result in a significant impact on a substantial number of small entities.

Treasury and General Government Appropriations Act of 1999

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a proposed policy or regulation may affect family well-being. If the agency's determination is affirmative, then the agency must prepare an impact assessment addressing criteria specified in the law. This regulation will not have an impact on family well-being as defined in this legislation, which asks agencies to assess policies with respect to whether the policy strengthens or erodes family stability and the authority and rights of parents in the education, nurturing, and supervision of their children; helps the family perform its functions; and increases or decreases disposable income.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure in any one year by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (1995 dollars), updated annually for inflation. The 2022 threshold is approximately $165 million. The Department has determined that this rule would not impose a mandate that will result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of more than $165 million in any one year.

Federalism Assessment Executive Order 13132

Executive Order 13132 on federalism applies to policies that have federalism implications, defined as ''regulations, legislative comments or proposed legislation, and other policy statements or actions that 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.'' This rulemaking does not have federalism implications for state or local governments as defined in the Executive order.

Congressional Review

This regulation is not a major rule as defined in 5 U.S.C. 804.

Executive Orders 12866 and 13563—Regulatory Impact Analysis

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if the regulation is necessary, to select the regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. While there are some costs associated with these regulations, they are not economically significant as defined under Executive Order 12866. However, the regulation is significant and has been reviewed by Office of Management and Budget.

The regulation change will benefit recipients that have been financially impacted by an emergency event and are unable to meet their matching cost requirement, as required by the grant award. It would reduce the financial burden to recipients that need a waiver to provide the 20 percent cost share. To the extent that this final rule results in transfers, they will not exceed the threshold for economic significance because the total funding level for the program is below the threshold. Also, there is no cost to the agency other than the administrative time that it would take to review and if approved, process the waiver request.

January Contreras, Assistant Secretary of the Administration for Children and Families, approved this document on January 24, 2023.

List of Subjects in 45 CFR Part 1336

Disaster assistance, Emergency preparedness, Native Americans, Public health.

Dated: February 22, 2023.

Xavier Becerra,

Secretary, Department of Health and Human Services.

For the reasons stated in the preamble, we amend 45 CFR part 1336 as follows:

PART 1336—NATIVE AMERICAN PROGRAMS

■ 1. The authority citation for part 1336 continues to read as follows:

Authority: 42 U.S.C. 2991 *et seq.*

■ 2. Amend § 1336.50 by revising paragraphs (b)(2) and (3) to read as follows:

§ 1336.50 Financial and administrative requirements.

* * * * *

(b) * * *

(2) *Application.* If an applicant or recipient wishes to request a waiver of the requirement for a 20 percent non-Federal matching share, the following conditions must be met:

(i) If an applicant for an initial award or an applicant for a non-competing continuation award anticipates that it will be unable to meet the cost-sharing or matching requirement, the applicant may request a waiver of the 20 percent non-Federal matching share. It must include with its application for funding, the submission of a revised SF424A, a written justification that clearly explains why the applicant cannot provide the matching share including the amount of non-Federal share to be waived, and how it meets the criteria indicated in paragraph (b)(3) of this section. For an applicant for an initial award, or an applicant seeking a non-competing continuation award, a request for a waiver must be submitted at the time of the initial application or non-competing continuation (NCC) application.

(ii) If a recipient is unable to contribute part or all of the required non-Federal matching share during a budget period due to an emergency situation such as a natural disaster, man-made disaster, act of terrorism, public health emergency, or other qualifying event, the recipient may request a waiver of all or part of the requirement for a 20 percent non-Federal matching share specified under paragraph (b)(1) of this section. Any requests for an emergency waiver may be submitted at any time during a budget period as soon as the adverse effect is known to the recipient and must be submitted in accordance with the requirements specified in paragraph (b)(3) of this section.

(3) *Criteria.* Both of the following criteria must be met for an applicant or recipient to be eligible for a waiver of the non-Federal matching requirement:

(i) Applicant or recipient lacks the available resources to meet part or all of the non-Federal matching requirement. This must be documented by an institutional audit if available, or a full disclosure of applicant's or recipient's total assets and liabilities.

(ii) Applicants or recipients can document that reasonable efforts to obtain cash or in-kind contributions for the purposes of the project from third parties have been unsuccessful, including evidence and the results of such attempts. Evidence of such efforts can include letters from possible sources of funding or any relevant correspondence, indicating that the requested resources are not available for that project. The requests must be appropriate to the source in terms of project purpose, applicant eligibility, and reasonableness of the request.

* * * * *

[FR Doc. 2023–03994 Filed 2–24–23; 8:45 am]

BILLING CODE 4184–34–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 401

[Docket No. USCG–2022–0370]

RIN 1625–AC82

Great Lakes Pilotage Rates—2023 Annual Ratemaking and Review of Methodology

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: In accordance with the statutory provisions enacted by the Great Lakes Pilotage Act of 1960, the Coast Guard is issuing new base pilotage rates for the 2023 shipping season. This rule adjusts the pilotage rates to account for changes in district operating expenses, an increase in the number of pilots, and anticipated inflation. These changes, when combined, result in a 16-percent net increase in pilotage costs compared to the 2022 season.

DATES: This final rule is effective March 29, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *www.regulations.gov,* type USCG–2022–0370 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: For information about this document call or email Mr. Brian Rogers, Commandant, Office of Waterways and Ocean Policy—Great Lakes Pilotage Division (CG–WWM–2), Coast Guard; telephone 410–360–9260, email *Brian.Rogers@uscg.mil,* or fax 202–372–1914.

SUPPLEMENTARY INFORMATION:

Table of Contents for Preamble

I. Abbreviations

AMOU American Maritime Officers Union
APA American Pilots' Association
BLS Bureau of Labor Statistics
CFR Code of Federal Regulations
CPA Certified public accountant
CPI Consumer Price Index
DHS Department of Homeland Security
Director U.S. Coast Guard's Director of the Great Lakes Pilotage
ECI Employment Cost Index
FOMC Federal Open Market Committee
FR Federal Register
GLPA Great Lakes Pilotage Authority (Canadian)
GLPAC Great Lakes Pilotage Advisory Committee
GLPMS Great Lakes Pilotage Management System
LPA Lakes Pilots Association
NAICS North American Industry Classification System
NPRM Notice of proposed rulemaking
OMB Office of Management and Budget
PCE Personal Consumption Expenditures
§ Section
SBA Small Business Administration
SLSPA Saint Lawrence Seaway Pilotage Association
The Act The Great Lakes Pilotage Act
U.S.C. United States Code
WGLPA Western Great Lakes Pilots Association

II. Executive Summary

In accordance with Title 46 of the United States Code (U.S.C.), Chapter 93,[1] the Coast Guard regulates pilotage for oceangoing vessels on the Great Lakes and St. Lawrence Seaway—including setting the rates for pilotage services and adjusting them on an annual basis for the upcoming shipping season. The shipping season begins when the locks open in the St. Lawrence Seaway, which allows traffic access to and from the Atlantic Ocean. The opening of the locks varies annually, depending on waterway conditions, but is generally in March or April. The rates, which for the 2023 season range from $410 to $876 per pilot hour (depending on which of the specific six areas pilotage service is provided), are paid by shippers to the pilot associations. The three pilot associations, which are the exclusive U.S. source of registered pilots on the Great Lakes, use this revenue to cover operating expenses, maintain infrastructure, compensate apprentice and registered pilots, acquire and implement technological advances, train new personnel, and provide for continuing professional development.

In accordance with statutory and regulatory requirements, the Coast Guard employs the ratemaking methodology introduced in 2016. Our ratemaking methodology calculates the revenue needed for each pilotage association (operating expenses, compensation for the number of pilots, and anticipated inflation), and then divides that amount by the expected demand for pilotage services over the course of the coming year, to produce an hourly rate. This is a 10-step methodology to calculate rates, which is explained in detail in the ''Discussion of Methodological and Other Changes'' in section V of the preamble to this rule.

As part of our annual review, the Coast Guard is issuing a full ratemaking and establishing new pilotage rates for 2023 based on the existing 10-step ratemaking methodology. The Coast Guard conducted the last full ratemaking 5 years ago, in 2018 (83 FR 26162, June 5, 2018). Per Title 46 of the Code of Federal Regulations (CFR), section 404.100(a), in this final rule, the Coast Guard's Director of the Great Lakes Pilotage (''the Director'') is establishing base pilotage rates via a full ratemaking pursuant to §§ 404.101 through 404.110. The Coast Guard sets base rates to meet the goal of promoting safe, efficient, and reliable pilotage service on the Great Lakes by generating sufficient revenue for each pilotage association to reimburse its necessary and reasonable operating expenses, fairly compensate trained and rested pilots, and provide appropriate funds to use for improvements. A 10-year average is used when calculating traffic to smooth out anomalies in traffic caused by unexpected events, such as those caused by the COVID–19 pandemic. The Coast Guard estimates that this rule results in $5,172,200 of additional costs.

Based on the ratemaking model discussed in this final rule, the Coast Guard is establishing the rates shown in table 1.

[1] 46 U.S.C. 9301–9308.

TABLE 1—CURRENT AND 2023 PILOTAGE RATES ON THE GREAT LAKES

Area	Name	Final 2022 pilotage rate	Final 2023 pilotage rate
District One: Designated	St. Lawrence River	$834	$876
District One: Undesignated	Lake Ontario	568	586
District Two: Designated	Navigable waters from Southeast Shoal to Port Huron, MI	536	601
District Two: Undesignated	Lake Erie	610	704
District Three: Designated	St. Mary's River	662	834
District Three: Undesignated	Lakes Huron, Michigan, and Superior	342	410

This rule affects 56 U.S. Great Lakes pilots, 6 apprentice pilots, 3 pilot associations, and the owners and operators of an average of 285 oceangoing vessels that transit the Great Lakes annually. This rule is not economically significant under Executive Order 12866 and will not affect the Coast Guard's budget or increase Federal spending. The estimated overall annual regulatory economic impact of this rate change is a net increase of $5,172,200 in estimated payments made by shippers during the 2023 shipping season. This final rule establishes the 2023 yearly compensation for pilots on the Great Lakes at $424,398 per pilot (a $25,132 increase, or 6.29 percent, over their 2022 compensation). Because the Coast Guard must review, and, if necessary, adjust rates each year, the Coast Guard analyzes these as single-year costs and does not annualize them over 10 years. Section VIII of this preamble provides the regulatory impact analyses of this rule.

III. Basis and Purpose

The legal basis of this rulemaking is 46 U.S.C. Chapter 93,[2] which requires foreign merchant vessels and United States vessels operating ''on register'' (meaning United States vessels engaged in foreign trade) to use United States or Canadian pilots while transiting the United States waters of the St. Lawrence Seaway and the Great Lakes system.[3] For U.S. Great Lakes pilots, the statute requires the Secretary to ''prescribe by regulation rates and charges for pilotage services, giving consideration to the public interest and the costs of providing the services.'' [4] The statute requires that rates be established or reviewed and adjusted each year, no later than March 1.[5] The statute also requires that base rates be established by a full ratemaking at least once every 5 years, and, in years when base rates are not established, they must be reviewed and, if necessary, adjusted.[6] The Secretary's duties and authority under 46 U.S.C. Chapter 93 have generally been delegated to the Coast Guard.[7]

The purpose of this rule is to issue new pilotage rates for the 2023 shipping season. The Coast Guard believes that the new rates will continue to promote our goal, as outlined in 46 CFR 404.1, of promoting safe, efficient, and reliable pilotage service in the Great Lakes by generating for each pilotage association sufficient revenue to reimburse its necessary and reasonable operating expenses, fairly compensate trained and rested pilots, and provide appropriate funds to use for improvements.

IV. Discussion of Comments and Changes

In response to the notice of proposed rulemaking (NPRM) for this ratemaking (87 FR 52870, August 30, 2022) the Coast Guard received six comment submissions. These submissions include one comment filed jointly by the Lakes Pilots Association, the Saint Lawrence Seaway Pilotage Association, and the Western Great Lakes Pilots Association (the Great Lakes Pilots' comment); one filed jointly by the Shipping Federation of Canada, the American Great Lakes Ports Association, and the United States Great Lakes Shipping Association (collectively, the Coalition); one from the president of the St. Lawrence Seaway Pilots' Association (SLSPA); one from the president of the Lakes Pilots Association (LPA); one from the president of the Western Great Lakes Pilot Association (WGLPA); and one from an individual who did not provide an affiliation to any stakeholder. As each of these commenters touched on numerous issues, for each response below, the Coast Guard notes which commenter raised the specific points addressed. In situations where multiple commenters raised similar issues, the Coast Guard provides one response to those issues.

A. Great Lakes Pilotage Ratemaking Methodology

The Coalition recommended that the Coast Guard define what the term ''necessary and reasonable'' means. In 46 CFR 404.2(b), the Coast Guard lists criteria to recognize an expense item as necessary and reasonable. In general, necessary and reasonable operating expenses are those with a clear business reason to operate the pilotage pool or provide pilotage, and for which the cost is consistent with market conditions and not excessive, to ensure safe and reliable pilotage service to foreign-flag vessels.

The Coalition recommended the addition of a line-by-line review of the previous year's operating expenses in order to better shape future projections of operating expenses. The Coast Guard disagrees with this recommendation because the recommendation is already in place and conducted by both the Coast Guard and an independent third party. The Coast Guard's current practice is to receive yearly financial statements in April of each year from each district and compare them to the previous year's expenses. For transparency, we place the financial statements on the Coast Guard's Office of Waterways and Ocean Policy—Great Lakes Pilotage Division website so the public can also look at these documents.[8] The Coast Guard also hires an independent accounting firm to conduct, in conjunction with the Coast Guard, extensive reviews of the pilot association's financial information, including but not limited to variance analysis of previous operating expenses, which enables the Coast Guard to determine the necessity and reasonableness of association expenses. This practice was reviewed by the Government Accountability Office in 2019 and was deemed a best practice

[2] 46 U.S.C. 9301–9308.

[3] 46 U.S.C. 9302(a)(1).

[4] 46 U.S.C. 9303(f).

[5] *Id.*

[6] *Id.*

[7] DHS Delegation No. 00170.1 (II)(92)(f), Revision No. 01.3. The Secretary retains the authority under Section 9307 to establish, and appoint members to, a Great Lakes Pilotage Advisory Committee.

[8] Financial statements can be found 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/Office-of-Waterways-and-Ocean-Policy-Great-Lakes-Pilotage-Div/.*

when developing rates, as it keeps the Coast Guard impartial.

The Coalition recommended a reevaluation of the framework for pilotage operation in ''designated'' and ''undesignated'' waters. The Coast Guard does not have the authority to accommodate this recommendation. The Great Lakes Pilotage Act (''the Act'') created the designated and undesignated categories for the System. In undesignated waters, the United States- or Canadian-registered pilot must be onboard and available to the master. In designated waters, the pilot must be on the bridge and direct the navigation of the vessel. Through the Act, Congress bestowed the authority to classify these waters onto the President of the United States. Such designation can be accomplished only by Executive order or Presidential proclamation, which the Coast Guard has no authority to issue, and would only oppose if the change compromised maritime safety.

The Coalition recommended that the Coast Guard make the compensation level of individual pilots available to the public. The Coast Guard disagrees with this recommendation. Compensation of individual pilots is not included in the expense base or methodology, and, therefore, we decline to add a regulatory requirement for pilot associations to publicly report the compensation of individual pilots. The Coast Guard does not use the actual earnings or average earnings; instead, target pilot compensation is used (described in Step 4 of the existing methodology), which the Coast Guard has determined to be reasonable and necessary. Because actual salary values are not used in the ratemaking, the Coast Guard believes that a requirement to report pilot compensation is not in the public interest or necessary to provide for the costs of services. Progress toward pilot retention can be reviewed through pilot turnover and the association's ability to promptly fill pilot vacancies for fully registered pilots and apprentice pilots.

The Coalition recommended that the Coast Guard include an additional layer of review in the methodology by taking an annual look back at the actual revenues and comparing it with the previous year's projections for accuracy. The Coast Guard acknowledges the utility of such an exercise and already has a process during which we take the financial statements that are submitted annually by each District under 46 CFR 401.320(d)(4) and compare the actual revenue reported with the projected revenue from the previous year's rate.

Any substantial difference between actual and projected revenue is a result of incorrectly predicting vessel traffic or average vessel weight. The Coast Guard uses a ten-year moving average to predict traffic, which has been demonstrated to be sufficiently accurate over time while also providing a measure of rate stability that pilots and shippers alike can rely on.[9] No commenter has provided a more accurate methodology to predict traffic.

While we acknowledge the value of looking back on the accuracy of recent projections, such analysis is not as simple as comparing one number to another. First, our estimates for projected needed revenue are based on 3-year-old expense data, which means the analysis may not be as accurate as it would be if it were based on real-time expense data. This delay is out of the Coast Guard's control, as we must wait for the numbers to be audited before we receive them. Second, there is a necessary offset in comparing the realized revenues because they have to match the earlier year, when the base of expenses occurred. Lastly, there is prevailing inflation that occurs between when expenses are realized and then put into the ratemaking, and when we receive the realized revenue figure to compare back. These factors can cause minor differences between the projected and actual revenue figures and would need to be included in a discussion on the accuracy of past projections.

The Coast Guard is amenable to including a discussion of the already existing ''look back'' exercise into its ratemaking process and would welcome feedback on where and how to do this. The Coast Guard encourages the Coalition to bring this matter up at the next advisory committee meeting, so we can see exactly how they would like this added to the methodology.

B. The Staffing Model

The WGLPA made the recommendation that the Coast Guard amend the final rule to reflect four apprentice pilots. The Coast Guard disagrees with this recommendation. District Three currently has 20 full member pilots along with 5 apprentice pilots. According to our records, two apprentice pilots will become fully registered pilots at the beginning of the year. When these 2 apprentice pilots become full members, that will bring the number to 22 full member pilots. The WGLPA does not have any additional trainees or apprentice pilots in its training program and did not provide the names of any expected hires for the Coast Guard to consider adjusting this number. If the District would like to add an additional apprentice pilot to their roster for 2023, the matter can be discussed with the Director prior to the opening of the 2023 shipping season.

The WGLPA commented that it has six pilots assigned to the designated area and requested that the Coast Guard adjust the rate to reflect six pilots, not the five pilots currently implemented in the rate. The Coast Guard disagrees. The Coast Guard is willing to evaluate potential adjustments based on specific delays or safety concerns in the designated area of District Three, but the commenter did not provide any supporting documentation for last year or this year demonstrating that the current split between designated and undesignated pilots in the staffing model is causing delays or safety concerns in the system. The Coast Guard did not see a significant enough change in bridge hours to justify the addition of a sixth pilot.

The LPA made the comment, that they will have 16 registered pilots and 1 trainee pilot in District Two for the 2023 shipping season, as opposed to the 2 apprentice pilots listed in the NPRM. The Coast Guard agrees with this comment. Based on reviews from the apprentice pilot training evaluations for 2022, one of the two apprentice pilots finished the apprentice program more rapidly than anticipated. Because of this, the Coast Guard has determined that District Two will have 16 registered pilots and only 1 apprentice pilot at the beginning of the 2023 shipping season and will adjust the numbers in the rate accordingly.

The LPA, WGLPA, and SLSPA all recommended that the staffing model increase the number of pilots in their districts. The Coast Guard agrees with this comment and is amenable to addressing the current staffing model further. A decision is necessary regarding which changes will be implemented to reflect the correct number of pilots needed in the staffing model in order to conduct safe and continuous pilotage service. The Coast Guard will discuss this issue with stakeholders throughout the year and at

[9] *See Am. Great Lake Ports Assn.* v. *United States Coast Guard,* 443 F. Supp. 3d 44, 64 (D.D.C. 2020), holding that ''the Coast Guard made an intentional choice to use a wider window for calculating the traffic average in order to minimize volatility. Although the agency acknowledged that using a ten-year moving average meant that in 2018, Plaintiffs would have to pay more than they would have had the Coast Guard used a three-year moving average, the agency determined that the ten-year average was nonetheless preferable in order to smooth out historically observed spikes in traffic data. That was a rational choice, even if the traffic data included data from the period of the last recession.'' The Court also cited ''data [that] clearly support[ed] the Coast Guard's decision to use a ten-year moving average in order to prevent 'dramatic swings' in rates from year to year.'' *Am. Great Lake Ports Assn.,* 443 F. Supp. 3d at 65.

the next GLPAC meeting so that this issue is resolved for the next ratemaking.

The SLSPA commented that they will need three additional trainee pilots for the 2023 season to safely and reliably meet the future traffic demand in District One. The Coast Guard agrees to the addition of three trainee pilots. This addition does not have any impact on this ratemaking because the districts are reimbursed for trainee pilot expenses, via the rate, 3 calendar years after the expenses are incurred in Step 1 of the methodology. The Coast Guard understands that changes to the staffing model will need to be incorporated in the 2024 ratemaking in order to accommodate these potential pilots in future rates. The Coast Guard will discuss this issue with stakeholders throughout the year and at the next GLPAC meeting so that this issue is resolved for the next ratemaking.

C. 2023 Great Lakes Pilotage Rate

The Coalition commented on the rate, stating that rates are too high, landing Great Lakes pilots within the wealthiest 2 percent of Americans. The Coast Guard does not find this comment to be relevant to the proposed rates established by this rulemaking. The commenter provided no supporting documentation. The Coast Guard suggests that the commenter provide supporting documentation at a future GLPAC meeting or submit supporting documentation for further consideration.

The WGLPA requested an explanation for the ''Director's Adjustments—Applicant Surcharge Collected'' number in table 27 of the NPRM. The Coast Guard placed a Director's adjustment of $122,539 in the NPRM and final rule. This number, $105,668.60, was derived from surcharges collected from vessel trips between April 6, 2020, and December 9, 2020, and $16,870.58, summed from vessel trips before April 6, 2020. The Coast Guard did not authorize these surcharges.

D. Cruise Line Traffic

The commenters were almost unanimously concerned about an explosion of cruise vessel traffic on the Great Lakes and the resulting impact on pilot demand. The Coast Guard recognizes that a blossoming cruise ship sector is of concern to all Great Lakes stakeholders and considered the concerns of each commenter in this arena. Each commenter urged the Coast Guard to stay abreast of this issue and to address it in the staffing model sooner rather than later.

The Coast Guard understands the importance of this issue and has already begun studying the growth of the cruise sector traffic. At the September 13, 2022, GLPAC meeting, the Coast Guard addressed the issue of cruise ship traffic with Great Lakes stakeholders. Among the issues discussed was a recognition that the staffing model, which is based on pilot assignment cycle hours, may not be as helpful when vessels such as cruise ships have a different calculus of their movement.[10] For example, cruise ships holding hundreds of passengers will be less tolerant of delays than a typical shipping vessel and will also have scheduled delays while passengers visit port city attractions. Another issue is that because of the novelty of the sector, lack of historic data, and COVID–19 preventing any cruise ship traffic in 2020 and 2021, our 10-year moving average does not capture very much cruise ship traffic, which could result in a systemic error.

The experts at GLPAC, having recognized these deficiencies, ultimately recommended that the Director use his discretion to accommodate cruise line traffic demand, irrespective of the current staffing model ceiling, if no changes to the model or ratemaking methodology itself are viable this year.

The Coast Guard is committed to addressing this new demand but will not make changes to the staffing model without the ''robust analysis'' called for by GLPAC.[11] The Coast Guard will collaborate with GLPAC to gather more definitive pilot hour data for the cruise ship sector, including ship assignment and bridge hour numbers for cruise ships in each District. We acknowledge that this is a sector that could be a permanent factor in the Great Lakes, and we are committed to finding a reasonable solution to increased pilot demand without disregarding this year's statutory deadline. In addition to the Coast Guard's future efforts, we encourage stakeholders to work together, as there may be solutions to this issue outside of this ratemaking process.

In the meantime, the Director will use his discretion, as recommended by GLPAC, to take measures to accommodate demand in the 2023 season. Such measures may include hiring contract pilots or allowing retired pilots to return to work on a temporary basis. The Coast Guard encourages stakeholders to gather relevant data before the next meeting of the GLPAC, which will be announced in the **Federal Register**.

E. Fair Business Practices

One commenter opposed the rate increase on the basis that it forces hiring a Coast Guard pilot, is creating a monopoly, and is bad for business. The Coast Guard disagrees. The Coast Guard does not and has never employed Coast Guard pilots for any trade, as the commenter suggests. The Coast Guard has no authority in determining market structures. In 46 U.S.C. 9302, Congress requires vessels to employ United States or Canadian registered pilots. The Coast Guard is only responsible for providing clear and timely regulations, policy, and direction to the affected population.

F. Temporary Pilot Services

The LPA requested recuperation of operating expenses related to wages paid to a retired pilot, which they needed on a temporary registration to meet demand surges. The Coast Guard agrees with the recommendation and finds this is a necessary and reasonable cost related to the costs of providing pilotage. In addition, at the most recent GLPAC meeting, on September 13, 2022, the appointed members unanimously agreed that this expense should be an allowable operating expense. The Coast Guard posted a summary of the GLPAC meeting minutes, titled, ''GLPAC Sept 13, 2022, Meeting Memorandum for the Record USCG'' to the rulemaking docket, USCG–2022–0370, on September 20, 2022. A subsequent ''GLPAC Sept 13, 2022, Meeting Memorandum for the Record v2,'' posted on October 3, 2022, made unrelated corrections to Coast Guard statements and replaced the original September 20, 2022, version. The ''Memorandum for the Record'' summarizes the GLPAC discussion and approval of the temporary pilot wages as an operating expense. The Coast Guard plans to issue guidelines regarding the reimbursement of temporary registered pilot costs.

The GLPAC consists of the three pilot association presidents and four additional members representing the ports, vessel operators, shippers, and labor organizations, who all concurred with adding this expense to meet the shipping demands for timely service. The expenses associated with the hiring of a temporary pilot in the operating expenses are included in this

[10] See discussion on pages 4–5 of the Memorandum For the Record of the Sept. 13, 2022 GLPAC Meeting. The transcript is available in the docket at *https://www.regulations.gov/document/USCG-2022-0370-0018*.

[11] See discussion on pages 43–54 of the GLP Advisory Committee Sept. 1, 2021 Meeting Minutes, available online at *https://www.regulations.gov/document/USCG-2022-0370-0009*.

ratemaking, in Step 1 of the methodology.

G. Bridge Hours

The WGLPA made a comment that the number of hours for District Three ''Time on Task'' should be amended to reflect 3,520 hours in their designated area in 2020, 23,678 hours in their undesignated area in 2020, 2,516 hours in their designated area in 2021, and 18,286 hours in their undesignated area for 2021. The Coast Guard agrees with this comment. Previous figures, extracted from the data the Coast Guard received, was inaccurate. The Coast Guard has detailed this difference in trips in the ''SeaPro Sept 27 2022 Error Conversation Memorandum for the Record'', which can be found at *www.regulations.gov/document/USCG-2022-0370-0019.* After reviewing the updated numbers, the Coast Guard agrees to incorporate the commenter's submitted numbers into the rulemaking.

V. Discussion of Methodological and Other Changes

The Coast Guard is using the existing ratemaking methodology for establishing the base rates in this full ratemaking. The Coast Guard is not issuing any methodological or other policy changes to the ratemaking within this final rule.

According to 46 U.S.C. 9303(f), and restated in 46 CFR 404.100(a), the Coast Guard must establish base rates by a full ratemaking at least once every 5 years. The Coast Guard determined that the current base rate and methodology still adequately adheres to the Coast Guard's goals of safety through rate and compensation stability, while promoting recruitment and retention of qualified U.S. registered pilots. The Coast Guard has made several changes to the ratemaking over the last several years in consideration of the public interest and the costs of providing services. The recent changes and their impacts are summarized as follows.

In the 2017 ratemaking (82 FR 41466, August 31, 2017), the Coast Guard modified the methodology to account for the additional revenue produced by the application of weighting factors (discussed in detail in Steps 7 through 9 for each district, in section VII of this preamble).

In the 2018 ratemaking (83 FR 26162, June 5, 2018), the Coast Guard adopted a new approach in the methodology for the compensation benchmark, based upon United States mariners rather than Canadian working pilots.

In the 2020 ratemaking (85 FR 20088, April 9, 2020), the Coast Guard revised the methodology to accurately capture all costs and revenues associated with Great Lakes pilotage requirements and produce an hourly rate that adequately and accurately compensates pilots and covers expenses.

The 2021 ratemaking (86 FR 14184, March 12, 2021) changed the inflation calculation in Step 4, § 404.104(b) for interim ratemakings, so that the previous year's target compensation value is first adjusted by actual inflation value using the Employment Cost Index (ECI). That change ensures that the target pilot compensation reimbursed to the association remains current with inflation and competitive with industry pay increases.

The 2022 ratemaking (87 FR 18488, March 30, 2022) implemented an apprentice pilot wage benchmark in Steps 3 and 4 to provide predictability and stability to pilot associations training apprentice pilots. The 2022 final rule also codified rounding up the staffing model's final number to ensure the ratemaking does not undercount the pilot need presented by the staffing model and association circumstances.

Table 2 summarizes the changes between the 2023 Ratemaking NPRM and this final rule.

TABLE 2—CHANGES BETWEEN PROPOSED RULE AND FINAL RULE

Change	Reasoning
Revise number of pilots in District Two from 15 to 16 and adjust apprentice pilots from 2 to 1.	District Two reported that one of their two apprentice pilots listed in the NPRM would become a fully registered pilot for the 2023 season.
Correct traffic data for District Three to reflect discrepancy in the assignment of bridge hours to designated and undesignated areas.	District Three commented that the hours listed in Step 7 were incorrect and provided a corrected sheet of traffic hours, which correctly attribute hours between the designated and undesignated areas. See further details below.
Update inflation figures • Updates 2021 Employment Cost Index (ECI) inflation from 5.1%, listed in the NPRM, to 5.7%. • Updates 2022 Personal Consumption Expenditures (PCE) inflation from 2.7%, listed in the NPRM, to 4.3%. • Updates 2023 PCE inflation from 2.3%, listed in the NPRM, to 2.7%.	More recent figures were published since the Coast Guard conducted the analysis for the NPRM.

Using the corrected traffic data for 2020, the Coast Guard removed 34 trips from District Three that occurred before March 24, 2020 (the opening of the 2020 season). The Coast Guard identified eight incorrectly specified trips with errors or missing data in the ''Area'' and/or ''District'' columns.[12] With these corrections, the total bridge hours decreased by 500 hours for the undesignated areas and decreased by 162 hours for the designated areas. Similarly, for 2021, the Coast Guard removed 19 trips that occurred before March 21, 2021 (the opening of the 2021 season) and identified 12 incorrectly specified trips with errors or missing data in the ''Area'' and/or ''District'' columns. The 2021 total bridge hours increased by 67 hours for the undesignated areas and decreased by 68 hours for the designated area. Table 3 shows the difference between the published figures for bridge hours in Step 7 and the updated figures used for this final rule.

[12] The ''Area'' column is a written description either as Lake (undesignated) or River (designated), while ''District'' is the numerical Area, six, seven, or eight. An example of an incorrect specification was a trip described as Lake in the ''Area'' column, and area seven in the ''District'' column, meaning it was listed as simultaneously designated and undesignated.

TABLE 3—CHANGES TO STEP 7 BRIDGE HOURS FROM PROPOSED RULE TO FINAL RULE

	Previously published		Updated		Difference	
	Undesignated	Designated	Undesignated	Designated	Undesignated	Designated
2020	24,178	3,682	23,678	3,520	−500	−162
Average	21,106	2,930	21,056	2,914	−50	−16
2021	18,219	2,584	18,286	2,516	67	−68
Average	21,327	3,021	21,284	2,998	−43	−23

Further, the Coast Guard updated Step 8, ''Average Weighting Factor by Area'' to reflect the changes in the number of transits by vessel class in each area. This includes corrections to the 8 incorrectly specified trips in 2020, the 12 incorrectly specified trips in 2021, and the general corrections from the change in bridge hours in the updated data provided by District Three. Table 4 details the changes by area and vessel class for both 2020 and 2021 which will be used in this final rule. The Coast Guard will not otherwise publish a correction to the previously published 2020 data used in the 2022 ratemaking.

TABLE 4—CHANGES TO STEP 8 FROM PROPOSED RULE TO FINAL RULE

Area/vessel class	Number of transits		
	Previously published	Updated	Difference
Area 6—Undesignated			
Class 1 (2021)	7	8	1
Class 2 (2020)	395	332	−63
Class 2 (2021)	261	273	12
Class 3 (2021)	7	5	−2
Class 4 (2020)	413	339	−74
Class 4 (2021)	312	356	44
Area 7—Designated			
Class 1 (2020)	16	15	−1
Class 1 (2021)	12	15	3
Class 2 (2020)	250	218	−32
Class 2 (2021)	128	131	3
Class 3 (2020)	4	1	−3
Class 4 (2020)	385	336	−49
Class 4 (2021)	299	258	−41
Area 8—Undesignated			
Class 1 (2021)	4	5	1
Class 2 (2020)	239	180	−59
Class 2 (2021)	96	124	28
Class 3 (2020)	2	1	−1
Class 4 (2020)	456	265	−191
Class 4 (2021)	182	319	137

These refinements to the methodology continue to promote safe, efficient, and reliable pilotage service on the Great Lakes, and allow each pilotage association to generate sufficient revenue to cover its necessary and reasonable operating expenses, fairly compensate trained and rested pilots, and realize an appropriate revenue to use for improvements.

VI. Individual Target Pilot Compensation Benchmark

The Coast Guard is issuing the target pilot compensation benchmark in this ratemaking at the target compensation for the ratemaking year 2022, adjusted for inflation. In a full ratemaking year, per 46 CFR 404.104(a), the Director determines a base individual target pilot compensation using a compensation benchmark in consideration of relevant currently available non-proprietary information. The Director may make necessary and reasonable adjustments to the benchmark if circumstances require. The compensation benchmark will be used in Step 4 of the existing methodology. In the following interim year ratemakings, the base target pilot compensation will be adjusted annually in accordance with § 404.104(b). How the Coast Guard arrived at this compensation benchmark is explained below.

Prior to 2016, the Coast Guard based the compensation benchmark on data provided by the American Maritime Officers Union (AMOU) regarding its contract for first mates on the Great Lakes. However, in 2016, the AMOU elected to no longer provide this data to the Coast Guard. In the 2016 ratemaking (81 FR 11907, March 7, 2016), the Coast Guard used the average compensation for a Canadian pilot plus a 10-percent adjustment. The shipping industry challenged the compensation benchmark, and the court found that the Coast Guard did not adequately support the 10-percent addition to the Canadian GLPA compensation benchmark. *American Great Lakes Ports Association* v. *Zukunft,* 296 F.Supp. 3d 27, 48 (D.D.C. 2017), *aff'd sub nom. American Great Lakes Ports Association* v. *Schultz,* 962 F.3d 510 (D.C. Cir. 2020). The Coast Guard then based the 2018 full ratemaking compensation benchmark on data provided by the AMOU, regarding its contract for first mates on the Great Lakes in the 2011 to 2015 period (83 FR 26162, June 5, 2018). The 2018 final rule adjusted the AMOU 2015 data for inflation using Federal Open Market Committee median economic projections for PCE inflation.

In the 2020 interim year ratemaking final rule, the Coast Guard established its most recent pilot compensation benchmark. Given the lack of access to AMOU data, the Coast Guard did not rely on the AMOU aggregated wage and benefit information as the basis for the compensation benchmark. Instead, the Coast Guard adopted the 2019 target pilot compensation (with inflation) as our compensation benchmark going forward. The Coast Guard stated in the 2020 final rule that no other United States or Canadian pilot compensation data was appropriate to use as a benchmark at that time. *See* 85 FR 20088, 20091 (April 9, 2020). The Director determined that the ratemaking provided adequate compensation for pilots. In the 2020 ratemaking, the Coast Guard announced that the 2020 benchmark will be used for future rates. *See* 85 FR 20091 (April 9, 2020).

Based on our experience over the past three ratemakings (2020–2022), the Director continues to believe that the level of target pilot compensation for those years provided an appropriate level of compensation for U.S.-registered pilots. According to § 404.101(a), the Director may make necessary and reasonable adjustments to the benchmark based on current information. However, current circumstances do not indicate that an adjustment, other than for inflation, is necessary. The Director bases this decision on the fact that there is no indication that registered pilots are resigning due to their compensation, or that this compensation benchmark is causing shortfalls in achieving reliable pilotage. The Coast Guard also does not believe that the pilot compensation benchmark is too high relative to the expertise required to perform the job. The compensation will continue to be adjusted annually, in accordance with published inflation rates, which will ensure the compensation remains competitive and current for upcoming years.

Therefore, the Coast Guard is not seeking alternative benchmarks for target compensation at this time and, instead, will simply adjust the amount of target pilot compensation for inflation as our target compensation benchmark for 2023, as shown in Step 4. This target compensation benchmark approach has advanced and will continue to advance the Coast Guard's goals of safety through rate and compensation stability while also promoting recruitment and retention of qualified U.S. pilots.

The compensation benchmark for 2023 is $399,266 per registered pilot and $143,736 per apprentice pilot, using the 2022 compensation as a benchmark. The Coast Guard then follows the procedure outlined in paragraph (b) of § 404.104, which adjusts the existing compensation benchmark for inflation using a two-step process. First, the Coast Guard adjusts the 2022 target compensation benchmark of $399,266 by 3.5 percent, for an adjusted value of $413,240. This first adjustment accounts for the difference in actual first quarter 2022 ECI inflation, which is 5.7 percent, and the 2022 PCE estimate of 2.2 percent.[13] [14] The second step accounts for projected inflation from 2022 to 2023, which is 2.7 percent.[15] Based on the projected 2023 inflation estimate, the target compensation benchmark for 2023 is $424,398 per pilot. The apprentice pilot wage benchmark is 36 percent of the target pilot compensation, or $152,783 ($424,398 × 0.36).

VII. Discussion of Rate Adjustments

In this final rule, based on the policy changes described in the previous section, the Coast Guard is issuing new pilotage rates for 2023. The Coast Guard is conducting the 2023 ratemaking as a full ratemaking, as was done in 2018 (83 FR 26162). Thus, the Coast Guard adjusted the compensation benchmark following the full ratemaking year procedures under § 404.100(a) rather than following the procedure for an interim ratemaking year under § 404.100(b).

This section discusses the rate changes using the ratemaking steps provided in 46 CFR part 404. The Coast Guard details all 10 steps of the ratemaking procedure for each of the 3 districts to show how the Coast Guard arrives at the new rates.

District One

A. Step 1: Recognize Previous Operating Expenses

Step 1 in the ratemaking methodology requires that the Coast Guard review and recognize the operating expenses for the last full year for which figures are available (§ 404.101). To do so, the Coast Guard begins by reviewing the independent accountant's financial reports for each association's 2020 expenses and revenues.[16] For accounting purposes, the financial reports divide expenses into designated and undesignated areas. For costs accrued by the pilot associations generally, such as employee benefits, for example, the cost is divided between the designated and undesignated areas on a *pro rata* basis.

In the 2020 expenses used as the basis for this rulemaking, districts used the term ''applicant'' to describe applicant

[13] Employment Cost Index, Total Compensation for Private Industry workers in Transportation and Material Moving, Annual Average, Series ID: CIU2010000520000A. Accessed September 29, 2022. *https://www.bls.gov/news.release/eci.t05.htm.*

[14] Table 1 Summary of Economic Projections, PCE Inflation June Projection. Accessed September 2022 *https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20220921.pdf.*

[15] Table 1 Summary of Economic Projections, PCE Inflation December Projection. Accessed March 2022 *https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20220316.pdf.*

[16] These reports are available in the docket for this rulemaking.

trainees and persons who will be called apprentices (applicant pilots), under the definition of ''apprentice pilot'', which was introduced in the 2022 final rule. Therefore, when describing past expenses, the term ''applicant'' is used to match what was reported from 2020, which includes both applicant and apprentice pilots. The term ''apprentice'' is used to distinguish apprentice pilot wages and describe the impacts of the ratemaking going forward.

The Coast Guard will continue to include apprentice salaries as an allowable expense in the 2023 ratemaking, as it is based on 2020 operating expenses, when salaries were still an allowable expense. The apprentice salaries paid in the years 2020 and 2021 have not been reimbursed in the ratemaking as of publication of this rule. Applicant salaries (including applicant trainees and apprentice pilots) will continue to be an allowable operating expense through the 2024 ratemaking, which uses operating expenses from 2021, when the wages for apprentice pilots were still authorized as operating expenses.

Beginning with the 2025 ratemaking, apprentice pilot salaries will no longer be included as a 2022 operating expense, because apprentice pilot wages will have already been factored into the ratemaking Steps 3 and 4 in calculation of the 2022 rates. Beginning in 2025, the applicant salaries' operating expenses for 2022 will consist of only applicant trainees (those who are not yet apprentice pilots). The recognized operating expenses for District One are shown in table 5.

TABLE 5—2020 RECOGNIZED EXPENSES FOR DISTRICT ONE

Reported operating expenses for 2020	District One		
	Designated	Undesignated	Total
	St. Lawrence River	Lake Ontario	
Applicant Pilot Compensation:			
Salaries	$257,250	$171,500	$428,750
Employee Benefits	13,633	9,089	22,722
Applicant Subsistence/Travel	14,901	9,934	24,835
Applicant License Insurance	1,771	1,181	2,952
Applicant Payroll Tax	20,823	13,882	34,705
Total Applicant Pilot Compensation	308,378	205,586	513,964
Other Pilot Cost:			
Subsistence/Travel- Pilot	575,475	383,650	959,125
Hotel/Lodging Cost	32,802	21,868	54,671
License Insurance-Pilots	45,859	30,573	76,432
Payroll Taxes-Pilots	188,318	125,546	313,864
Other	26,433	17,621	44,054
Total other pilotage costs	868,887	579,258	1,448,145
Pilot Boat and Dispatch Costs:			
Pilot Boat Expense (Operating)	325,904	217,269	543,173
Pilot Boat Cost (D1–20–01)	104,658	69,772	174,430
Dispatch Expense	139,916	93,277	233,193
Payroll Taxes	22,930	15,287	38,217
Total Pilot and Dispatch Costs	593,408	395,605	989,013
Administrative Expenses:			
Legal-General Counsel	3,124	2,083	5,207
Legal-Shared Counsel (K&L Gates)	62,906	41,937	104,843
Legal-USCG Litigation	8,793	5,862	14,655
Insurance	35,040	23,360	58,400
Employee Benefits	5,541	3,694	9,235
Payroll Taxes	6,511	4,341	10,852
Other Taxes	69,000	46,000	115,000
Real Estate Taxes	23,298	15,532	38,830
Travel	21,516	14,344	35,860
Depreciation	152,071	101,381	253,452
Certified Public Accountant (CPA) Deduction (D1–19–01)	(44,623)	(29,748)	(74,371)
Interest	36,924	24,616	61,540
CPA Deduction (D1–19–01)	(18,710)	(12,473)	(31,183)
American Pilots' Association (APA) Dues	27,172	18,115	45,287
Dues and Subscriptions	4,080	2,720	6,800
Utilities	15,618	10,412	26,030
Salaries	69,848	46,565	116,413
Accounting/Professional Fees	8,220	5,480	13,700
Other	55,213	36,809	92,022
Applicant Administrative Expense			
Pilot Training	26,787	17,858	44,645
Supplies	481	320	801
Total Administrative Expenses	568,810	379,208	948,018
Total Expenses (OpEx + Applicant + Pilot Boats + Admin + Capital)	2,339,483	1,559,657	3,899,140

TABLE 5—2020 RECOGNIZED EXPENSES FOR DISTRICT ONE—Continued

Reported operating expenses for 2020	District One		
	Designated	Undesignated	Total
	St. Lawrence River	Lake Ontario	
Director's Adjustments—Applicant Surcharge Collected	(10,814)	(7,209)	(18,024)
Director's Adjustments—Applicant Salaries	(19,379)	(12,919)	(32,298)
Total Director's Adjustments	(30,193)	(20,129)	(50,322)
Total Operating Expenses (OpEx + Adjustments)	2,309,290	1,539,528	3,848,818

B. Step 2: Project Operating Expenses, Adjusting for Inflation or Deflation

In accordance with the text in § 404.102, having identified the recognized 2020 operating expenses in Step 1, the next step is to estimate the current year's operating expenses by adjusting those expenses for inflation over the 3-year period. The Coast Guard calculates inflation using the BLS data from the CPI for the Midwest Region of the United States for the 2021 inflation rate.[17] Because the BLS does not provide forecasted inflation data, the Coast Guard uses economic projections from the Federal Reserve for the 2022 and 2023 inflation modification.[18] Based on that information, the calculations for Step 2 are as presented in table 6.

TABLE 6—ADJUSTED OPERATING EXPENSES FOR DISTRICT ONE

	District One		
	Designated	Undesignated	Total
Total Operating Expenses (Step 1)	$2,309,290	$1,539,528	$3,848,818
2021 Inflation Modification (@5.1%)	117,774	78,516	196,290
2022 Inflation Modification (@4.3%)	104,364	69,576	173,940
2023 Inflation Modification (@2.7%)	68,349	45,566	113,915
Adjusted 2023 Operating Expenses	2,599,777	1,733,186	4,332,963

C. Step 3: Estimate Number of Registered Pilots and Apprentice Pilots

In accordance with the text in § 404.103, the Coast Guard estimates the number of fully registered pilots in each district. The Coast Guard determines the number of fully registered pilots based on data provided by the SLSPA. Using these numbers, the Coast Guard estimates that there will be 18 registered pilots in 2023 in District One. The Coast Guard determines the number of apprentice pilots based on input from the district on anticipated retirements and staffing needs. Using these numbers, the Coast Guard estimates that there will be two apprentice pilots in 2023 in District One. Based on the seasonal staffing model discussed in the 2017 ratemaking (see 82 FR 41466 (August 31, 2017)), a certain number of pilots are assigned to designated waters and a certain number to undesignated waters, as shown in table 7. These numbers are used to determine the amount of revenue needed in their respective areas.

TABLE 7—AUTHORIZED PILOTS FOR DISTRICT ONE

Item	District One
Maximum Number of Pilots (per § 401.220(a)) *	18
2023 Authorized Pilots (total)	18
Pilots Assigned to Designated Areas	10
Pilots Assigned to Undesignated Areas	8
2023 Apprentice Pilots	2

* For a detailed calculation, refer to the Great Lakes Pilotage Rates—2017 Annual Review final rule, which contains the staffing model. See 82 FR 41466, table 6 at 41480 (August 31, 2017).

[17] The 2021 inflation rate is available at *https://data.bls.gov/pdq/SurveyOutputServlet?data_tool=dropmap&series_id=CUUR0200SA0, CUUS0200SA0*. Specifically, the CPI is defined as ''All Urban Consumers (CPI–U), All Items, 1982–4=100.'' Series CUUS0200SAO. (Downloaded September 2022.)

[18] The 2022 and 2023 inflation rates are available at *https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20220921.pdf*. We used the Core PCE Inflation June Projection found in table 2. (Downloaded September 2022.)

D. Step 4: Determine Target Pilot Compensation Benchmark and Apprentice Pilot Wage Benchmark

In this step, the Coast Guard determines the total pilot compensation for each area. Because a full ratemaking is being issued this year, the Coast Guard follows the procedure outlined in paragraph (a) of § 404.104, which requires developing a benchmark after considering the most relevant currently available non-proprietary information. In accordance with the discussion in section VI. ''Individual Target Pilot Compensation Benchmark'' of this preamble, the compensation benchmark for 2023 uses the 2022 compensation of $399,266 per registered pilot as a base, then adjusts for inflation following the procedure outlined in paragraph (a) of § 404.104. The target pilot compensation for 2023 is $424,398 per pilot. The apprentice pilot wage benchmark is 36 percent of the target pilot compensation, or $152,783 ($424,398 × 0.36).

Next, the Coast Guard certifies that the number of pilots estimated for 2023 is less than or equal to the number permitted under the staffing model in § 401.220(a). The staffing model suggests that the number of pilots needed is 18 pilots for District One, which is less than or equal to 18, the number of registered pilots provided by the pilot association. In accordance with § 404.104(c), the Coast Guard uses the revised target individual compensation level to derive the total pilot compensation by multiplying the individual target compensation by the estimated number of registered pilots for District One, as shown in table 8. The Coast Guard estimates that the number of apprentice pilots with limited registration needed will be two for District One in the 2023 season. The total target wages for apprentices are allocated at 60 percent for the designated area and 40 percent for the undesignated area, in accordance with the allocation for operating expenses.

TABLE 8—TARGET COMPENSATION FOR DISTRICT ONE

	District One		
	Designated	Undesignated	Total
Target Pilot Compensation	$424,398	$424,398	$424,398
Number of Pilots	10	8	18
Total Target Pilot Compensation	$4,243,980	$3,395,184	$7,639,164
Target Apprentice Pilot Compensation	$152,783	$152,783	$152,783
Number of Apprentice Pilots	.....	.....	2
Total Target Apprentice Pilot Compensation	$183,340	$122,227	$305,567

E. Step 5: Project Working Capital Fund

Next, the Coast Guard calculates the working capital fund revenues needed for each area by first adding the figures for projected operating expenses, total pilot compensation, and total target apprentice pilot wage for each area and then finding the preceding year's average annual rate of return for new issues of high-grade corporate securities. Using Moody's data, the number is 2.7033 percent.[19] By multiplying the two figures, the Coast Guard obtains the working capital fund contribution for each area, as shown in table 9.

TABLE 9—WORKING CAPITAL FUND CALCULATION FOR DISTRICT ONE

	District One		
	Designated	Undesignated	Total
Adjusted Operating Expenses (Step 2)	$2,599,777	$1,733,186	$4,332,963
Total Target Pilot Compensation (Step 4)	4,243,980	3,395,184	7,639,164
Total Target Apprentice Pilot Compensation (Step 4)	183,340	122,227	305,567
Total 2023 Expenses	7,027,097	5,250,597	12,277,694
Working Capital Fund (2.7%)	189,966	141,941	331,907

F. Step 6: Project Needed Revenue

In this step, the Coast Guards adds all the expenses accrued to derive the total revenue needed for each area. These expenses include the projected operating expenses (from Step 2), the total pilot compensation (from Step 4), total target apprentice pilot wage, (from Step 4) and the working capital fund contribution (from Step 5). These calculations are shown in table 10.

TABLE 10—REVENUE NEEDED FOR DISTRICT ONE

	District One		
	Designated	Undesignated	Total
Adjusted Operating Expenses (Step 2)	$2,599,777	$1,733,186	$4,332,963

[19] Moody's Seasoned Aaa Corporate Bond Yield, average of 2021 monthly data. The Coast Guard uses the most recent year of complete data. Moody's is taken from Moody's Investors Service, which is a bond credit rating business of Moody's Corporation. Bond ratings are based on creditworthiness and risk. The rating of ''Aaa'' is the highest bond rating assigned with the lowest credit risk. See *https://fred.stlouisfed.org/series/AAA*. (Downloaded March 4, 2022.)

TABLE 10—REVENUE NEEDED FOR DISTRICT ONE—Continued

	District One		
	Designated	Undesignated	Total
Total Target Pilot Compensation (Step 4)	4,243,980	3,395,184	7,639,164
Total Target Apprentice Pilot Compensation (Step 4)	183,340	122,227	305,567
Working Capital Fund (Step 5)	189,966	141,941	331,907
Total Revenue Needed	7,217,063	5,392,538	12,609,601

G. Step 7: Calculate Initial Base Rates

Having determined the revenue needed for each area in the previous six steps, to develop an hourly rate, the Coast Guard divides that number by the expected number of hours of traffic.

Step 7 is a two-part process. The first part is calculating the 10-year average of traffic in District One, using the total time on task or pilot bridge hours. To calculate the time on task for each district, the Coast Guard uses billing data from the GLPMS. The data is pulled from the system filtering by district, year, job status (including only closed jobs), and flagging code (including only U.S. jobs). Because separate figures are calculated for designated and undesignated waters, there are two parts for each calculation, as shown in table 11.

TABLE 11—TIME ON TASK FOR DISTRICT ONE

[Hours]

Year	District One	
	Designated	Undesignated
2021	6,188	7,871
2020	6,265	7,560
2019	8,232	8,405
2018	6,943	8,445
2017	7,605	8,679
2016	5,434	6,217
2015	5,743	6,667
2014	6,810	6,853
2013	5,864	5,529
2012	4,771	5,121

TABLE 11—TIME ON TASK FOR DISTRICT ONE—Continued

[Hours]

Year	District One	
	Designated	Undesignated
Average	6,386	7,135

Next, the Coast Guard derives the initial hourly rate by dividing the revenue needed by the average number of hours for each area. This produces an initial rate, which is necessary to produce the revenue needed for each area, assuming the amount of traffic is as expected. The calculations for District One are presented in table 12.

TABLE 12—INITIAL RATE CALCULATIONS FOR DISTRICT ONE

	Designated	Undesignated
Revenue needed (Step 6)	$7,217,063	$5,392,538
Average time on task (hours)	6,386	7,135
Initial rate	1,130	756

H. Step 8: Calculate Average Weighting Factors by Area

In this step, the Coast Guard calculates the average weighting factor for each designated and undesignated area by first collecting the weighting factors, set forth in 46 CFR 401.400, for each vessel trip. Using this database, the average weighting factor for each area is calculated, using the data from each vessel transit from 2014 onward, as shown in tables 13 and 14.

TABLE 13—AVERAGE WEIGHTING FACTOR FOR DISTRICT ONE, DESIGNATED AREAS

Vessel class/year	Number of transits	Weighting factor	Weighted transits
Class 1 (2014)	31	1	31
Class 1 (2015)	41	1	41
Class 1 (2016)	31	1	31
Class 1 (2017)	28	1	28
Class 1 (2018)	54	1	54
Class 1 (2019)	72	1	72
Class 1 (2020)	8	1	8
Class 1 (2021)	10	1	10
Class 2 (2014)	285	1.15	328
Class 2 (2015)	295	1.15	339
Class 2 (2016)	185	1.15	213
Class 2 (2017)	352	1.15	405
Class 2 (2018)	559	1.15	643
Class 2 (2019)	378	1.15	435
Class 2 (2020)	560	1.15	644
Class 2 (2021)	315	1.15	362
Class 3 (2014)	50	1.3	65
Class 3 (2015)	28	1.3	36

TABLE 13—AVERAGE WEIGHTING FACTOR FOR DISTRICT ONE, DESIGNATED AREAS—Continued

Vessel class/year	Number of transits	Weighting factor	Weighted transits
Class 3 (2016)	50	1.3	65
Class 3 (2017)	67	1.3	87
Class 3 (2018)	86	1.3	112
Class 3 (2019)	122	1.3	159
Class 3 (2020)	67	1.3	87
Class 3 (2021)	52	1.3	68
Class 4 (2014)	271	1.45	393
Class 4 (2015)	251	1.45	364
Class 4 (2016)	214	1.45	310
Class 4 (2017)	285	1.45	413
Class 4 (2018)	393	1.45	570
Class 4 (2019)	730	1.45	1059
Class 4 (2020)	427	1.45	619
Class 4 (2021)	407	1.45	590
Total	6,704	.....	8,640
Average weighting factor (weighted transits ÷ number of transits)	.....	1.29	.....

TABLE 14—AVERAGE WEIGHTING FACTOR FOR DISTRICT ONE, UNDESIGNATED AREAS

Vessel class/year	Number of transits	Weighting factor	Weighted transits
Class 1 (2014)	25	1	25
Class 1 (2015)	28	1	28
Class 1 (2016)	18	1	18
Class 1 (2017)	19	1	19
Class 1 (2018)	22	1	22
Class 1 (2019)	30	1	30
Class 1 (2020)	3	1	3
Class 1 (2021)	19	1	19
Class 2 (2014)	238	1.15	274
Class 2 (2015)	263	1.15	302
Class 2 (2016)	169	1.15	194
Class 2 (2017)	290	1.15	334
Class 2 (2018)	352	1.15	405
Class 2 (2019)	366	1.15	421
Class 2 (2020)	358	1.15	412
Class 2 (2021)	463	1.15	532
Class 3 (2014)	60	1.3	78
Class 3 (2015)	42	1.3	55
Class 3 (2016)	28	1.3	36
Class 3 (2017)	45	1.3	59
Class 3 (2018)	63	1.3	82
Class 3 (2019)	58	1.3	75
Class 3 (2020)	35	1.3	46
Class 3 (2021)	71	1.3	92
Class 4 (2014)	289	1.45	419
Class 4 (2015)	269	1.45	390
Class 4 (2016)	222	1.45	322
Class 4 (2017)	285	1.45	413
Class 4 (2018)	382	1.45	554
Class 4 (2019)	326	1.45	473
Class 4 (2020)	334	1.45	484
Class 4 (2021)	466	1.45	676
Total	5,638	.....	7,291
Average weighting factor (weighted transits ÷ number of transits)	.....	.....	1.29

I. Step 9: Calculate Revised Base Rates

In this step, the Coast Guard revises the base rates so that the total cost of pilotage is equal to the revenue needed after considering the impact of the weighting factors. To do this, the initial base rates calculated in Step 7 are divided by the average weighting factors calculated in Step 8, as shown in table 15.

TABLE 15—REVISED BASE RATES FOR DISTRICT ONE

Area	Initial rate (Step 7)	Average weighting factor (Step 8)	Revised rate (initial rate average ÷ weighting factor)
District One: Designated	$1,130	1.29	$876
District One: Undesignated	756	1.29	586

J. Step 10: Review and Finalize Rates

In this step, the Director reviews the rates set forth by the staffing model and ensures that they meet the goal of ensuring safe, efficient, and reliable pilotage. To establish this, the Director considers whether the rates incorporate appropriate compensation for pilots to handle heavy traffic periods and whether there is a sufficient number of pilots to handle those heavy traffic periods. The Director also considers whether the rates will cover operating expenses and infrastructure costs, including average traffic and weighting factions. Based on the financial information submitted by the pilots, the Director is not issuing any alterations to the rates in this step. By means of this rule, § 401.405(a)(1) and (2) are modified to reflect the final rates shown in table 16.

TABLE 16—FINAL RATES FOR DISTRICT ONE

Area	Name	Final 2022 pilotage rate	Final 2023 pilotage rate
District One: Designated	St. Lawrence River	$834	$876
District One: Undesignated	Lake Ontario	568	586

District Two

A. Step 1: Recognize Previous Operating Expenses

Step 1 in the ratemaking methodology requires that the Coast Guard review and recognize the operating expenses of the last full year for which figures are available (§ 404.101). To do so, the Coast Guard begins by reviewing the independent accountant's financial reports for each association's 2020 expenses and revenues.[20] For accounting purposes, the financial reports divide expenses into designated and undesignated areas. For costs accrued by the pilot associations generally, such as employee benefits, for example, the cost is divided between the designated and undesignated areas on a *pro rata* basis.

In the 2020 expenses used as the basis for this rulemaking, districts used the term ''applicant'' to describe applicant trainees and persons who will be called apprentices (applicant pilots), under the definition introduced by the 2022 final rule. Therefore, when describing past expenses, the term ''applicant'' is used to match what was reported from 2020, which includes both applicant and apprentice pilots. The term ''apprentice'' is used to distinguish apprentice pilot wages and describe the impacts of the ratemaking going forward.

The Coast Guard continues to include apprentice salaries as an allowable expense in the 2023 ratemaking, as it is based on 2020 operating expenses, when salaries were still an allowable expense. The apprentice salaries paid in the years 2020 and 2021 have not been reimbursed in the ratemaking as of publication of this rule. Applicant salaries (including applicant trainees and apprentice pilots) will continue to be an allowable operating expense through the 2024 ratemaking, which uses operating expenses from 2021, where the wages for apprentice pilots were still authorized as operating expenses.

Beginning with the 2025 ratemaking, apprentice pilot salaries will no longer be included as a 2022 operating expense, because apprentice pilot wages will have already been factored into the ratemaking Steps 3 and 4 in calculation of the 2022 rates. Beginning in 2025, the applicant salaries' operating expenses for 2022 will consist of only applicant trainees (those who are not yet apprentice pilots). The recognized operating expenses for District Two are shown in table 17.

TABLE 17—2020 RECOGNIZED EXPENSES FOR DISTRICT TWO

Reported operating expenses for 2020	District Two		
	Undesignated	Designated	Total
	Lake Erie	Southeast Shoal to Port Huron	
Applicant Salaries	$101,810	$152,715	$254,525
Applicant Health Insurance	12,706	19,058	31,764
Applicant Subsistence/Travel	6,732	10,098	16,830
Applicant Hotel/Lodging Cost	3,652	5,478	9,130

[20] These reports are available in the docket for this rulemaking.

TABLE 17—2020 RECOGNIZED EXPENSES FOR DISTRICT TWO—Continued

Reported operating expenses for 2020	District Two		
	Undesignated	Designated	Total
	Lake Erie	Southeast Shoal to Port Huron	
Applicant Payroll Tax	4,888	7,332	12,220
Total Applicant Cost	129,788	194,681	324,469
Pilot Subsistence/Travel	124,953	187,427	312,380
Hotel/Lodging Cost	40,744	61,116	101,860
License Renewal	1,606	2,409	4,015
Payroll Taxes	94,996	142,495	237,491
Insurance	8,666	12,999	21,665
Total Other Pilotage Costs	270,965	406,446	677,411
Pilot Boat and Dispatch Costs:			
Pilot Boat Cost	218,840	328,261	547,101
Employee Benefits	92,554	138,831	231,385
Payroll taxes	13,565	20,347	33,912
Total Pilot Boat and Dispatch Costs	324,959	487,439	812,398
Administrative Expense:			
Legal—General Counsel	4,016	6,024	10,040
Legal—Shared Counsel (K&L Gates)	9,898	14,846	24,744
Legal—Shared Counsel (K&L Gates) (D2–20–01)	3,233	4,850	8,083
Office Rent	27,627	41,440	69,067
Insurance	12,357	18,536	30,893
Employee Benefits	157,650	236,476	394,126
Payroll Taxes	5,007	7,510	12,517
Other Taxes	43,400	65,100	108,500
Real Estate Taxes	8,285	12,427	20,712
Depreciation/Auto Lease/Other	7,783	11,674	19,457
Interest	114	171	285
APA Dues	14,683	22,025	36,708
Dues and Subscriptions	819	1,229	2,048
Utilities	18,453	27,679	46,132
Salaries—Admin Employees	50,250	75,374	125,624
Accounting	14,360	21,540	35,900
Pilot Training	146	219	365
Other	24,604	36,906	61,510
Total Administrative Expenses	402,685	604,026	1,006,711
Total OpEx (Pilot Costs + Applicant Cost + Pilot Boats + Admin)	1,128,397	1,692,592	2,820,989
TOTAL DIRECTOR'S ADJUSTMENTS	.....	.....	.....
Total Operating Expenses (OpEx + Adjustments)	1,128,397	1,692,592	2,820,989

B. Step 2: Project Operating Expenses, Adjusting for Inflation or Deflation

In accordance with the text in § 404.102, having identified the recognized 2020 operating expenses in Step 1, the next step is to estimate the current year's operating expenses by adjusting those expenses for inflation over the 3-year period. The Coast Guard calculates inflation using the BLS data from the CPI for the Midwest Region of the United States for the 2021 inflation rate.[21] Because the BLS does not provide forecasted inflation data, economic projections are used from the Federal Reserve for the 2022 and 2023 inflation modification.[22] Based on that information, the calculations for Step 2 are as presented in table 18.

[21] The 2021 inflation rate is available at *https://data.bls.gov/pdq/SurveyOutputServlet?data_tool=dropmap&series_id=CUUR0200SA0, CUUS0200SA0*. Specifically, the CPI is defined as ''All Urban Consumers (CPI–U), All Items, 1982–4=100.'' Series CUUS0200SAO. (Downloaded September 2022.)

[22] The 2022 and 2023 inflation rates are available at *https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20220921.pdf*. We used the Core PCE Inflation June Projection found in table 1. (Downloaded September 2022.)

TABLE 18—ADJUSTED OPERATING EXPENSES FOR DISTRICT TWO

	District Two		
	Undesignated	Designated	Total
Total Operating Expenses (Step 1)	$1,128,397	$1,692,592	$2,820,989
2021 Inflation Modification (@5.1%)	57,548	86,322	143,870
2022 Inflation Modification (@4.3%)	50,996	76,493	127,489
2023 Inflation Modification (@2.7%)	33,397	50,096	83,493
Adjusted 2023 Operating Expenses	1,270,338	1,905,503	3,175,841

C. Step 3: Estimate Number of Registered Pilots and Apprentice Pilots

In accordance with the text in § 404.103, the Coast Guard estimates the number of fully registered pilots in each district. The Coast Guard determines the number of fully registered pilots based on data provided by the LPA. Using these numbers, the Coast Guard estimates that there will be 16 registered pilots in 2023 in District Two. The Coast Guard determines the number of apprentice pilots based on input from the district on anticipated retirements and staffing needs. Using these numbers, the Coast Guard estimates that there will be one apprentice pilot in 2023 in District Two. Based on the seasonal staffing model discussed in the 2017 ratemaking (see 82 FR 41466), a certain number of pilots are assigned to designated waters and a certain number to undesignated waters, as shown in table 19. These numbers are used to determine the amount of revenue needed in their respective areas.

TABLE 19—AUTHORIZED PILOTS FOR DISTRICT TWO

Item	District Two
Maximum Number of Pilots (per § 401.220(a))*	16
2023 Authorized Pilots (total)	16
Pilots Assigned to Designated Areas	6
Pilots Assigned to Undesignated Areas	10
2023 Apprentice Pilots	1

*For a detailed calculation, refer to the Great Lakes Pilotage Rates—2017 Annual Review final rule, which contains the staffing model. See 82 FR 41466, table 6 at 41480 (August 31, 2017).

D. Step 4: Determine Target Pilot Compensation Benchmark and Apprentice Pilot Wage Benchmark

In this step, the Coast Guard determines the total pilot compensation for each area. Because a full ratemaking is being issued this year, the Coast Guard follows the procedure outlined in paragraph (a) of § 404.104, which requires developing a benchmark after considering the most relevant currently available non-proprietary information. In accordance with the discussion in section V of this preamble, the compensation benchmark for 2023 uses the 2022 compensation of $399,266 per registered pilot as a base, then adjusts for inflation following the procedure outlined in paragraph (b) of § 404.104. The target pilot compensation for 2023 is $424,398 per pilot. The apprentice pilot wage benchmark is 36 percent of the target pilot compensation, or $152,783 ($424,398 × 0.36).

Next, the Coast Guard certifies that the number of pilots estimated for 2023 is less than or equal to the number permitted under the staffing model in § 401.220(a). The staffing model suggests that the number of pilots needed is 16 pilots for District Two, which is less than or equal to 16, the number of registered pilots provided by the pilot association. In accordance with § 404.104(c), the Coast Guard uses the revised target individual compensation level to derive the total pilot compensation by multiplying the individual target compensation by the estimated number of registered pilots for District Two, as shown in table 20. The Coast Guard estimates that the number of apprentice pilots with limited registration needed will be one for District Two in the 2023 season. The total target wages for apprentices are allocated at 60 percent for the designated area and 40 percent for the undesignated area, in accordance with the allocation for operating expenses.

TABLE 20—TARGET COMPENSATION FOR DISTRICT TWO

	District Two		
	Undesignated	Designated	Total
Target Pilot Compensation	$424,398	$424,398	$424,398
Number of Pilots	10	6	16
Total Target Pilot Compensation	$4,243,980	$2,546,388	$6,790,368
Target Apprentice Pilot Compensation	$152,783	$152,783	$152,783
Number of Apprentice Pilots	.....	.....	1
Total Target Apprentice Pilot Compensation	$61,113.39	$91,669.89	$152,783

E. Step 5: Project Working Capital Fund

Next, the Coast Guard calculates the working capital fund revenues needed for each area by first adding the figures for projected operating expenses, total pilot compensation, and total target apprentice pilot wage for each area and then finding the preceding year's average annual rate of return for new issues of high-grade corporate securities. Using Moody's data, the number is 2.7033 percent.[23] By multiplying the two figures, the Coast Guard obtains the working capital fund contribution for each area, as shown in table 21.

TABLE 21—WORKING CAPITAL FUND CALCULATION FOR DISTRICT TWO

	District Two		
	Undesignated	Designated	Total
Adjusted Operating Expenses (Step 2)	$1,270,338	$1,905,503	$3,175,841
Total Target Pilot Compensation (Step 4)	4,243,980	2,546,388	6,790,368
Total Target Apprentice Pilot Compensation (Step 4)	61,113	91,670	152,783
Total 2023 Expenses	5,575,431	4,543,561	10,118,992
Working Capital Fund (2.7%)	150,722	122,828	273,550

F. Step 6: Project Needed Revenue

In this step, the Coast Guard adds all the expenses accrued to derive the total revenue needed for each area. These expenses include the projected operating expenses (from Step 2), the total pilot compensation (from Step 4), total target apprentice pilot wage, (from Step 4) and the working capital fund contribution (from Step 5). These calculations are shown in table 22.

TABLE 22—REVENUE NEEDED FOR DISTRICT TWO

	District Two		
	Undesignated	Designated	Total
Adjusted Operating Expenses (Step 2)	$1,270,338	$1,905,503	$3,175,841
Total Target Pilot Compensation (Step 4)	4,243,980	2,546,388	6,790,368
Total Target Apprentice Pilot Compensation (Step 4)	61,113	91,670	152,783
Working Capital Fund (Step 5)	150,722	122,828	273,550
Total Revenue Needed	5,726,153	4,666,389	10,392,542

G. Step 7: Calculate Initial Base Rates

Having determined the revenue needed for each area in the previous six steps, to develop an hourly rate, the Coast Guard divides that number by the expected number of hours of traffic. Step 7 is a two-part process. In the first part, the Coast Guard calculates the 10-year average of traffic in District Two, using the total time on task or pilot bridge hours. To calculate the time on task for each district, the Coast Guard uses billing data from SeaPro, pulling the data from the system filtering by district, year, job status (including only processed jobs), and flagging code (including only U.S. jobs). Because separate figures are calculated for designated and undesignated waters, there are two parts for each calculation, as shown in table 23.

TABLE 23—TIME ON TASK FOR DISTRICT TWO

[Hours]

Year	District Two	
	Undesignated	Designated
2021	8,826	3,226
2020	6,232	8,401
2019	6,512	7,715
2018	6,150	6,655
2017	5,139	6,074
2016	6,425	5,615
2015	6,535	5,967
2014	7,856	7,001
2013	4,603	4,750
2012	3,848	3,922
Average	6,213	5,933

[23] Moody's Seasoned Aaa Corporate Bond Yield, average of 2021 monthly data. The Coast Guard uses the most recent year of complete data. Moody's is taken from Moody's Investors Service, which is a bond credit rating business of Moody's Corporation. Bond ratings are based on creditworthiness and risk. The rating of ''Aaa'' is the highest bond rating assigned with the lowest credit risk. See *https://fred.stlouisfed.org/series/AAA*. (Downloaded March 4, 2022.)

Next, the Coast Guard derives the initial hourly rate by dividing the revenue needed by the average number of hours for each area. This produces an initial rate, which is necessary to produce the revenue needed for each area, assuming the amount of traffic is as expected. The calculations for District Two are presented in table 24.

TABLE 24—INITIAL RATE CALCULATIONS FOR DISTRICT TWO

	Undesignated	Designated
Revenue needed (Step 6)	$5,726,153	$4,666,389
Average time on task (hours)	6,213	5,933
Initial rate	$922	$787

H. Step 8: Calculate Average Weighting Factors by Area

In this step, the Coast Guard calculate the average weighting factor for each designated and undesignated area by first collecting the weighting factors, set forth in 46 CFR 401.400, for each vessel trip. Using this database, the Coast Guard calculates the average weighting factor for each area using the data from each vessel transit from 2014 onward, as shown in tables 25 and 26.

TABLE 25—AVERAGE WEIGHTING FACTOR FOR DISTRICT TWO, UNDESIGNATED AREAS

Vessel class/year	Number of transits	Weighting factor	Weighted transits
Class 1 (2014)	31	1	31
Class 1 (2015)	35	1	35
Class 1 (2016)	32	1	32
Class 1 (2017)	21	1	21
Class 1 (2018)	37	1	37
Class 1 (2019)	54	1	54
Class 1 (2020)	1	1	1
Class 1 (2021)	7	1	7
Class 2 (2014)	356	1.15	409
Class 2 (2015)	354	1.15	407
Class 2 (2016)	380	1.15	437
Class 2 (2017)	222	1.15	255
Class 2 (2018)	123	1.15	141
Class 2 (2019)	127	1.15	146
Class 2 (2020)	165	1.15	190
Class 2 (2021)	206	1.15	237
Class 3 (2014)	20	1.3	26
Class 3 (2015)	0	1.3	0
Class 3 (2016)	9	1.3	12
Class 3 (2017)	12	1.3	16
Class 3 (2018)	3	1.3	4
Class 3 (2019)	1	1.3	1
Class 3 (2020)	1	1.3	1
Class 3 (2021)	5	1.3	7
Class 4 (2014)	636	1.45	922
Class 4 (2015)	560	1.45	812
Class 4 (2016)	468	1.45	679
Class 4 (2017)	319	1.45	463
Class 4 (2018)	196	1.45	284
Class 4 (2019)	210	1.45	305
Class 4 (2020)	201	1.45	291
Class 4 (2021)	227	1.45	329
Total	5,019	.....	6,592
Average weighting factor (weighted transits ÷ number of transits)	.....	1.31	.....

TABLE 26—AVERAGE WEIGHTING FACTOR FOR DISTRICT TWO, DESIGNATED AREAS

Vessel class/year	Number of transits	Weighting factor	Weighted transits
Class 1 (2014)	20	1	20
Class 1 (2015)	15	1	15
Class 1 (2016)	28	1	28
Class 1 (2017)	15	1	15
Class 1 (2018)	42	1	42
Class 1 (2019)	48	1	48
Class 1 (2020)	7	1	7
Class 1 (2021)	12	1	12
Class 2 (2014)	237	1.15	273

TABLE 26—AVERAGE WEIGHTING FACTOR FOR DISTRICT TWO, DESIGNATED AREAS—Continued

Vessel class/year	Number of transits	Weighting factor	Weighted transits
Class 2 (2015)	217	1.15	250
Class 2 (2016)	224	1.15	258
Class 2 (2017)	127	1.15	146
Class 2 (2018)	153	1.15	176
Class 2 (2019)	281	1.15	323
Class 2 (2020)	342	1.15	393
Class 2 (2021)	240	1.15	276
Class 3 (2014)	8	1.3	10
Class 3 (2015)	8	1.3	10
Class 3 (2016)	4	1.3	5
Class 3 (2017)	4	1.3	5
Class 3 (2018)	14	1.3	18
Class 3 (2019)	1	1.3	1
Class 3 (2020)	5	1.3	7
Class 3 (2021)	2	1.3	3
Class 4 (2014)	359	1.45	521
Class 4 (2015)	340	1.45	493
Class 4 (2016)	281	1.45	407
Class 4 (2017)	185	1.45	268
Class 4 (2018)	379	1.45	550
Class 4 (2019)	403	1.45	584
Class 4 (2020)	405	1.45	587
Class 4 (2021)	268	1.45	389
Total	4,674	.....	6,140
Average weighting factor (weighted transits ÷ number of transits)	.....	1.31	.....

I. Step 9: Calculate Revised Base Rates

In this step, the Coast Guard revises the base rates so that the total cost of pilotage is equal to the revenue needed after considering the impact of the weighting factors. To do this, the initial base rates calculated in Step 7 are divided by the average weighting factors calculated in Step 8, as shown in table 27.

TABLE 27—REVISED BASE RATES FOR DISTRICT TWO

Area	Initial rate (Step 7)	Average weighting factor (Step 8)	Revised rate (initial rate/ average weighting factor)
District Two: Undesignated	$922	1.31	$704
District Two: Designated	787	1.31	601

J. Step 10: Review and Finalize Rates

In this step, the Director reviews the rates set forth by the staffing model and ensures that they meet the goal of ensuring safe, efficient, and reliable pilotage. To establish this, the Director considers whether the rates incorporate appropriate compensation for pilots to handle heavy traffic periods, and whether there is a sufficient number of pilots to handle those heavy traffic periods. The Director also considers whether the rates will cover operating expenses and infrastructure costs and takes average traffic and weighting factors into consideration. Based on the financial information submitted by the pilots, the Director is not issuing any alterations to the rates in this step. By means of this rule, § 401.405(a)(3) and (4) are modified to reflect the final rates shown in table 28.

TABLE 28—FINAL RATES FOR DISTRICT TWO

Area	Name	Final 2022 pilotage rate	Final 2023 pilotage rate
District Two: Designated	Navigable waters from Southeast Shoal to Port Huron, MI	$536	$601
District Two: Undesignated	Lake Erie	610	704

District Three

A. Step 1: Recognize Previous Operating Expenses

Step 1 in the ratemaking methodology requires that the Coast Guard review and recognize the operating expenses of the last year for which figures are available (§ 404.101). To do so, the Coast Guard begins by reviewing the independent accountant's financial reports for each association's 2020 expenses and revenues.[24] For accounting purposes, the financial reports divide expenses into designated and undesignated areas. For costs accrued by the pilot associations generally, such as employee benefits, for example, the cost is divided between the designated and undesignated areas on a *pro rata* basis.

In the 2020 expenses used as the basis for this rulemaking, districts used the term ''applicant'' to describe applicant trainees and persons who will be called apprentices (applicant pilots), under the definition introduced by the 2022 final rule. Therefore, when describing past expenses, the term ''applicant'' is used to match what was reported from 2020, which includes both applicant and apprentice pilots. The term ''apprentice'' is used to distinguish apprentice pilot wages and describe the impacts of the ratemaking going forward.

The Coast Guard continues to include apprentice salaries as an allowable expense in the 2023 ratemaking, as it is based on 2020 operating expenses, when salaries were still an allowable expense. The apprentice salaries paid in the years 2020 and 2021 have not been reimbursed in the ratemaking as of publication of this rule. Applicant salaries (including applicant trainees and apprentice pilots) will continue to be an allowable operating expense through the 2024 ratemaking, which uses operating expenses from 2021, where the wages for apprentice pilots were still authorized as operating expenses.

Beginning with the 2025 ratemaking, apprentice pilot salaries will no longer be included as a 2022 operating expense, because apprentice pilot wages will have already been factored into the ratemaking Steps 3 and 4 in calculation of the 2022 rates. Beginning in 2025, the applicant salaries' operating expenses for 2022 will consist of only applicant trainees (those who are not yet apprentice pilots). The recognized operating expenses for District Three are shown in table 29.

TABLE 29—2020 RECOGNIZED EXPENSES FOR DISTRICT THREE

Reported operating expenses for 2020	District Three			
	Undesignated	Designated	Undesignated	Total
	Lakes Huron and Michigan	St. Mary's River	Lake Superior	
Other Pilotage Costs:				
Pilot Subsistence/Travel	$284,547	$118,603	$149,261	$552,411
Hotel/Lodging Cost	87,208	36,349	45,745	169,302
License Insurance—Pilots	16,749	6,981	8,786	32,516
Payroll Taxes	.....	.....	.....	.....
Payroll Tax (D3–19–01)	151,266	63,049	79,348	293,663
Other	6,505	2,711	3,412	12,628
Total Other Pilotage Costs	546,275	227,693	286,552	1,060,520
Applicant Cost:				
Applicant Salaries	340,677	141,998	178,705	661,380
Applicant Benefits	66,083	27,544	34,665	128,292
Applicant Payroll Tax	25,711	10,717	13,487	49,915
Applicant Hotel/Lodging	31,313	13,052	16,425	60,790
Total Applicant Cost	463,784	193,311	243,282	900,377
Pilot Boat and Dispatch costs:				
Pilot Boat Costs	515,075	214,689	270,187	999,951
Dispatch Costs	112,008	46,686	58,755	217,449
Employee Benefits	41,153	17,153	21,587	79,893
Payroll Taxes	16,771	6,991	8,798	32,560
Total Pilot Boat and Dispatch costs	685,007	285,519	359,327	1,329,853
Administrative Cost:				
Legal—General Counsel	1,921	801	1,008	3,730
Legal—Shared Counsel (K&L Gates)	21,650	9,024	11,357	42,031
Legal—Shared Counsel (K&L Gates) CPA Deduction (D3–20–03)	3,601	1,501	1,889	6,991
Legal—USCG Litigation	8,575	3,574	4,498	16,647
Insurance	18,811	7,841	9,867	36,519
Employee Benefits	80,117	33,394	42,026	155,537
Payroll Tax	8,101	3,377	4,250	15,728
Other Taxes	15,797	6,584	8,286	30,667
Real Estate Taxes	2,001	834	1,050	3,885
Depreciation/Auto Leasing/Other	61,096	25,465	32,048	118,609
Interest	2,940	1,225	1,542	5,707
APA Dues	23,860	9,945	12,516	46,321
Dues and Subscriptions	4,971	2,072	2,607	9,650
Salaries	50,795	21,172	26,645	98,612
Utilities	54,212	22,596	28,438	105,246

[24] These reports are available in the docket for this rulemaking.

TABLE 29—2020 RECOGNIZED EXPENSES FOR DISTRICT THREE—Continued

Reported operating expenses for 2020	District Three			
	Undesignated	Designated	Undesignated	Total
	Lakes Huron and Michigan	St. Mary's River	Lake Superior	
Accounting/Professional Fees	23,823	9,930	12,496	46,249
Other Expenses	38,507	16,050	20,199	74,756
Other Expenses CPA Deduction (D3–18–01)	(4,684)	(1,952)	(2,457)	(9,093)
Total Administrative Expenses	416,094	173,433	218,265	807,792
Total Operating Expenses (Other Costs + Applicant Cost + Pilot Boats + Admin)	2,111,160	879,956	1,107,426	4,098,542
Director's Adjustments—Applicant Surcharge Collected	(63,120)	(26,309)	(33,110)	(122,539)
Total Director's Adjustments	(63,120)	(26,309)	(33,110)	(122,539)
Total Operating Expenses (OpEx + Adjustments)	2,048,040	853,647	1,074,316	3,976,003

B. Step 2: Project Operating Expenses, Adjusting for Inflation or Deflation

In accordance with the text in § 404.103, having identified the recognized 2020 operating expenses in Step 1, the next step is to estimate the current year's operating expenses by adjusting those expenses for inflation over the 3-year period. The Coast Guard calculates inflation using the BLS data from the CPI for the Midwest Region of the United States for the 2021 inflation rate.[25] Because the BLS does not provide forecasted inflation data, economic projections are used from the Federal Reserve for the 2022 and 2023 inflation modification.[26] Based on that information, the calculations for Step 2 are as presented in table 30.

TABLE 30—ADJUSTED OPERATING EXPENSES FOR DISTRICT THREE

	District Three		
	Undesignated	Designated	Total
Total Operating Expenses (Step 1)	$3,122,356	$853,647	$3,976,003
2021 Inflation Modification (@5.1%)	159,240	43,536	202,776
2022 Inflation Modification (@4.3%)	141,109	38,579	179,688
2023 Inflation Modification (@2.7%)	92,413	25,266	117,679
Adjusted 2023 Operating Expenses	3,515,118	961,028	4,476,146

C. Step 3: Estimate Number of Registered Pilots and Apprentice Pilots

In accordance with the text in § 404.103, the Coast Guard estimate the number of registered pilots in each district. The Coast Guard determines the number of registered pilots based on data provided by the WGLPA. Using these numbers, the Coast Guard estimates that there will be 22 registered pilots in 2023 in District Three. The Coast Guard determine the number of apprentice pilots based on input from the district on anticipated retirements and staffing needs. Using these numbers, the Coast Guard estimates that there will be three apprentice pilots in 2023 in District Three. Based on the seasonal staffing model discussed in the 2017 ratemaking (see 82 FR 41466), a certain number of pilots are assigned to designated waters and a certain number to undesignated waters, as shown in table 31. These numbers are used to determine the amount of revenue needed in their respective areas.

TABLE 31—AUTHORIZED PILOTS FOR DISTRICT THREE

Item	District Three
Maximum Number of Pilots (per § 401.220(a))*	22
2023 Authorized Pilots (total)	22
Pilots Assigned to Designated Areas	5
Pilots Assigned to Undesignated Areas	17
2023 Apprentice Pilots	3

*For a detailed calculation, refer to the Great Lakes Pilotage Rates—2017 Annual Review final rule, which contains the staffing model. See 82 FR 41466, table 6 at 41480 (August 31, 2017).

[25] The 2021 inflation rate is available at *https://data.bls.gov/pdq/SurveyOutputServlet?data_tool=dropmap&series_id=CUUR0200SA0, CUUS0200SA0*. Specifically, the CPI is defined as ''All Urban Consumers (CPI–U), All Items, 1982–4=100.'' Series CUUS0200SAO. (Downloaded September 2022.)

[26] The 2022 and 2023 inflation rates are available at *https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20220921.pdf*. We used the Core PCE Inflation June Projection found in table 1. (Downloaded September 2022.)

D. Step 4: Determine Target Pilot Compensation Benchmark and Apprentice Pilot Wage Benchmark

In this step, the Coast Guard determine the total pilot compensation for each area. Because a full ratemaking is being issued this year, the Coast Guard follows the procedure outlined in paragraph (a) of § 404.104, which requires developing a benchmark after considering the most relevant currently available non-proprietary information. In accordance with the discussion in section V of this preamble, the compensation benchmark for 2023 uses the 2022 compensation of $399,266 per registered pilot as a base, then adjusts for inflation following the procedure outlined in paragraph (b) of § 404.104. The target pilot compensation for 2023 is $424,398 per pilot. The apprentice pilot wage benchmark is 36 percent of the target pilot compensation, or $152,783 ($424,398 × 0.36).

Next, the Coast Guard certifies that the number of pilots estimated for 2023 is less than or equal to the number permitted under the staffing model in § 401.220(a). The staffing model suggests that the number of pilots needed is 22 pilots for District Three, which is less than or equal to 22, the number of registered pilots provided by the pilot association. In accordance with § 404.104(c), the revised target individual compensation level is used to derive the total pilot compensation by multiplying the individual target compensation by the estimated number of registered pilots for District Three, as shown in table 32. The Coast Guard estimates that the number of apprentice pilots with limited registration needed will be three for District Three in the 2023 season. The total target wages for apprentices are allocated with 21 percent for the designated area, and 79 percent (52 percent + 27 percent) for the undesignated areas, in accordance with the allocation for operating expenses.

TABLE 32—TARGET COMPENSATION FOR DISTRICT THREE

	District Three		
	Undesignated	Designated	Total
Target Pilot Compensation	$424,398	$424,398	$424,398
Number of Pilots	17	5	22
Total Target Pilot Compensation	$7,214,766	$2,121,990	$9,336,756
Target Apprentice Pilot Compensation	$152,783	$152,783	$152,783
Number of Apprentice Pilots	.....	.....	3
Total Target Apprentice Pilot Compensation	$359,942	$98,408	$458,350

E. Step 5: Project Working Capital Fund

Next, the Coast Guard calculates the working capital fund revenues needed for each area by first adding the figures for projected operating expenses, total pilot compensation, and total target apprentice pilot wage for each area and then finding the preceding year's average annual rate of return for new issues of high-grade corporate securities. Using Moody's data, the number is 2.7033 percent.[27] By multiplying the two figures, the working capital fund contribution for each area is obtained, as shown in table 33.

TABLE 33—WORKING CAPITAL FUND CALCULATION FOR DISTRICT THREE

	District Three		
	Undesignated	Designated	Total
Adjusted Operating Expenses (Step 2)	$3,515,118	$961,028	$4,476,146
Total Target Pilot Compensation (Step 4)	7,214,766	2,121,990	9,336,756
Total Target Apprentice Pilot Compensation (Step 4)	359,942	98,408	458,350
Total 2023 Expenses	11,089,826	3,181,425	14,271,252
Working Capital Fund (2.7%)	299,795	86,005	385,800

F. Step 6: Project Needed Revenue

In this step, the Coast Guard adds all the expenses accrued to derive the total revenue needed for each area. These expenses include the projected operating expenses (from Step 2), the total pilot compensation (from Step 4), and the working capital fund contribution (from Step 5). The calculations are shown in table 34.

TABLE 34—REVENUE NEEDED FOR DISTRICT THREE

	District Three		
	Undesignated	Designated	Total
Adjusted Operating Expenses (Step 2)	$3,515,118	$961,028	$4,476,146

[27] Moody's Seasoned Aaa Corporate Bond Yield, average of 2021 monthly data. The Coast Guard uses the most recent year of complete data. Moody's is taken from Moody's Investors Service, which is a bond credit rating business of Moody's Corporation. Bond ratings are based on creditworthiness and risk. The rating of ''Aaa'' is the highest bond rating assigned with the lowest credit risk. See *https://fred.stlouisfed.org/series/AAA*. (Downloaded March 4, 2022).

TABLE 34—REVENUE NEEDED FOR DISTRICT THREE—Continued

	District Three		
	Undesignated	Designated	Total
Total Target Pilot Compensation (Step 4)	7,214,766	2,121,990	9,336,756
Total Target Apprentice Pilot Compensation (Step 4)	359,942	98,408	458,350
Working Capital Fund (Step 5)	299,795	86,005	385,800
Total Revenue Needed	11,389,621	3,267,430	14,657,052

G. Step 7: Calculate Initial Base Rates

Having determined the revenue needed for each area in the previous six steps, to develop an hourly rate, the Coast Guard divides that number by the expected number of hours of traffic. Step 7 is a two-part process. In the first part, the 10-year average of traffic in District Three is calculated using the total time on task or pilot bridge hours. To calculate the time on task for each district, the Coast Guard uses billing data from SeaPro, pulling the data from the system filtering by district, year, job status (including only processed jobs), and flagging code (including only U.S. jobs). Because separate figures for designated and undesignated waters are calculated, there are two parts for each calculation, as shown in table 35.

TABLE 35—TIME ON TASK FOR DISTRICT THREE

[Hours]

Year	District Three	
	Undesignated	Designated
2021	18,286	2,516
2020	23,678	3,520
2019	24,851	3,395
2018	19,967	3,455
2017	20,955	2,997
2016	23,421	2,769
2015	22,824	2,696
2014	25,833	3,835
2013	17,115	2,631
2012	15,906	2,163
Average	21,284	2,998

Next, the Coast Guard derives the initial hourly rate by dividing the revenue needed by the average number of hours for each area. This produces an initial rate, which is necessary to produce the revenue needed for each area, assuming the amount of traffic is as expected. The calculations for District Three are set forth in table 36.

TABLE 36—INITIAL RATE CALCULATIONS FOR DISTRICT THREE

	Undesignated	Designated
Revenue needed (Step 6)	$11,389,621	$3,267,430
Average time on task (hours)	21,284	2,998
Initial rate	$535	$1,090

H. Step 8: Calculate Average Weighting Factors by Area

In this step, the Coast Guard calculates the average weighting factor for each designated and undesignated area by first collecting the weighting factors, set forth in 46 CFR 401.400, for each vessel trip. Using this database, the Coast Guard calculates the average weighting factor for each area using the data from each vessel transit from 2014 onward, as shown in tables 37 and 38.

TABLE 37—AVERAGE WEIGHTING FACTOR FOR DISTRICT THREE, UNDESIGNATED AREAS

Vessel class/year	Number of transits	Weighting factor	Weighted transits
Area 6:			
Class 1 (2014)	45	1	45
Class 1 (2015)	56	1	56
Class 1 (2016)	136	1	136
Class 1 (2017)	148	1	148
Class 1 (2018)	103	1	103
Class 1 (2019)	173	1	173
Class 1 (2020)	4	1	4
Class 1 (2021)	8	1	8
Class 2 (2014)	274	1.15	315
Class 2 (2015)	207	1.15	238
Class 2 (2016)	236	1.15	271
Class 2 (2017)	264	1.15	304
Class 2 (2018)	169	1.15	194
Class 2 (2019)	279	1.15	321
Class 2 (2020)	332	1.15	382
Class 2 (2021)	273	1.15	314
Class 3 (2014)	15	1.3	20

TABLE 37—AVERAGE WEIGHTING FACTOR FOR DISTRICT THREE, UNDESIGNATED AREAS—Continued

Vessel class/year	Number of transits	Weighting factor	Weighted transits
Class 3 (2015)	8	1.3	10
Class 3 (2016)	10	1.3	13
Class 3 (2017)	19	1.3	25
Class 3 (2018)	9	1.3	12
Class 3 (2019)	9	1.3	12
Class 3 (2020)	4	1.3	5
Class 3 (2021)	5	1.3	7
Class 4 (2014)	394	1.45	571
Class 4 (2015)	375	1.45	544
Class 4 (2016)	332	1.45	481
Class 4 (2017)	367	1.45	532
Class 4 (2018)	337	1.45	489
Class 4 (2019)	334	1.45	484
Class 4 (2020)	339	1.45	492
Class 4 (2021)	356	1.45	516
Total for Area 6	5,620	.....	7,224
Area 8:			
Class 1 (2014)	3	1	3
Class 1 (2015)	0	1	0
Class 1 (2016)	4	1	4
Class 1 (2017)	4	1	4
Class 1 (2018)	0	1	0
Class 1 (2019)	0	1	0
Class 1 (2020)	1	1	1
Class 1 (2021)	5	1	5
Class 2 (2014)	177	1.15	204
Class 2 (2015)	169	1.15	194
Class 2 (2016)	174	1.15	200
Class 2 (2017)	151	1.15	174
Class 2 (2018)	102	1.15	117
Class 2 (2019)	120	1.15	138
Class 2 (2020)	180	1.15	207
Class 2 (2021)	124	1.15	143
Class 3 (2014)	3	1.3	4
Class 3 (2015)	0	1.3	0
Class 3 (2016)	7	1.3	9
Class 3 (2017)	18	1.3	23
Class 3 (2018)	7	1.3	9
Class 3 (2019)	6	1.3	8
Class 3 (2020)	1	1.3	1
Class 3 (2021)	1	1.3	1
Class 4 (2014)	243	1.45	352
Class 4 (2015)	253	1.45	367
Class 4 (2016)	204	1.45	296
Class 4 (2017)	269	1.45	390
Class 4 (2018)	188	1.45	273
Class 4 (2019)	254	1.45	368
Class 4 (2020)	265	1.45	384
Class 4 (2021)	319	1.45	463
Total for Area 8	3,252	.....	4342
Combined total	8,872	.....	11,566
Average weighting factor (weighted transits/number of transits)	.....	1.30	.....

TABLE 38—AVERAGE WEIGHTING FACTOR FOR DISTRICT THREE, DESIGNATED AREAS

Vessel class/year	Number of transits	Weighting factor	Weighted transits
Area 7:			
Class 1 (2014)	27	1	27
Class 1 (2015)	23	1	23
Class 1 (2016)	55	1	55
Class 1 (2017)	62	1	62
Class 1 (2018)	47	1	47
Class 1 (2019)	45	1	45
Class 1 (2020)	15	1	15
Class 1 (2021)	15	1	15

TABLE 38—AVERAGE WEIGHTING FACTOR FOR DISTRICT THREE, DESIGNATED AREAS—Continued

Vessel class/year	Number of transits	Weighting factor	Weighted transits
Class 2 (2014)	221	1.15	254
Class 2 (2015)	145	1.15	167
Class 2 (2016)	174	1.15	200
Class 2 (2017)	170	1.15	196
Class 2 (2018)	126	1.15	145
Class 2 (2019)	162	1.15	186
Class 2 (2020)	218	1.15	251
Class 2 (2021)	131	1.15	151
Class 3 (2014)	15	1.3	20
Class 3 (2015)	0	1.3	0
Class 3 (2016)	6	1.3	8
Class 3 (2017)	14	1.3	18
Class 3 (2018)	6	1.3	8
Class 3 (2019)	3	1.3	4
Class 3 (2020)	1	1.3	1
Class 3 (2021)	2	1.3	3
Class 4 (2014)	321	1.45	465
Class 4 (2015)	245	1.45	355
Class 4 (2016)	191	1.45	277
Class 4 (2017)	234	1.45	339
Class 4 (2018)	225	1.45	326
Class 4 (2019)	308	1.45	447
Class 4 (2020)	336	1.45	487
Class 4 (2021)	258	1.45	374
Total	3,801	.....	4970
Average weighting factor (weighted transits/number of transits)	.....	1.31	.....

I. Step 9: Calculate Revised Base Rates

In this step, the Coast Guard revises the base rates so that the total cost of pilotage is equal to the revenue needed after considering the impact of the weighting factors. To do this, the Coast Guard divides the initial base rates calculated in Step 7 by the average weighting factors calculated in Step 8, as shown in table 39.

TABLE 39—REVISED BASE RATES FOR DISTRICT THREE

Area	Initial rate (Step 7)	Average weighting factor (Step 8)	Revised rate (initial rate ÷ average weighting factor)
District Three: Undesignated	$535	1.30	$410
District Three: Designated	1,090	1.31	834

J. Step 10: Review and Finalize Rates

In this step, the Director reviews the rates set forth by the staffing model and ensures that they meet the goal of ensuring safe, efficient, and reliable pilotage. To establish this, the Director considers whether the rates incorporate appropriate compensation for pilots to handle heavy traffic periods and whether there is a sufficient number of pilots to handle those heavy traffic periods. The Director also considers whether the rates will cover operating expenses and infrastructure costs and takes average traffic and weighting factors into consideration. Based on this information, the Director is not issuing any alterations to the rates in this step. By means of this rule, § 401.405(a)(5) and (6) are modified to reflect the final rates shown in table 40.

TABLE 40—FINAL RATES FOR DISTRICT THREE

Area	Name	Final 2022 pilotage rate	Final 2023 pilotage rate
District Three: Designated	St. Mary's River	$662	$834
District Three: Undesignated	Lakes Huron, Michigan, and Superior	342	410

VIII. Regulatory Analyses

The Coast Guard developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below, the Coast Guard summarizes its analyses based on these statutes or Executive orders.

A. Regulatory Planning and Review

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) 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 (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. A regulatory analysis follows.

The purpose of this rule is to establish new base pilotage rates, as 46 U.S.C. 9303(f) requires that rates be established or reviewed and adjusted each year. The statute also requires that base rates be established by a full ratemaking at least once every 5 years, and, in years when base rates are not established, they must be reviewed and, if necessary, adjusted. The last full ratemaking was concluded in June of 2018.[28] For this ratemaking, the Coast Guard estimates an increase in cost of approximately $5.17 million to industry. This is approximately a 16-percent increase because of the change in revenue needed in 2023 compared to the revenue needed in 2022.

TABLE 41—ECONOMIC IMPACTS DUE TO CHANGES

Change	Description	Affected population	Costs	Benefits
Rate changes	In accordance with 46 U.S.C. Chapter 93, the Coast Guard is required to review and adjust base pilotage rates annually.	Owners and operators of 285 vessels transiting the Great Lakes system annually, 56 United States Great Lakes pilots, 6 apprentice pilots, and 3 pilotage associations.	Increase of $5,172,200 due to change in revenue needed for 2023 ($37,659,195) from revenue needed for 2022 ($32,486,995) as shown in table 42.	New rates cover an association's necessary and reasonable operating expenses. Promotes safe, efficient, and reliable pilotage service on the Great Lakes. Provides fair compensation, adequate training, and sufficient rest periods for pilots. Ensures the association receives sufficient revenues to fund future improvements.

The Coast Guard is required to review and adjust pilotage rates on the Great Lakes annually. See section III of this preamble for detailed discussions of the legal basis and purpose for this rulemaking. Based on the annual review for this rulemaking, the Coast Guard is adjusting the pilotage rates for the 2023 shipping season to generate sufficient revenues for each district to reimburse its necessary and reasonable operating expenses, fairly compensate properly trained and rested pilots, and provide an appropriate working capital fund to use for improvements. The result is an increase in rates for all areas in District One, District Two, and District Three. These changes also lead to a net increase in the cost of service to shippers. The change in per-unit cost to each individual shipper is dependent on their area of operation.

A detailed discussion of the economic impact analysis follows.

Affected Population

This rule affects United States Great Lakes pilots and apprentice pilots, the 3 pilot associations, and the owners and operators of 285 oceangoing vessels that transit the Great Lakes annually on average from 2019 to 2021. The Coast Guard estimates that there will be 56 registered pilots and 6 apprentice pilots during the 2023 shipping season. The shippers affected by these rate changes are those owners and operators of domestic vessels operating ''on register'' (engaged in foreign trade) and owners and operators of non-Canadian foreign vessels on routes within the Great Lakes system. These owners and operators must have pilots or pilotage service as required by 46 U.S.C. 9302. There is no minimum tonnage limit or exemption for these vessels. The statute applies only to commercial vessels and not to recreational vessels. United States-flagged vessels not operating on register, and Canadian ''lakers,'' which account for most commercial shipping on the Great Lakes, are not required by 46 U.S.C. 9302 to have pilots. However, these United States- and Canadian-flagged lakers may voluntarily choose to engage a Great Lakes registered pilot. Vessels that are U.S.-flagged may opt to have a pilot for varying reasons, such as unfamiliarity with designated waters and ports, or for insurance purposes.

The Coast Guard used billing information from the years 2019 through 2021 from the GLPMS to estimate the average annual number of vessels affected by the rate adjustment. The GLPMS tracks data related to managing and coordinating the dispatch of pilots on the Great Lakes, and billing in accordance with the services. As described in Step 7 of the ratemaking methodology, the Coast Guard uses a 10-year average to estimate the traffic and used 3 years of the most recent billing data to estimate the affected population. When 10 years of the most recent billing data was reviewed, the Coast Guard found the data included vessels that have not used pilotage services in recent years; therefore, using 3 years of billing data is a better representation of the vessel population that is currently using pilotage services and is impacted by this rulemaking.

The Coast Guard found that 424 unique vessels used pilotage services during the years 2019 through 2021. That is, these vessels had a pilot dispatched to the vessel, and billing information was recorded in the GLPMS or SeaPro. Of these vessels, 397 were foreign-flagged vessels and 27 were U.S.-flagged vessels. As stated previously, U.S.-flagged vessels not operating on register are not required to have a registered pilot per 46 U.S.C. 9302, but they can voluntarily choose to have one.

Numerous factors affect vessel traffic, which varies from year to year. Therefore, rather than using the total number of vessels over the time period, the Coast Guard took an average of the unique vessels using pilotage services from the years 2019 through 2021 as the best representation of vessels estimated to be affected by the rates in this

[28] Great Lakes Pilotage Rates—2018 Annual Review and Revisions to Methodology (83 FR 26162), published June 5, 2018.

rulemaking. From 2019 through 2021, an average of 285 vessels used pilotage services annually.[29] On average, 273 of these vessels were foreign-flagged and 12 were U.S.-flagged vessels that voluntarily opted into the pilotage service (these figures are rounded averages).

Total Cost to Shippers

The rate changes resulting from this adjustment to the rates result in a net increase in the cost of service to shippers. However, the change in per unit cost to each individual shipper is dependent on their area of operation.

The Coast Guard estimates the effect of the rate changes on shippers by comparing the total projected revenues needed to cover costs in 2022 with the total projected revenues to cover costs in 2023. The Coast Guard sets pilotage rates so that pilot associations receive enough revenue to cover their necessary and reasonable expenses. Shippers pay these rates when they engage a pilot as required by 46 U.S.C. 9302. Therefore, the aggregate payments of shippers to pilot associations are equal to the projected necessary revenues for pilot associations. The revenues each year represent the total costs that shippers must pay for pilotage services. The change in revenue from the previous year is the additional cost to shippers discussed in this rule.

The impacts of the rate changes on shippers are estimated from the district pilotage projected revenues (shown in tables 10, 22, and 34 of this preamble). The Coast Guard estimates that for the 2023 shipping season, the projected revenue needed for all three districts is $37,659,195.

To estimate the change in cost to shippers from this rule, the Coast Guard compared the 2023 total projected revenues to the 2022 projected revenues. Because the Coast Guard reviews and prescribes rates for Great Lakes pilotage annually, the effects are estimated as a single-year cost rather than annualized over a 10-year period. In the 2022 rulemaking, the total projected revenue needed for 2022 is estimated as $32,486,994.[30] This is the best approximation of 2022 revenues, as, at the time of publication of this rule, the Coast Guard does not have enough audited data available for the 2022 shipping season to revise these projections. Table 42 shows the revenue projections for 2022 and 2023 and details the additional cost increases to shippers by area and district as a result of the rate changes on traffic in Districts One, Two, and Three.

TABLE 42—EFFECT OF THE RULE BY AREA AND DISTRICT

[U.S. dollars; non-discounted]

Area	Revenue needed in 2022	Revenue needed in 2023	Additional costs of this rule
Total, District One	$11,791,695	$12,609,601	$817,906
Total, District Two	8,786,882	10,392,542	1,605,660
Total, District Three	11,908,418	14,657,052	2,748,633
System Total	32,486,995	37,659,195	5,172,199

Note: All figures are rounded to the nearest dollar and may not sum.

The resulting difference between the projected revenue in 2022 and the projected revenue in 2023 is the annual change in payments from shippers to pilots as a result of the rate changes by this rule. The effect of the rate changes to shippers will vary by area and district. After taking into account the change in pilotage rates, the rate changes will lead to affected shippers operating in District One experiencing an increase in payments of $817,906 over the previous year. District Two and District Three will experience an increase in payments of $1,605,660 and $2,748,633, respectively, when compared with 2022. The overall adjustment in payments will be an increase in payments by shippers of $5,172,199 across all three districts (a 16-percent increase when compared with 2022). Again, because the Coast Guard reviews and sets rates for Great Lakes pilotage annually, the impacts are estimated as single-year costs rather than being annualized over a 10-year period.

Table 43 shows the difference in revenue by revenue-component from 2022 to 2023 and presents each revenue-component as a percentage of the total revenue needed. In both 2022 and 2023, the largest revenue-component was pilotage compensation (63 percent of total revenue needed in 2022, and 63 percent of total revenue needed in 2023), followed by operating expenses (31 percent of total revenue needed in 2022, and 32 percent of total revenue needed in 2023).

TABLE 43—DIFFERENCE IN REVENUE BY REVENUE-COMPONENT

Revenue component	Revenue needed in 2022	Percentage of total revenue needed in 2022	Revenue needed in 2023	Percentage of total revenue needed in 2023	Difference (2023 revenue – 2022 revenue)	Percentage change from previous year
Adjusted Operating Expenses	$10,045,658	31	$11,984,950	32	$1,939,292	19
Total Target Pilot Compensation	20,362,566	63	23,766,288	63	3,403,722	17
Total Target Apprentice Pilot Compensation	1,293,622	4	916,700	2	(376,922)	(29)
Working Capital Fund	785,149	2	991,257	3	206,108	26
Total Revenue Needed	32,486,995	100	37,659,195	100	5,172,199	16

Note: All figures are rounded to the nearest dollar and may not sum.

[29] Some vessels entered the Great Lakes multiple times in a single year, affecting the average number of unique vessels using pilotage services in any given year.

[30] 87 FR 18488, see table 42. *https://www.govinfo.gov/content/pkg/FR-2022-03-30/pdf/2022-06394.pdf.*

As stated above, the Coast Guard estimates that there will be a total increase in revenue needed by the pilot associations of $5,172,200. This represents an increase in revenue needed for target pilot compensation of $3,403,722, a decrease in revenue needed for total apprentice pilot wage benchmark of ($376,922), an increase in the revenue needed for adjusted operating expenses of $1,939,292, and an increase in the revenue needed for the working capital fund of $206,108. Of the $5,172,200 total change in revenue, $1,461,677 (28 percent) results from changes in inflation, $2,052,118 (40 percent) results from changes in the number of pilots, ($443,258) (−9 percent) results from the decrease in the number of apprentice pilots, and $2,101,662 (41 percent) results from other changes in traffic.

The change in revenue needed for pilot compensation, $3,403,722, is due to three factors: (1) The changes to adjust 2022 pilotage compensation to account for the difference between actual ECI inflation [31] (5.7 percent) and predicted PCE inflation [32] (2.2 percent) for 2022; (2) an increase of two pilots in District Two and three pilots in District Three compared to 2022; and (3) projected inflation of pilotage compensation in Step 2 of the methodology, using predicted inflation through 2024.

The target compensation is $424,398 per pilot in 2023, compared to $399,266 in 2022. The changes to modify the 2022 pilot compensation to account for the difference between predicted and actual inflation will increase the 2022 target compensation value by 3.5 percent. As shown in table 44, this inflation adjustment increases total compensation by $13,974 per pilot, and the total revenue needed by $782,561 when accounting for all 56 pilots.

TABLE 44—CHANGE IN REVENUE RESULTING FROM THE CHANGE TO INFLATION OF PILOT COMPENSATION CALCULATION IN STEP 4

2022 Target Pilot Compensation	$399,266
Adjusted 2022 Compensation ($399,266 × 1.035)	413,240
Difference between Adjusted Target 2022 Compensation and Target 2022 Compensation ($413,240 − $399,266)	13,974
Increase in total Revenue for 56 Pilots ($13,974 × 56)	782,561

Note: All figures are rounded to the nearest dollar and may not sum.

Similarly, table 45 shows the impact of the difference between predicted and actual inflation on the target apprentice pilot compensation benchmark. The inflation adjustment increases the compensation benchmark by $5,031 per apprentice pilot, and the total revenue needed by $30,185 when accounting for all 6 apprentice pilots.

TABLE 45—CHANGE IN REVENUE RESULTING FROM THE CHANGE TO INFLATION OF APPRENTICE PILOT COMPENSATION CALCULATION IN STEP 4

Target Apprentice Pilot Compensation	$143,736
Adjusted Compensation ($143,736 × 1.035)	148,767
Difference between Adjusted Target Compensation and Target Compensation ($148,767 − $143,736)	5,031
Increase in total Revenue for Apprentices ($5,031 × 6)	30,185

Note: All figures are rounded to the nearest dollar and may not sum.

As noted earlier, the Coast Guard predicts that 56 pilots will be needed for the 2023 season. This will be an increase of five pilots compared to the 2022 season. The difference reflects an increase of two pilots in District Two and three pilots in District Three. Table 46 shows the increase of $2,052,118 in revenue needed solely for pilot compensation. As noted previously, to avoid double counting, this value excludes the change in revenue resulting from the change to adjust 2022 pilotage compensation to account for the difference between actual and predicted inflation.

TABLE 46—CHANGE IN REVENUE RESULTING FROM INCREASE OF FIVE PILOTS

2023 Target Compensation	$424,398
Total Number of New Pilots	5
Total Cost of New Pilots ($424,398 × 5)	$2,121,990
Difference between Adjusted Target 2022 Compensation and Target 2022 Compensation ($413,240 − $399,266)	$13,974
Increase in total Revenue for 5 Pilots ($13,974 × 5)	$69,872
Net Increase in total Revenue for 5 Pilots ($2,121,990 − $69,872)	$2,052,118

Note: All figures are rounded to the nearest dollar and may not sum.

[31] Employment Cost Index, Total Compensation for Private Industry workers in Transportation and Material Moving, Annual Average, Series ID: CIU2010000520000A. Accessed September 29, 2022. *https://www.bls.gov/news.release/eci.t05.htm.*

[32] Table 1 Summary of Economic Projections, PCE Inflation June Projection. Accessed September, 2022 *https://www.federalreserve.gov/monetarypolicy/files/fomcprojtabl20220921.pdf.*

Similarly, the Coast Guard predicts that six apprentice pilots will be needed for the 2023 season. This will be a decrease of three apprentices from the 2022 season. The difference reflects a decrease of one apprentice for District Two and two apprentices for District Three. Table 47 shows the decrease of ($443,258) in revenue needed solely for apprentice pilot compensation. As noted previously, to avoid double counting, this value excludes the change in revenue resulting from the change to adjust 2022 apprentice pilotage compensation to account for the difference between actual and predicted inflation.

TABLE 47—CHANGE IN REVENUE RESULTING FROM DECREASE OF THREE APPRENTICES

2023 Apprentice Target Compensation	$152,783
Total Number of New Apprentices	(3)
Total Cost of New Apprentices ($152,783 × −3)	($458,350)
Difference between Adjusted Target 2022 Compensation and Target 2022 Compensation ($148,767 − $143,736)	$5,031
Increase in total Revenue for −3 Apprentices ($5,031 [× −3)	($15,092)
Net Increase in total Revenue for −3 Apprentices (−$458,350 − −$15,092)	($443,258)

Note: All figures are rounded to the nearest dollar and may not sum.

Another increase, $624,831, will be the result of increasing compensation for the 56 pilots to account for future inflation of 2.7 percent in 2023. This will increase total compensation by $11,158 per pilot.

TABLE 48—CHANGE IN REVENUE RESULTING FROM INFLATING 2022 COMPENSATION TO 2023

Adjusted 2022 Compensation	$413,240
2023 Target Compensation ($413,240 × 1.027)	424,398
Difference between Adjusted 2022 Compensation and Target 2023 Compensation $424,398 − $413,240)	11,158
Increase in total Revenue for 56 Pilots ($11,158 × 56)	624,831

Note: All figures are rounded to the nearest dollar and may not sum.

Similarly, an increase of $24,101 will be the result of increasing compensation for the 6 apprentice pilots to account for future inflation of 2.7 percent in 2023. This will increase total compensation by $4,017 per apprentice pilot, as shown in table 49.

TABLE 49—CHANGE IN REVENUE RESULTING FROM INFLATING 2022 APPRENTICE PILOT COMPENSATION TO 2023

Adjusted 2022 Compensation	$148,767
2023 Target Compensation ($424,398 × 36%)	152,783
Difference between Adjusted Compensation and Target Compensation $152,783 − $148,767)	4,017
Increase in total Revenue for 6 Apprentices ($4,017 × 6)	24,101

Note: All figures are rounded to the nearest dollar and may not sum.

Table 50 presents the percentage change in revenue by area and revenue-component, excluding surcharges, as they are applied at the district level.[33]

[33] The 2022 projected revenues are from the Great Lakes Pilotage Rate—2022 Annual Review and Revisions to Methodology final rule (86 FR 14184), tables 9, 21, and 33. The 2023 projected revenues are from tables 10, 22, and 34 of this final rule.

TABLE 50—DIFFERENCE IN REVENUE BY REVENUE-COMPONENT AND AREA

	Adjusted operating expenses			Total target pilot compensation			Total target apprentice pilot compensation			Working capital fund			Total revenue needed		
	2022	2023	Percentage change	2022	2023	Percentage change	2022	2023	Percentage change	2022	2023	Percentage change	2022	2023	Percentage change
District One: Designated	$2,419,401	$2,599,777	7	$4,165,143	$4,243,980	2	$172,483	$183,340	6.3	$163,077	$189,966	16	$6,747,621	$7,217,063	7.0
District One: Undesignated	1,613,051	1,733,186	7	3,309,117	3,395,184	3	114,989	122,227	6.3	121,906	141,941	16	5,044,074	5,392,538	6.9
District Two: Undesignated	1,078,929	1,270,338	18	3,366,611	4,243,980	26	172,483	61,113	(64.6)	110,101	150,722	37	4,555,641	5,726,153	25.7
District Two: Designated	1,618,395	1,905,503	18	2,510,585	2,546,388	1	114,989	91,670	(20.3)	102,261	122,828	20	4,231,241	4,666,389	10.3
District Three: Undesignated	2,603,961	3,515,118	35	6,556,746	7,214,766	10	567,756	359,942	(37)	226,880	299,795	32	9,387,588	11,389,621	21.3
District Three: Designated	711,920	961,028	35	1,747,987	2,121,990	21	150,923	98,408	(35)	60,924	86,005	41	2,520,831	3,267,430	29.6

Note: All figures are rounded to the nearest dollar and may not sum.

Benefits

This rule allows the Coast Guard to meet the requirements in 46 U.S.C. 9303 to review the rates for pilotage services on the Great Lakes. The rate changes promote safe, efficient, and reliable pilotage service on the Great Lakes by (1) ensuring that rates cover an association's operating expenses, (2) providing fair pilot compensation, adequate training, and sufficient rest periods for pilots, and (3) ensuring pilot associations produce enough revenue to fund future improvements. The rate changes also help recruit and retain pilots, which ensures a sufficient number of pilots to meet peak shipping demand, helping to reduce delays caused by pilot shortages.

B. Small Entities

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, the Coast Guard has considered whether this rule will have a significant economic impact on a substantial number of small entities. 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.

For the rule, the Coast Guard reviewed recent company size and ownership data for the vessels identified in the GLPMS, and we reviewed business revenue and size data provided by publicly available sources such as ReferenceUSA.[34] As described in section VIII.A of this preamble, the Coast Guard found that 285 unique vessels used pilotage services on average during the years 2019 through 2021. These vessels are owned by 59 entities, of which 44 are foreign entities that operate primarily outside the United States, and the remaining 15 entities are U.S. entities. The Coast Guard compared the revenue and employee data found in the company search to the Small Business Administration's (SBA) small business threshold as defined in the SBA's ''Table of Size Standards'' for small businesses to determine how many of these companies are considered small entities.[35] Table 51 shows the North American Industry Classification System (NAICS) codes of the U.S. entities and the small entity standard size established by the SBA.

TABLE 51—NAICS CODES AND SMALL ENTITIES SIZE STANDARDS

NAICS	Description	Small entity size standard
238910	Site Preparation Contractors.	$16,500,000.
423860	Transportation Equipment And Supplies.	150 Employees.
425120	Wholesale Trade Agents And Brokers.	100 Employees.
483212	Inland Water Passenger Transportation.	500 Employees.
484230	Specialized Freight (Except Used Goods) Trucking.	$30,000.
488330	Navigational Services to Shipping.	$41,500,000.
561510	Travel Agencies ...	$22,000,000.
561599	All Other Travel Arrangement And Reservation Services.	$22,000,000.
713930	Marinas	$8,000,000.
813910	Business Associations.	$8,000,000.

Of the 15 U.S. entities, 8 exceed the SBA's small business standards for small entities. To estimate the potential impact on the seven small entities, the Coast Guard used their 2021 invoice data to estimate their pilotage costs in 2023. Of the seven small entities, from 2019 to 2021, only five used pilotage services in 2021. The Coast Guard increased their 2021 costs to account for the changes in pilotage rates resulting from this rule and the Great Lakes Pilotage Rates—2021 Annual Review and Revisions to Methodology final rule (86 FR 14184). The Coast Guard estimated the change in cost to these entities resulting from this rule by subtracting their estimated 2022 pilotage costs from their estimated 2023 pilotage costs and found the average costs to small firms will be approximately $29,311, with a range of $810 to $109,314. The estimated change in pilotage costs between 2022 and 2023 was then compared with each firm's annual revenue. In all but one case, the impact of the change in estimated pilotage expenses were below 1 percent of revenues. For one uniquely small entity, the change in impact will be 4.19 percent of revenues, as this entity reports revenue approximately 10 times less than the next largest small entity.

In addition to the owners and operators discussed previously, three U.S. entities that receive revenue from pilotage services will be affected by this rule. These are the three pilot associations that provide and manage pilotage services within the Great Lakes districts. These associations are designated with the same NAICS code as Business Associations [36] with a small-entity size standard of $8,000,000. Based on the reported revenues from audit reports, none of the associations qualify as small entities.

Finally, the Coast Guard did not find any small not-for-profit organizations that are independently owned and operated and are not dominant in their fields that will be impacted by this rule. The Coast Guard also did not find any small governmental jurisdictions with populations of fewer than 50,000 people that will be impacted by this rule. Based on this analysis, the Coast Guard concludes this rulemaking will not affect a substantial number of small entities, nor have a significant economic impact on any of the affected entities.

Therefore, 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.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, the Coast Guard offers to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. 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.

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).

[34] See *https://resource.referenceusa.com/*.

[35] See *https://www.sba.gov/document/support--table-size-standards*. SBA has established a ''Table of Size Standards'' for small businesses that sets small business size standards by NAICS code. A size standard, which is usually stated in number of employees or average annual receipts (''revenues''), represents the largest size that a business (including its subsidiaries and affiliates) may be in order to remain classified as a small business for SBA and Federal contracting programs. Accessed April 2022.

[36] In previous rulemakings, the associations used a different NAICS code, 483212 Inland Water Passenger Transportation, which had a size standard of 500 employees and, therefore, designated the associations as small entities. The change in NAICS code comes from an update to the association's ReferenceUSA profile in February 2022.

D. Collection of Information

This rule calls for no new collection of information nor does it revise an existing collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

E. Federalism

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

Congress directed the Coast Guard to establish ''rates and charges for pilotage services.'' See 46 U.S.C. 9303(f). This regulation is issued pursuant to that statute and is preemptive of State law as specified in 46 U.S.C. 9306. Under 46 U.S.C. 9306, a ''State or political subdivision of a State may not regulate or impose any requirement on pilotage on the Great Lakes.'' As a result, States or local governments are expressly prohibited from regulating within this category. Therefore, this rule is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

While it is well settled that States may not regulate in categories in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, the Coast Guard recognizes the key role that State and local governments may have in making regulatory determinations. Additionally, for rules with federalism implications and preemptive effect, Executive Order 13132 specifically directs agencies to consult with State and local governments during the rulemaking process. If you believe this rule will have implications for federalism under Executive Order 13132, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

F. Unfunded Mandates

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. Although this rule will not result in such expenditure, the effects of this rule are discussed elsewhere in this preamble.

G. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights).

H. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988 (Civil Justice Reform) to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

The Coast Guard has analyzed this rule under Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks). This rule is not an economically significant rule and will not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), because it will 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. Energy Effects

The Coast Guard has analyzed this rule under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) and have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

L. Technical Standards

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards will be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, the Coast Guard did not consider the use of voluntary consensus standards.

M. Environment

The Coast Guard has analyzed this rule under Department of Homeland Security Management Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. 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. This rule is categorically excluded under paragraphs A3 and L54 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. Paragraph A3 pertains to the promulgation of rules of the following nature: (a) those of a strictly administrative or procedural nature; (b) those that implement, without substantive change, statutory or regulatory requirements; (c) those that implement, without substantive change, procedures, manuals, and other guidance documents; (d) those that interpret or amend an existing regulation without changing its environmental effect; (e) those that provide technical guidance on safety and security matters; and (f) those that provide guidance for the preparation of security plans. Paragraph L54 pertains to regulations which are editorial or procedural.

This rule involves setting or adjusting the pilotage rates for the 2023 shipping season to account for changes in district operating expenses, changes in the number of pilots, and anticipated inflation. These changes are consistent with, and promote, the Coast Guard's maritime safety mission.

List of Subjects in 46 CFR Part 401

Administrative practice and procedure, Great Lakes; Navigation (water), Penalties, Reporting and recordkeeping requirements, Seamen.

For the reasons discussed in the preamble, the Coast Guard is amending 46 CFR part 401 as follows:

PART 401—GREAT LAKES PILOTAGE REGULATIONS

■ 1. The authority citation for part 401 is revised to read as follows:

Authority: 46 U.S.C. 2103, 2104(a), 6101, 7701, 8105, 9303, 9304; DHS Delegation No. 00170.1, Revision No. 01.3, paragraphs (II)(92)(a), (d), (e), (f).

■ 2. Amend § 401.405 by revising paragraphs (a)(1) through (6) to read as follows:

§ 401.405 Pilotage rates and charges.

(a) * * *

(1) The St. Lawrence River is $876;

(2) Lake Ontario is $586;

(3) Lake Erie is $704;

(4) The navigable waters from Southeast Shoal to Port Huron, MI is $601;

(5) Lakes Huron, Michigan, and Superior is $410; and

(6) The St. Mary's River is $834.

* * * * *

Dated: February 8, 2023.

W.R. Arguin,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Prevention Policy.

[FR Doc. 2023–03212 Filed 2–24–23; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 23–111; FR ID 127148]

Radio Broadcasting Services; Various Locations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the FM Table of Allotments, of the Commission's rules, by reinstating certain channels as a vacant FM allotment in various communities. The FM allotments were previously removed from the FM Table because a construction permit and/or license was granted. These FM allotments are now considered vacant because of the cancellation of the associated FM authorizations or the dismissal of long-form auction FM applications. A staff engineering analysis confirms that all of the vacant FM allotments complies with the Commission's minimum distance separation and city-grade coverage requirements. The window period for filing applications for these vacant FM allotments will not be opened at this time. Instead, the issue of opening these allotments for filing will be addressed by the Commission in subsequent order.

DATES: Effective February 27, 2023.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Order,* adopted February 8, 2023 and released February 9, 2023. The full text of this Commission decision is available online at *https://apps.fcc.gov/ecfs/.* The full text of this document can also be downloaded in Word or Portable Document Format (PDF) at *https://www.fcc.gov/edocs.* This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. The Commission will not send a copy of the *Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because these allotments were previously reported.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336 and 339.

■ 2. In § 73.202, in paragraph (b), amend table 1 (the Table of FM Allotments) by:

■ a. Adding in alphabetical order:

■ i. Entries for ''Ajo,'' ''Fredonia,'' and ''Peach Springs'' under Arizona;

■ ii. An entry for ''Lake Village'' under Arkansas;

■ iii. Entries for ''Kettleman City,'' ''Tecopa,'' and ''Wasco'' under California;

■ iv. An entry for ''Bear Lake'' under Michigan;

■ v. An entry for ''Grand Portage'' under Minnesota;

■ vi. An entry for ''Greenwood'' under Mississippi; and

■ vii. An entry for ''Bunker'' under Missouri;

■ b. Revising the entry for ''Owyhee'' under Nevada;

■ c. Adding in alphabetical order an entry for ''Clovis'' under New Mexico;

■ d. Revising the entry for ''Junction'' under Texas;

■ e. Adding in alphabetical order the entry for ''Sonora'' under Texas; and

■ f. Adding in alphabetical order an entry for ''Barton'' under Vermont.

The additions and revisions read as follows:

§ 73.202 Table of Allotments.

* * * * *

(b) * * *

TABLE 1 TO PARAGRAPH (b)

U.S. States	Channel No.
Arizona	
* * * * *	
Ajo	275A.
* * * * *	
Fredonia	266C1.
* * * * *	
Peach Springs	280A.
* * * * *	
Arkansas	
* * * * *	
Lake Village	278C3.
* * * * *	
California	
* * * * *	
Kettleman City	299A.
* * * * *	
Tecopa	288A.
* * * * *	
Wasco	224A.
* * * * *	
Michigan	
Bear Lake	264C3.
* * * * *	
Minnesota	
* * * * *	
Grand Portage	251A.

TABLE 1 TO PARAGRAPH (b)—Continued

U.S. States	Channel No.
Mississippi	
* * * * *	
Greenwood	230C3.
* * * * *	
Missouri	
* * * * *	
Bunker	292C3.
* * * * *	
Nevada	
* * * * *	
Owyhee	247C1.
* * * * *	
New Mexico	
* * * * *	
Clovis	272C3.
* * * * *	
Texas	
* * * * *	
Junction	228C2, 277C3, 290A.
* * * * *	
Sonora	272C3.
* * * * *	
Vermont	
Barton	262A.
* * * * *	

* * * * *

[FR Doc. 2023–03730 Filed 2–24–23; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 230216–0043]

RIN 0648–BL54

Fisheries of the Exclusive Economic Zone Off Alaska; Amendment 124 to the BSAI FMP for Groundfish and Amendment 112 to the GOA FMP for Groundfish To Revise IFQ Program Regulations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to implement Amendment 124 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP) and Amendment 112 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP). First, this final rule amends regulations for the Individual Fishing Quota (IFQ) and Community Development Quota (CDQ) Programs for pot gear configurations, pot gear tending and retrieval requirements, pot limits, and associated recordkeeping and reporting requirements. These changes increase operational efficiency and flexibility for IFQ holders and CDQ groups. Second, this final rule authorizes jig gear as a legal gear type for harvesting sablefish IFQ and CDQ, increasing opportunities for entry-level participants. Third, this final rule temporarily removes the Adak community quota entity (CQE) residency requirement for a period of five years. These actions are intended to promote the goals and objectives of the Northern Pacific Halibut Act of 1982 (Halibut Act), the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the BSAI FMP, GOA FMP, and other applicable laws.

DATES: Effective February 27, 2023.

ADDRESSES: Electronic copies of the Environmental Assessment and the Regulatory Impact Review (herein referred to as the ''Analysis'') prepared for this final rule are available from *www.regulations.gov* or from the NMFS Alaska Region website at *https://www.fisheries.noaa.gov/region/alaska.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Assistant Regional Administrator, Sustainable Fisheries Division; and to *www.reginfo.gov/public/do/PRAMain.* Find the particular information collection by using the search function.

FOR FURTHER INFORMATION CONTACT: Abby Jahn, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

The North Pacific Fishery Management Council (Council) recommended Amendment 124 to the BSAI FMP and Amendment 112 to the GOA FMP to authorize the use of jig gear in the sablefish IFQ and CDQ programs. Amendment 124 would also remove the residency requirements for CQE. The Council also recommended changes to Federal regulations to increase operational efficiency and flexibility for IFQ holders and CDQ groups. Fishery Management Plan amendments and regulations developed by the Council may be implemented by NMFS only after approval by the Secretary of Commerce. Similarly, halibut fishery regulations developed by the Council may only be implemented by NMFS after approval of the Secretary of Commerce. NMFS published a Notice of Availability for Amendment 124 to the BSAI FMP and Amendment 112 to the GOA FMP in the **Federal Register** on (87 FR 66125, November 2, 2022) with comments invited through January 3, 2023. NMFS published a proposed rule to implement Amendment 124 to the BSAI FMP and Amendment 112 to the GOA FMP (87 FR 71559, November 23, 2022) with comments invited through December 23, 2022.

This final rule implements provisions that affect IFQ halibut and IFQ sablefish in the GOA and IFQ and CDQ halibut and sablefish in the BSAI. The IFQ and CDQ fisheries are prosecuted in accordance with discrete catch limits and managed in separate geographic areas of harvest. Sablefish IFQ regulatory areas are defined and shown in Figure 14 to 50 CFR part 679 and section 1.3 of the Analysis. Halibut IFQ areas are consistent with International Pacific Halibut Commission (IPHC) regulatory areas and are defined and shown in Figure 15 to 50 CFR part 679 and section 1.3 of the Analysis. This final rule applies within sablefish IFQ areas in the GOA, specifically the Southeast Outside (SEO) District of the GOA, West Yakutat (WY) District of the GOA, Central GOA (CGOA), and Western GOA (WGOA). This final rule

also applies to the halibut IFQ Area 4 in the BSAI.

The following sections summarize the IFQ, CDQ, and CQE Programs; modifications to Amendment 101 to the GOA FMP through this final rule; applicability of halibut retention; and authorized gear changes. Additional details are provided in the preamble to the proposed rule (87 FR 71559, November 23, 2022).

IFQ, CDQ, and CQE Programs

Commercial halibut and sablefish fisheries in the GOA and BSAI are managed primarily under the IFQ Program. The IFQ Program was implemented in 1995 (58 FR 59375, November 9, 1993) and is managed pursuant to regulations at 50 CFR parts 300 and 679 under the authority of section 5 of the Halibut Act, 16 U.S.C. 773c, and section 303(b) of the Magnuson-Stevens Act, 16 U.S.C. 1853(b). The IFQ Program allocates halibut and sablefish quota share (QS). QS allows the holder to harvest a specific percentage of either the annual commercial catch limit in the halibut fishery or the total allowable catch (TAC) in the sablefish fishery.

The Western Alaska CDQ Program was implemented in 1992 (57 FR 54936, November 23, 1992). Subsequently, the Magnuson-Stevens Act was amended to include provisions specific to the CDQ Program. The purposes of the CDQ Program are: (1) to provide eligible western Alaska villages with the opportunity to participate and invest in fisheries in the BSAI management area; (2) to support economic development in western Alaska; (3) to alleviate poverty and provide economic and social benefits for residents of western Alaska; and (4) to achieve sustainable and diversified local economies in western Alaska (16 U.S.C. 1855(i)(1)(A)).

The CQE Program was implemented in 2004 (69 FR 23681, April 30, 2004). The purpose of the CQE Program is to improve the ability for rural coastal communities to maintain long-term opportunities to access the halibut and sablefish resources for the GOA. The CQE Program was later amended under Amendment 102 to the BSAI FMP to include eligible communities such as Adak (79 FR 8870, February 14, 2014). The Adak CQE has purchased IFQ Program QS. Each year, a CQE may transfer (lease) its IFQ to one or more eligible individuals who must be onboard when the IFQ is fished and landed. Caps limit the amount of QS that can be held on behalf of each community and collectively for all communities. Limitations on leasing IFQ derived from QS held by a CQE were established for either eligible community residents of Adak or non-residents for a period of five years. The purpose of the time limitation was to explicitly tie the potential long-term benefits of QS held by an Aleutian Islands CQE to the residents of Adak. The Council, in part, recommended this action to remove the residency requirement for an additional period of five years with the intent of creating more opportunities for the Adak CQE to fully harvest its allocation.

Section 4.3 of the Analysis (available as indicated in the **ADDRESSES** section above) and the preamble to the proposed rule prepared for this action provide additional detail on the IFQ, CDQ, and CQE programs (87 FR 71559, November 23, 2022).

Provisions of Amendment 101

This final rule modifies provisions implemented under Amendment 101 to the GOA FMP (81 FR 95435, December 28, 2016). Amendment 101 authorized the use of longline pot gear in the GOA sablefish IFQ fishery; established pot limits, gear retrieval and tending requirements, and gear marking requirements; and required vessel operators to comply with current retention requirements under the IFQ Program. In recommending Amendment 101, the Council indicated its intent to monitor interactions between longline pot and hook-and-line gear in the GOA sablefish IFQ fishery and to determine whether changes to regulatory provisions were needed. In 2021, the Council reviewed provisions of the GOA sablefish IFQ fishery. The review and public testimony highlighted that some gear provisions such as pot limits, gear retrieval, and tending requirements implemented under Amendment 101 were either too restrictive or not meeting the original intent. As a result, the Council initiated analysis of the IFQ Omnibus action. Refer to sections 1.2 and 2.4 of the Analysis and to the preamble of the proposed rule for this action (87 FR 71559, November 23, 2022) for a further discussion on the development of and modifications to Amendment 101 through this final rule.

Halibut Retention

Sablefish IFQ fishermen who also hold halibut IFQ are required to retain halibut that are 32 inches or greater in length (legal size) harvested in the BSAI and GOA sablefish IFQ fishery, provided they have unused halibut IFQ. This regulation was implemented with the IFQ Program in 1995 and is intended to promote full utilization of halibut by reducing discards of halibut caught incidentally in the sablefish IFQ fishery. Many IFQ fishermen hold both sablefish and halibut IFQ, and the two species can overlap in some fishing areas (58 FR 59375, November 9, 1993). In 2016, the IPHC recommended annual management measures that authorized longline pot gear as a legal gear type to retain halibut, provided NMFS implemented regulations to authorize longline pot gear in the sablefish IFQ fishery (81 FR 14000, March 16, 2016). In addition to authorizing longline pot gear in the sablefish IFQ fishery and the other provisions described in the preceding section, Amendment 101 also included halibut retention requirements that aligned Federal regulations with the provisions in the 2016 IPHC annual management measures. The purpose of requiring retention of incidentally caught halibut is to avoid discard, and therein discard mortality, of halibut.

As required by Federal regulations, each groundfish pot must include tunnel openings no wider than nine-inches to prevent certain non-target species, such as halibut, from entering the pot. Amendment 118 to the BSAI FMP (85 FR 840, January 8, 2020) implemented regulations requiring vessel operators to retain IFQ or CDQ halibut when using pot gear when an IFQ or CDQ permit holder on board the vessel has unused halibut IFQ or CDQ for the IFQ regulatory area fished in the IFQ vessel category. Amendment 118 also added an exception to the requirement for a tunnel opening of no wider than nine inches. The exception created by Amendment 118 applies to groundfish pots when there is halibut IFQ or CDQ on board, and when fishing for halibut or sablefish IFQ or CDQ in the BSAI. If the tunnel opening requirement remained in effect, the ability to harvest halibut IFQ or CDQ using pots would have been limited because the opening would be too small for legal halibut.

In developing this action, the Council and NMFS carefully considered existing regulations and retention requirements across the BSAI and GOA. This final rule adds an exception applicable to the GOA so that the requirement for a nine-inch maximum width tunnel opening does not apply to groundfish pots when a vessel begins a trip with unfished halibut IFQ on board and when those vessels are fishing for IFQ halibut and IFQ sablefish.

Authorized Gear

This final rule provides additional options for the permissible placement of the biodegradable panel on collapsible slinky pots. This will allow vessel operators in the IFQ and CDQ fisheries to choose a configuration that works

best for their operation. This final rule also authorizes jig gear in the GOA sablefish IFQ fisheries and the BSAI sablefish IFQ and CDQ fisheries. For additional discussion on the development of collapsible slinky pots, regulations for biodegradable panels, and jig gear, refer to the preamble to the proposed rule (87 FR 71559, November 23, 2022) and the Analysis.

Need for Amendment 112, Amendment 124, and This Final Rule

Amendment 112, Amendment 124, and this final rule are intended to increase operational efficiency and reduce administrative burden for IFQ Program and CDQ Program participants. First, this final rule expands available options for placement of a biodegradable panel specific to collapsible slinky pots used to fish for halibut IFQ or CDQ, or sablefish IFQ or CDQ. Second, this final rule creates an exception to the groundfish pot requirement for a nine-inch tunnel opening when a vessel begins a trip with unfished halibut IFQ on board and when those vessels are fishing for IFQ halibut and IFQ sablefish in the GOA. Third, this final rule revises regulatory specifications for gear marking, pot limits, gear tending, and gear retrieval to improve efficiency. Fourth, this final rule authorizes jig gear for the harvest of sablefish IFQ and CDQ in the BSAI and sablefish IFQ in the GOA in order to provide additional opportunity for entry-level participants. Fifth, this final rule removes the Adak residency requirement for a period of five years in order to provide opportunity for the Adak CQE to fully harvest its IFQ. Lastly, this final rule updates regulations for clarity by revising recordkeeping and reporting requirements for groundfish logbooks (including IFQ species) and improves operational efficiency by modifying the IFQ Program medical transfer provision and allowing electronic submission for IFQ and CQE Program application forms.

The Final Rule

This final rule revises regulations at 50 CFR part 679. This section describes the regulation changes to implement Amendment 124 to the BSAI FMP and Amendment 112 to the GOA FMP, as well as additional regulations recommended by the Council and/or proposed by NMFS.

Collapsible Slinky Pot Exception

Each groundfish pot must have a biodegradable panel that is at least 18 inches (45.72 cm) in length and use untreated cotton thread of no larger size than No. 30 (*i.e.,* biodegradable twine). This final rule amends regulations at § 679.2 to allow for the biodegradable panel to be placed anywhere on the mesh of a collapsible slinky pot. Per the Council's recommendation, this regulation allows the door of the collapsible slinky pot to be wrapped with biodegradable twine. The biodegradable twine would not have to be 18 inches in length, but the door must be a minimum of 18 inches in diameter. This final rule adds the descriptors ''rigid or collapsible'' to the definition of ''Pot gear'' at § 679.2 in paragraph (15)(i) of the definition of ''Authorized fishing gear'' so that both types of pots are expressly included in this definition.

The changes above are limited to collapsible slinky pots in the IFQ and CDQ fisheries. The final rule does not affect groundfish pot gear used in non-IFQ or non-CDQ groundfish fisheries, nor rigid pot gear used in the IFQ and CDQ fisheries, which remain subject to the existing biodegradable panel placement requirements in the definition for ''Authorized fishing gear'' in paragraph (15)(i).

Tunnel Opening Exception for the GOA

Groundfish pots used in the sablefish IFQ fishery are required to have tunnel openings no wider than nine inches, which are intended prevent certain non-target species, such as halibut, from entering the pot. An exception to this requirement already applies in the BSAI when fishery participants use groundfish pots when there is halibut IFQ or CDQ on board, and when fishing for halibut or sablefish IFQ or CDQ in the BSAI. This final rule adds an exception in the GOA to the nine-inch tunnel opening requirement only where there is an IFQ or CDQ permit holder on board who has both unused halibut IFQ and unused sablefish IFQ. This allows IFQ fishery participants using longline pot gear in the GOA to select a tunnel opening of any size to more effectively fish for halibut IFQ while concurrently fishing for sablefish IFQ. Specifically, this final rule applies the exception at § 679.2 under the definition of ''Authorized fishing gear'' at paragraph (15)(iii) when there is IFQ halibut on board a vessel and the harvester is fishing for IFQ sablefish with longline pot gear in the GOA in accordance with § 679.42(l). No changes are required for the exception for the BSAI nor for the BSAI halibut and sablefish pot gear requirements described at § 679.42(m).

Gear Specifications in the GOA

This final rule revises regulations at § 679.24(a)(3) to modify the requirements for marking of longline pot gear deployed to harvest IFQ sablefish in the GOA. This change was recommended because elements of the existing marking requirements are unnecessary and burdensome for vessel operations. This final rule removes the requirement that each end of a set of longline pot gear has a cluster of four or more marker buoys, a flag mounted on a pole, and a radar reflector. However, the requirement that each end of a gear set has an attached hard buoy ball marked with the capital letters, ''LP,'' indicating longline pot gear, would remain so that gear visibility is maintained. Likewise, no changes are made to § 679.24(a)(1) or (2), which require all hook-and-line, longline pot, and pot-and-line marker buoys to be marked with the vessel's Federal Fisheries Permit (FFP) number or Alaska Department of Fish & Game (ADF&G) vessel registration number.

This final rule modifies § 679.42(l)(5)(ii)(B) for longline pot gear limits in the WY District GOA. Namely, the maximum number of pots that a vessel operator may deploy would be increased from 120 to 200 when harvesting IFQ sablefish in the WY District of the GOA. This final rule does not modify the maximum number of pots permitted in the SEO District or CGOA and WGOA regulatory areas.

Additionally, this final rule modifies IFQ fisheries prohibitions at § 679.7(f) and gear tending and retrieval requirements at § 679.42(l)(5)(iii) for longline pot gear in the GOA. First, this final rule adds cross references to § 679.42(l)(5)(iii) in the prohibitions at § 679.7, including paragraph (f)(21) for catcher vessels (C/Vs) in the SEO District, paragraph (f)(22) for catcher/processors (C/Ps) in the SEO District, paragraph (f)(23) for C/Vs or C/Ps in the WY District and the Central GOA regulatory area, and paragraph (f)(24) for C/Vs or C/Ps in the WG regulatory area. These changes are made for consistency and ease of navigation between regulations for longline pot gear in the GOA and prohibitions for IFQ fisheries.

Second, this final rule modifies regulations at § 679.42(l)(5)(iii)(A) for C/V operators in the SEO District by replacing retrieval requirements (*i.e.,* retrieve and remove) with gear tending requirements (*i.e.,* redeploy or remove), removing any reference to IFQ landings, and modifying the timeline so that a vessel operator either tends or retrieves gear from the fishing grounds within five days of deploying the gear. Corresponding changes occur at § 679.7(f)(21) to update the relevant prohibition. For the Central GOA regulatory area, this final rule modifies

the timeline so that a vessel operator either redeploys or removes gear from the fishing grounds within seven days of deploying the gear, adding paragraph § 679.42(l)(5)(iii)(E) to specify the revised gear tending requirements in a separate paragraph from the WY District. This final rule revises the corresponding prohibition at § 679.7(f)(23) for the Central GOA regulatory area and the WY District. The gear tending requirements included in this final rule promote consistency in geographic areas where fishery participants may fish in multiple areas and result in a 5 day gear tending requirement applicable in WY District and SEO District and a 7 day gear tending requirement applicable in the Central GOA and Western GOA regulatory areas. This final rule does not modify the gear tending requirements for C/Ps in the SEO District, vessel operators in the WY District, or vessel operators in the WG regulatory area.

Authorize Jig Gear

This final rule revises regulations at §§ 679.2, 679.20, and 679.24 to authorize jig gear in the IFQ and CDQ sablefish fisheries in the BSAI and the IFQ sablefish fishery in the GOA consistent with Amendments 124 and 112. Jig gear is defined at § 679.2 in paragraph (8) of the definition for ''Authorized fishing gear.'' Authorization of jig gear for the aforementioned fisheries does not require jig gear definition changes. Instead, this final rule adds ''jig gear'' to the definition of ''Fixed gear,'' in paragraph (4)(ii) under ''Authorized fishing gear'' at § 679.2, to specify that jig gear may be used to harvest sablefish IFQ and CDQ from any BSAI reporting area. No GOA-specific changes are required. The definition of ''Fixed gear,'' defined at § 679.2 in paragraph (4)(i) under the definition ''Authorized fishing gear,'' currently includes all ''longline gear'' used to harvest sablefish in the GOA. ''Longline gear'' is already defined to include ''jig gear.''

This final rule revises regulations at § 679.20(a)(4)(iii)(A) for the Bering Sea subarea, § 679.20(a)(4)(iv)(A) for the Aleutian Islands subarea, and § 679.20(b)(1)(i) for the nonspecified reserve. This change replaces the phrase ''hook-and-line and pot gear'' with ''fixed gear'' for consistency with the definition of ''Fixed gear'' defined at § 679.2 in paragraph (4)(ii) of the definition ''Authorized fishing gear.'' This change is associated with the final rule's modification of § 679.2's definition of ''Authorized fishing gear'' to include jig gear. This final rule does not change the percent of the TAC allocated to the sablefish IFQ fishery in the BSAI. NMFS will continue to allocate 50 percent of the sablefish TAC in the Bering Sea subarea and 75 percent of the sablefish TAC in the Aleutian Islands subarea to the sablefish IFQ fishery.

This final rule adds ''jig gear'' to § 679.24 where gear restrictions for sablefish are found in the regulations. Specifically, this final rule adds ''jig gear'' to § 679.24(c)(2)(i)(A) and (B) so that jig gear is an authorized gear type for the Eastern GOA regulatory area and permitted when directed fishing for IFQ sablefish. This final rule adds ''jig gear'' to § 679.24(c)(3) and (4) so that sablefish is not considered a prohibited species for vessel operators using jig gear in the Central GOA, Western GOA, or BSAI. This final rule also makes two grammatical corrections to the list of permissible gear types in the Eastern GOA regulatory area at § 679.24(c)(2)(i)(A) and (B) and § 679.24(c)(4), changing ''and'' to ''or'' to clarify that at least one of the listed gear types must be used but that all gear types need not be used simultaneously.

Adak Residency Requirement

This final rule revises regulations at § 679.42 for sablefish and halibut QS use specific to eligible community residents of Adak, Alaska. Specifically, this final rule changes the date specified at § 679.42(e)(8)(ii) and (f)(7)(ii) from March 17, 2019, to five years after the effective date of this final rule. The regulatory changes at § 679.42(e)(8)(ii) apply only to a CQE in the Aleutian Islands subarea for sablefish QS. The regulatory changes at § 679.42(f)(7)(ii) apply only to a CQE in IFQ regulatory Area 4B for halibut QS.

Other Regulatory Provisions

This final rule modifies § 679.21(a)(5), which currently references sablefish as a prohibited species via a cross-reference to § 679.24(c)(2)(ii). Because § 679.24(c)(2)(ii) pertains only to the Eastern GOA regulatory area, the final rule changes the cross reference to § 679.24(c)(2) to clarify that sablefish is a prohibited species for the western GOA, central GOA, and the BSAI, as well as the Eastern GOA, per § 679.24(c)(2) through (4). This fix does not modify prohibited species bycatch management or gear restrictions for sablefish but rather corrects the cross reference to include all four areas.

This final rule also revises regulations at § 679.42 to exclude medical transfers approved in 2020, 2021, or 2022 from the use restriction detailed at § 679.42(d)(2)(iv)(C). Specifically, this final rule adds paragraph (d)(2)(iv)(C)(*l*), stating, ''A medical transfer approved in 2020, 2021, or 2022 does not count toward the restriction detailed in paragraph (d)(2)(iv)(C) of this section.'' Furthermore, this final rule adds, ''Except as provided for in paragraph (d)(2)(iv)(C)(*1*) of this section,'' to the beginning of paragraph (d)(2)(iv)(C) to link the exception to new paragraph (d)(2)(iv)(C)(*1*).

Additionally, this final rule revises regulations at § 679.5 specific to the longline and pot gear catcher vessel daily fishing logbook (DFL) and the C/P daily cumulative production logbook (DCPL). A sentence would be added at § 679.5(c)(1)(ii), (c)(3)(i)(A)(*1*), (c)(3)(i)(B)(*1*), and (c)(3)(iv)(A)(*2*) to clarify that the same logbook may be used for different gear types, provided different gear types are recorded on separate pages. This final rule does not change when the logbook is required however, it does provide additional flexibility to a vessel operator that must record fishing activity in a logbook. The purpose of these regulatory changes is to provide clear direction to vessel operators as to how these logbooks may be used. The changes are specific to groundfish fisheries for C/Vs greater than 60 ft length overall (LOA) using longline or pot gear, and IFQ or CDQ halibut or IFQ or CDQ sablefish fisheries for C/Vs less than 60 ft LOA using longline pot gear or pot gear.

The final rule revises regulations relevant to the CQE Program at §§ 679.4, 679.41, and 679.5. Those regulations require CQEs to submit certain information to the Regional Administrator and imply that information must be submitted by mail because only a mailing address is listed. This final rule revises §§ 679.4(k)(10)(vi)(A) and (D), 679.41(l)(3), and 679.5(t)(2) to remove the address for the Regional Administrator and change the word ''sent'' to ''submitted'' in § 679.4(k)(10)(vi)(D) to allow for additional submission methods. As a result, no submission method would be included in regulations and, instead, NMFS would provide this information on forms and on the NMFS Alaska Region website at *https://www.fisheries.noaa.gov/region/alaska.* The purpose of these changes is to provide additional methods for the public to submit information as the agency moves toward electronic submission.

Changes From Proposed to Final Rule

There is one change made to the regulations from the proposed to final rules to replaces the phrase ''hook-and-line and pot gear'' with ''fixed gear'' at

679.20(b)(1)(ii)(B) for consistency with the definition of ''Fixed gear'' in paragraph (4)(ii) of the definition of ''Authorized fishing gear'' at § 679.2. This conforming change was inadvertently left out of the proposed rule. Based on a comment received, the public reporting burden estimate for gear marking requirements is increased. This change is explained in the discussion of OMB Control Number 0648–0353 below.

Comments and Responses

NMFS received two comment letters from a member of the public and a fishery participant, respectively, on the proposed rule, FMP Amendments, and information collection requirements. NMFS summarized and responded to these two unique comments below.

Comment 1: A commenter expressed support for the increased use of jig gear, and the commenter requested changes to this action to include requiring the use of jig gear and reducing the use of net gear in order to reduce the likelihood of overfishing and to support sustainable harvests.

Response: Amendment 124, Amendment 112, and this final rule are intended to increase operational efficiency and reduce administrative burden for IFQ Program and CDQ Program participants consistent with National Standards 5 and 7. This action authorizes jig gear as a legal gear type for harvesting sablefish IFQ in the BSAI and GOA and sablefish CDQ in the BSAI to increase access to entry-level fishing opportunities. The Council did not consider or recommend requiring the use of jig gear, and this final rule does not require the use of jig gear. This action also does not modify harvest levels, and the flexibilities provided by the changes to authorized gear types, pot gear configuration, gear retrieval, pot limits, and biodegradeable panel requirements are small changes that do not change the nature of the IFQ Program or CDQ Program fisheries. The potential beneficial and adverse environmental effects of this action are described in Section 5 of the Analysis prepared for this action (See **ADDRESSES**). The potential effects of the action are expected to be insignificant on fishing mortality, stock biomass, and the spatial and temporal distribution of the target stocks. Requirements applicable to fishing with trawl or other net gear are outside the scope of this action. NMFS manages commercial, recreational, and subsistence fisheries consistent with the provisions of the Magnuson-Stevens Act and other applicable law.

Comment 2: A commenter provided information about the estimated information collection burden of gear marking requirements included in this final rule. The commenter stated that approximately 20 percent of their buoys need to be repainted annually resulting in an annual cost of $100 for supplies and approximately 30 minutes per buoy.

Response: Based on this comment, NMFS has updated the estimated public reporting burden for gear marking requirements, as summarized under the heading ''OMB Control Number 0648–0353'' below.

Classification

Pursuant to section 304(b)(3) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator (AA) has determined that this final rule is consistent with the BSAI FMP and the GOA FMP, Amendments 124 and 112 to the FMPs, other provisions of the Magnuson-Stevens Act, and other applicable law. Pursuant to Magnuson-Stevens Act section 305(d), this action is necessary to carry out the amendments to the BSAI FMP and the GOA FMP. NMFS is issuing specific regulations contained this rule pursuant to 305(d) of the Magnuson-Stevens Act to carry out amendments to the BSAI FMP and the GOA FMP. These changes are necessary to update recordkeeping and reporting requirements for groundfish logbooks (including IFQ species), improve operational efficiency by modifying the IFQ Program medical transfer provision, and allow electronic submission for IFQ and CQE Program application forms.

Regulations governing the U.S. fisheries for Pacific halibut are developed by the IPHC, the Council, and the Secretary of Commerce. Section 5 of the Halibut Act (16 U.S.C. 773c) allows the Regional Council having authority for a particular geographical area to develop regulations governing the allocation and catch of halibut in U.S. Convention waters as long as those regulations do not conflict with IPHC regulations. This final action is consistent with the Council's authority under the Halibut Act to implement management measures for the halibut IFQ fishery and does not conflict with IPHC regulations.

Administrative Procedure Act

Because this rule relieves a restriction by modifying specific provisions of the IFQ and CDQ Programs to reduce restrictions and promote increased operational efficiency and flexibility fishery participants, a 30-day delay in effective date is not required pursuant to 5 U.S.C. 553(d)(1). This action authorizes the use of jig gear in the sablefish IFQ and CDQ Programs and modifies pot gear configurations, pot gear tending and retrieval requirements, pot limits, and associated recordkeeping and reporting requirements. The collapsible slinky pot exception provides additional flexibility to vessel operators using longline pot gear to place the biodegradable anywhere on the mesh of a collapsible slinky pot. The changes to implement the tunnel opening exception in the GOA provides additional flexibility that allows IFQ fishery participants using longline pot gear in the GOA to select a tunnel opening of any size to more effectively fish for halibut IFQ while concurrently fishing for sablefish IFQ. This final rule loosens gear specifications in the GOA by removing specific gear marking requirements for vessels using longline pot gear, increasing the maximum number of pots that a vessel operator may deploy from 120 to 200 in the WY District of the GOA, removes the gear retrieval requirement for C/V operators in the SEO District and replaces it with a less restrictive gear tending requirement, and loosens the gear tending requirement in the Central GOA regulatory area from 5 days to 7 days. This final rule adds jig gear to the list of authorized gear in the IFQ and CDQ sablefish fisheries in the BSAI and the IFQ sablefish fishery in the GOA to provide an additional gear type for vessel operators to use. This final rule removes the Adak residency requirement for a period of five years in order to provide opportunity for the Adak CQE to fully harvest its IFQ. The additional regulatory provisions included in this final rule make minor changes to cross references and CQE form submission instructions to promote clarity to the regulated public, adds an exception to the IFQ medical transfer restriction that allows fishery participants additional flexibility to use medical transfers in future years, and modifies recordkeeping and reporting regulations to provide vessel operators using two gear types the option to record fishing activity in one DFL rather than two.

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866.

An Environmental Assessment and Regulatory Impact Review (''Analysis'') was prepared for Amendment 124, Amendment 112, and this final rule. The AA concluded that there will be no significant impact on the human environment as a result of this rule. A copy of the Analysis is available from

NMFS as indicated in the **ADDRESSES** section above.

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

Information Collection Requirements

This final rule contains collection of information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This final rule revises existing collection-of-information requirements for OMB Control Number 0648–0665 (Alaska CQE Program) and revises and extends, by 3 years, the existing collection-of-information requirements for 0648–0353 (Alaska Region Gear Identification Requirements). The existing collection-of-information requirements continue to apply under 0648–0213 (Alaska Region Logbook and Activity Family of Forms); 0648–0272 (Alaska Pacific Halibut & Sablefish Fisheries: IFQ); and 0648–0515 (Alaska Interagency Electronic Reporting System). The approved changes to the collections are described below. The public reporting burdens for the information collection requirements provided below include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

OMB Control Number 0648–0353

NMFS revises and extends by 3 years the existing requirements for OMB Control Number 0648–0353. This collection contains gear identification requirements for the groundfish fisheries in the Exclusive Economic Zone off Alaska. This collection is revised to reduce the number of marker buoys required for longline pot gear deployed to fish IFQ sablefish in the GOA because this final rule removes requirements for the vessel owner to use four or more marker buoys, a flag mounted on a pole, and a radar reflector to mark each end of a longline set. Removing these requirements decreases the burden for harvesters and increases operational efficiency. The number of respondents is not changed. Based on a comment received, the public reporting burden is increased to 30 minutes per individual response to collect the information and paint it on a buoy, and the annual cost of supplies to paint the buoys is increased to $100 per respondent.

OMB Control Number 0648–0665

This information collection is revised to modify the text on the Application for CQE to Transfer IFQ to an Eligible Community Resident or Non-Resident because this final rule removes the residency requirement for the Adak CQE for five years.

This final rule revises regulations for the CQE annual report, the CQE License Limitation Program (LLP) authorization letter, the Application for Nonprofit Corporation to be Designated as a CQE, and the Application for a CQE to Receive a Non-trawl Groundfish LLP License to provide additional methods for the public to submit the information as the agency moves toward electronic submission.

These revisions do not affect the number of respondents, anticipated responses, or burden hours or costs. The public reporting burden per individual response is estimated to average 2 hours for the Application for CQE to Transfer IFQ to an Eligible Community Resident or Non-Resident, 200 hours for the Application for Nonprofit Corporation to be Designated as a CQE, 40 hours for the CQE Annual Report, 20 hours for the Application for a CQE to Receive a Non-trawl Groundfish LLP License, and 1 hour for the CQE License Limitation Program Authorization letter.

Public Comment

We invite the general public and other Federal agencies to comment on proposed and continuing information collections, which help us assess the impact of our information collection requirements and minimize the public's reporting burden. Written comments and recommendations for these information collections should be submitted on the following website: *www.reginfo.gov/public/do/PRAMain.* Find the particular information collection by using the search function and entering either the title of the collection or the OMB Control Number.

Notwithstanding any other provisions of law, no person is required to respond to, and no person shall be subject to 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. All currently approved NOAA collections of information may be viewed at *https://www.reginfo.gov/public/do/PRASearch.*

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Date: February 16, 2023.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 50 CFR part 679 as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Pub. L. 108–447; Pub. L. 111–281.

■ 2. In § 679.2, amend the definition for ''Authorized fishing gear'' by revising paragraph (4)(ii) and the introductory text of paragraph (15), adding paragraphs (15)(i)(A) and (B), and revising paragraph (15)(iii) to read as follows:

§ 679.2 Definitions.

* * * * *

Authorized fishing gear * * *

(4) * * *

(ii) For sablefish harvested from any BSAI reporting area, all hook-and-line gear, jig gear, and all pot gear.

* * * * *

(15) *Pot gear* means a portable structure, rigid or collapsible, that is designed and constructed to capture and retain fish alive in the water. This gear type includes longline pot and pot-and-line gear. Each groundfish pot must comply with the following:

(i) * * *

(A) *Collapsible pot exception.* A collapsible pot (*e.g.,* slinky pot) used to fish for halibut IFQ or CDQ, or sablefish IFQ or CDQ, in accordance with paragraph (4) of this definition, is exempt from the biodegradable panel placement requirements described in paragraph (15)(i) of this definition. Instead, a collapsible pot must have either a biodegradable panel placed anywhere on the mesh of the collapsible pot, which is at least 18 inches (45.72 cm) in length and is made from untreated cotton thread of no larger size than No. 30, or one door on the pot must measure at least 18 inches (45.72 cm) in diameter and be wrapped with

untreated cotton thread of no larger size than No. 30.

(B) [Reserved]

* * * * *

(iii) *Halibut retention exception.* If halibut retention is required when harvesting halibut from any IFQ regulatory area in the BSAI or GOA, the requirements to comply with a tunnel opening for pots when fishing for IFQ or CDQ halibut or IFQ or CDQ sablefish in the BSAI in accordance with § 679.42(m), or for IFQ sablefish in the GOA in accordance with § 679.42(l), do not apply.

* * * * *

§ 679.4 [Amended]

■ 3. Amend § 679.4 as follows:

■ a. In paragraph (k)(10)(vi)(A), remove the address text, '', NMFS, P.O. Box 21668, Juneau, AK 99802''; and

■ b. In paragraph (k)(10)(vi)(D), remove the address text, ''sent to the Regional Administrator, NMFS, P.O. Box 21668, Juneau, AK 99802'' and add in its place, ''submitted to the Regional Administrator''.

■ 4. Amend § 679.5 as follows:

■ a. Revise paragraphs (c)(1)(ii), (c)(3)(i)(A)(*1*), (c)(3)(i)(B)(*1*), and (c)(3)(iv)(A)(*2*); and

■ b. In paragraph (t)(2), remove the address text, ''National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802''. The revisions read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

* * * * *

(c) * * *

(1) * * *

(ii) *Use of two or more vessel logbooks of different gear types.* If two or more different gear types are used onboard a vessel in a fishing year, the operator(s) of this vessel may use the same vessel logbooks for different gear types, provided different gear types are recorded on separate pages.

* * * * *

(3) * * *

(i) * * *

(A) * * *

(*1*) Except as described in paragraph (f)(1)(i) of this section, the operator of a catcher vessel 60 ft (18.3 m) or greater LOA, that is required to have an FFP under § 679.4(b) and that is using longline or pot gear to harvest groundfish, must maintain a longline and pot gear DFL and may use the same logbook for longline and pot gear, provided different gear types are recorded on separate pages.

* * * * *

(B) * * *

(*1*) The operator of a catcher vessel less than 60 ft (18.3 m) LOA, using longline pot gear to harvest IFQ sablefish or IFQ halibut in the GOA, or using pot gear to harvest IFQ or CDQ halibut or IFQ or CDQ sablefish in the BSAI, must maintain a longline and pot gear DFL according to paragraph (c)(3)(iv)(A)(*2*) of this section and may use the same logbook for longline and pot gear, provided different gear types are recorded on separate pages.

* * * * *

(iv) * * *

(A) * * *

(*2*) If a catcher vessel identified in paragraph (c)(3)(i)(A)(*1*) or (c)(3)(i)(B)(*1*) through (*3*) of this section is active, the operator must record in the longline and pot gear DFL, for one or more days on each logsheet, the information listed in paragraphs (c)(3)(v), (vi), (viii), and (x) of this section and may use the same logbook for longline and pot gear, provided different gear types are recorded on separate pages.

* * * * *

■ 5. In § 679.7, revise paragraphs (f)(21) through (24) to read as follows:

§ 679.7 Prohibitions.

* * * * *

(f) * * *

(21) Fail to redeploy or remove from the fishing grounds all deployed longline pot gear that is assigned to, and used by, a catcher vessel within five days of deploying the gear to fish IFQ sablefish in the Southeast Outside District of the GOA in accordance with § 679.42(l)(5)(iii)(A).

(22) Fail to redeploy or remove from the fishing grounds all deployed longline pot gear that is assigned to, and used by, a catcher/processor within five days of deploying the gear to fish IFQ sablefish in the Southeast Outside District of the GOA in accordance with § 679.42(l)(5)(iii)(B).

(23) Fail to redeploy or remove from the fishing grounds all deployed longline pot gear that is assigned to, and used by, a catcher vessel or a catcher/processor within five days of deploying the gear to fish IFQ sablefish in the West Yakutat District of the GOA, and within seven days of deploying the gear to fish IFQ sablefish in the Central GOA regulatory area, in accordance with § 679.42(l)(5)(iii)(C) and (E).

(24) Fail to redeploy or remove from the fishing grounds all deployed longline pot gear that is assigned to, and used by, a catcher vessel or a catcher/processor within seven days of deploying the gear to fish IFQ sablefish in the Western GOA regulatory area in accordance with § 679.42(l)(5)(iii)(D).

* * * * *

■ 6. In § 679.20, revise paragraphs (a)(4)(iii)(A), (a)(4)(iv)(A), (b)(1)(i), and (b)(1)(ii)(B) to read as follows:

§ 679.20 General limitations.

* * * * *

(a) * * *

(4) * * *

(iii) * * *

(A) *Fixed gear.* Vessels in the Bering Sea subarea using fixed gear will be allocated 50 percent of each TAC for sablefish.

* * * * *

(iv) * * *

(A) *Fixed gear.* Vessels in the Aleutian Islands subarea using fixed gear will be allocated 75 percent of each TAC for sablefish.

* * * * *

(b) * * *

(1) * * *

(i) *Nonspecified reserve.* Fifteen percent of the BSAI TAC for each target species, except pollock, the fixed gear allocation for sablefish, and the Amendment 80 species, which includes Pacific cod, is automatically placed in the nonspecified reserve before allocation to any sector. The remaining 85 percent of each TAC is apportioned to the initial TAC for each target species that contributed to the nonspecified reserve. The nonspecified reserve is not designated by species or species group. Any amount of the nonspecified reserve may be apportioned to target species that contributed to the nonspecified reserve, provided that such apportionments are consistent with paragraph (a)(3) of this section and do not result in overfishing of a target species.

(ii) * * *

(B) *Fixed gear sablefish CDQ reserves.* Twenty percent of the fixed gear allocation of sablefish established under paragraphs (a)(4)(iii)(A) and (a)(4)(iv)(A) of this section will be allocated to a CDQ reserve for each subarea.

* * * * *

■ 7. In § 679.21, revise paragraph (a)(5) to read as follows:

§ 679.21 Prohibited species bycatch management.

(a) * * *

(5) *Sablefish as a prohibited species.* (See § 679.24(c) for gear restrictions for sablefish.)

* * * * *

■ 8. In § 679.24, revise paragraphs (a)(3), (c)(2)(i)(A) and (B), and (c)(3) and (4) to read as follows:

§ 679.24 Gear limitations.

* * * * *

(a) * * *

(3) Each end of a set of longline pot gear deployed to fish IFQ sablefish in the GOA must have one hard buoy ball attached and marked with the capital letters ''LP'' in accordance with paragraph (a)(2) of this section.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(A) No person may use any gear other than hook-and-line, longline pot, jig, or trawl gear when fishing for sablefish in the Eastern GOA regulatory area.

(B) No person may use any gear other than hook-and-line gear, longline pot gear, or jig gear to engage in directed fishing for IFQ sablefish.

* * * * *

(3) *Central and Western GOA regulatory areas; sablefish as prohibited species.* Operators of vessels using gear types other than hook-and-line, longline pot, jig, or trawl gear in the Central and Western GOA regulatory areas must treat any catch of sablefish in these areas as a prohibited species as provided by § 679.21(a).

(4) *BSAI.* Operators of vessels using gear types other than hook-and-line, longline pot, pot-and-line, jig, or trawl gear in the BSAI must treat sablefish as a prohibited species as provided by § 679.21(a).

* * * * *

§ 679.41 [Amended]

■ 9. In § 679.41, in the introductory text of paragraph (l)(3), remove the two references to the address text '', NMFS, P.O. Box 21668, Juneau, AK 99802.''

■ 10. In § 679.42, revise paragraphs (d)(2)(iv)(C), (e)(8)(ii), (f)(7)(ii), (l)(5)(ii)(B), and (l)(5)(iii)(A) and (C); and add paragraph (l)(5)(iii)(E), to read as follows:

§ 679.42 Limitations on use of QS and IFQ.

* * * * *

(d) * * *

(2) * * *

(iv) * * *

(C) Except as provided for in paragraph (d)(2)(iv)(C)(*1*) of this section, NMFS will not approve a medical transfer if the applicant has received a medical transfer in any 3 of the previous 7 calendar years for any medical reason.

(*1*) Medical transfers approved in 2020, 2021, or 2022 do not count toward the restriction detailed in paragraph (d)(2)(iv)(C) of this section.

(*2*) [Reserved]

* * * * *

(e) * * *

(8) * * *

(ii) In the Aleutian Islands subarea may lease the IFQ resulting from that QS to any person who has received an approved Application for Eligibility as described in § 679.41(d) prior to February 28, 2028, but only to an eligible community resident of Adak, AK, after February 28, 2028.

* * * * *

(f) * * *

(7) * * *

(ii) In IFQ regulatory Area 4B may lease the IFQ resulting from that QS to any person who has received an approved Application for Eligibility as described in § 679.41(d) prior to February 28, 2028 but only to an eligible community resident of Adak, AK, after February 28, 2028.

* * * * *

(l) * * *

(5) * * *

(ii) * * *

(B) In the West Yakutat District of the GOA, a vessel operator is limited to deploying a maximum of 200 pots.

* * * * *

(iii) * * *

(A) In the Southeast Outside District of the GOA, a catcher vessel operator must redeploy or remove from the fishing grounds all longline pot gear that is assigned to the vessel and deployed to fish IFQ sablefish within five days of deploying the gear.

* * * * *

(C) In the West Yakutat District of the GOA, a vessel operator must redeploy or remove from the fishing grounds all longline pot gear that is assigned to the vessel and deployed to fish IFQ sablefish within five days of deploying the gear.

* * * * *

(E) In the Central GOA regulatory area, a vessel operator must redeploy or remove from the fishing grounds all longline pot gear that is assigned to the vessel and deployed to fish IFQ sablefish within seven days of deploying the gear.

* * * * *

[FR Doc. 2023–03669 Filed 2–24–23; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 88, No. 38
Monday, February 27, 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 Parts 433 and 435

[EERE–2010–BT–STD–0031]

RIN 1904–AB96

Clean Energy for New Federal Buildings and Major Renovations of Federal Buildings; Reopening of Comment Period

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

ACTION: Supplemental notice of proposed rulemaking; reopening of public comment period.

SUMMARY: On December 21, 2022, the U.S. Department of Energy (DOE) published in the **Federal Register** a supplemental notice of proposed rulemaking and announcement of a public webinar regarding revised energy performance standards for the construction of new Federal buildings and Federal buildings undergoing major renovations. DOE has received multiple requests to extend the public comment period, has reviewed these requests, and is reopening the public comment period to allow comments to be submitted until March 23, 2023.

DATES: The comment period for the supplemental notice of proposed rulemaking published in the **Federal Register** on December 21, 2022 (87 FR 78382) is reopened until March 23, 2023. Written comments, data, and information are requested and will be accepted on and before March 23, 2023.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2010–BT–STD–0031, by any of the following methods:

Federal eRulemaking Portal: www.regulations.gov. Follow the instructions for submitting comments.

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) 586–9138. If possible, please submit all items on a compact disc (''CD''), in which case it is not necessary to include printed copies.

Email: to *FossilFuelReduct-2010-STD-0031@ee.doe.gov.* Include docket number EERE–2010–BT–STD–0031 in the subject line of the message.

No telefacsimilies (''faxes'') will be accepted.

Docket: The docket for this activity, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

The docket web pages can be found at: *www.regulations.gov/docket/EERE-2010-BT-STD-0031.* The docket web page contains instructions on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Williams, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–9138. Email: *Jeremy.Williams@ee.doe.gov.*

Mr. Matthew Ring, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–2555. Email: *Matthew.Ring@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: On December 21, 2022, DOE published in the **Federal Register** a supplemental notice of proposed rulemaking (SNOPR) and announcement of public webinar regarding revised energy performance standards for the construction of new Federal buildings. DOE stated it would accept written comments, data, and information on the proposal until February 21, 2023. (87 FR 78382).

On January 17, 2023, DOE received a joint request from the Alliance to Save Energy, Business Council for Sustainable Energy, and the U.S. Green Building Council (USGBC), requesting a 30-day extension of the public comment period to allow more time to review the SNOPR and supportive material.[1] On January 27, 2023, DOE also received joint requests from the American Gas Association, American Public Gas Association, National Propane Gas Association, Plumbing-Heating-Cooling Contractors (National Association), and the U.S. Chamber of Commerce, requesting a 30-day extension to the public comment period.

DOE has reviewed these requests and determined that reopening the public comment period is warranted to allow interested parties additional time to submit comments for DOE's consideration. Accordingly, DOE is reopening the comment period deadline to March 23, 2023. DOE believes this additional 30 days is sufficient.

Signing Authority

This document of the Department of Energy was signed on February 21, 2023, by Mary Sotos, Director of the Federal Energy Management Program, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on February 21, 2023.

Treena V. Garrett,

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

[FR Doc. 2023–03908 Filed 2–24–23; 8:45 am]

BILLING CODE 6450–01–P

[1] See *https://www.regulations.gov/document/EERE-2010-BT-STD-0031-0073.*

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. FAA–2022–0770]

Airworthiness Criteria: Special Class Airworthiness Criteria for the Asylon DroneSentry Model ASY02C+ Unmanned Aircraft

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

ACTION: Notice of proposed airworthiness criteria.

SUMMARY: The FAA announces the availability of and requests comments on proposed airworthiness criteria for the Asylon Incorporated (Asylon) DroneSentry Model ASY02C+ unmanned aircraft (UA). This document proposes the airworthiness criteria that the FAA finds to be appropriate and applicable for the UA design.

DATES: Send comments on or before March 29, 2023.

ADDRESSES: Send comments identified by Docket No. FAA–2022–0770 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov/,* including any personal information the commenter provides. Using the search function of the docket website, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478).

Docket: Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Christopher J. Richards, Emerging Aircraft Strategic Policy Section, AIR–618, Strategic Policy Management Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 6020 28th Avenue South, Room 103, Minneapolis, MN 55450, telephone (612) 253–4559, email *Christopher.J.Richards@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested people to take part in the development of these airworthiness criteria by sending written comments, data, or views. The most helpful comments reference a specific portion of the airworthiness criteria, explain the reason for any recommended change, and include supporting data. Comments on operational, pilot certification, and maintenance requirements would address issues that are beyond the scope of this document.

Except for Confidential Business Information as described in the following paragraph, and other information as described in § 11.35 of title 14, Code of Federal Regulations (14 CFR), the FAA will file in the docket all comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning these proposed airworthiness criteria. Before acting on this proposal, the FAA will consider all comments received on or before the closing date for comments. The FAA will consider comments filed late if it is possible to do so without incurring delay. The FAA may change these proposed airworthiness criteria based on received comments.

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 these proposed airworthiness criteria contain commercial or financial information that is customarily treated as private, that you actually treat as private, and this is relevant or responsive to these proposed airworthiness criteria, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and the indicated comments will not be placed in the public docket of these proposed airworthiness criteria. Send submissions containing CBI to Christopher J. Richards, Emerging Aircraft Strategic Policy Section, AIR–618, Strategic Policy Management Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 6020 28th Avenue South, Room 103, Minneapolis, MN 55450, email *Christopher.J.Richards@faa.gov.* Comments the FAA receives, which are not specifically designated as CBI, will be placed in the public docket for these proposed airworthiness criteria.

Background

Asylon Incorporated (Asylon) applied to the FAA on October 15, 2021 for a special class type certificate under 14 CFR 21.17(b) for the DroneSentry Model ASY02C+ UA.

The DroneSentry Model ASY02C+ consists of an unmanned aircraft (UA) and its associated elements (AE) including communication links and components that control the UA. The DroneSentry Model ASY02C+ UA has a maximum gross takeoff weight of 19.2 pounds. It is approximately 49 inches in width, 49 inches in length, and 12 inches in height. The DroneSentry Model ASY02C+ UA is battery powered using electric motors for vertical takeoff, landing, and forward flight. The unmanned aircraft system (UAS) operations would rely on high levels of automation and may include multiple UA operated by a single pilot, up to a ratio of five UA to one pilot. Asylon anticipates operators will use the DroneSentry Model ASY02C+ for perimeter security patrols and surveillance. The proposed concept of operations for the DroneSentry Model ASY02C+ identifies a maximum operating altitude of 400 feet above ground level, a maximum cruise speed of 33.5 miles per hour, operations beyond visual line of sight of the pilot, and operations over human beings. Asylon has not requested type certification for flight into known icing for the DroneSentry Model ASY02C+.

Discussion

The FAA establishes airworthiness criteria to ensure the safe operation of aircraft in accordance with 49 U.S.C. 44701(a) and 44704. UA are type certificated by the FAA as special class

aircraft for which airworthiness standards have not been established by regulation. Under the provisions of 14 CFR 21.17(b), the airworthiness standards for special class aircraft are those the FAA finds to be appropriate and applicable to the specific type design.

The applicant has proposed a design with constraints upon its operations and an unusual design characteristic: the pilot is remotely located. The FAA developed existing airworthiness standards to establish an appropriate level of safety for each product and its intended use. The FAA's existing airworthiness standards did not envision aircraft with no pilot in the flightdeck and the technologies associated with that capability.

The FAA has reviewed the proposed design and assessed the potential risk to the National Airspace System. The FAA considered the size of the proposed aircraft, its maximum airspeed and altitude, and operational limitations to address the number of unmanned aircraft per operator and address operations in which the aircraft would operate beyond the visual line of sight of the pilot. These factors allowed the FAA to assess the potential risk the aircraft could pose to other aircraft and to human beings on the ground. Using these parameters, the FAA developed airworthiness criteria to address those potential risks to ensure the aircraft remains reliable, controllable, safe, and airworthy.

The proposed criteria focus on mitigating hazards by establishing safety outcomes that must be achieved, rather than by establishing prescriptive requirements that must be met. This is in contrast to many current airworthiness standards, used to certificate traditional aircraft systems, which prescribe specific indicators and instruments for a pilot in a flightdeck that would be inappropriate for UA. The FAA finds that the proposed criteria are appropriate and applicable for the UA design, based on the intended operational concepts for the UA as identified by the applicant.

The FAA selected the particular airworthiness criteria proposed by this notice for the following reasons:

General: In order to determine appropriate and applicable airworthiness standards for UA as a special class of aircraft, the FAA determined that the applicant must provide information describing the characteristics and capabilities of the UA and how it will be used.

D&R.001 Concept of Operations: To assist the FAA in identifying and analyzing the risks and impacts associated with integrating the proposed UA design into the National Airspace System, the applicant would be required to submit a Concept of Operations (CONOPS). The proposed criteria would require the applicant's CONOPS to identify the intended operational concepts for the UA and describe the UAS and its operation. The applicant would be required to describe the information in the CONOPS in sufficient detail to determine parameters and extent of testing, as well as operating limitations that will be placed in the UA Flight Manual. If the applicant requests to include collision avoidance equipment, the proposed criteria would require the applicant to identify such equipment in the CONOPS.

D&R.005 Definitions: The proposed criteria include a definitions section, distinguishing the term ''loss of Flight'' and ''loss of Control.''

Design and Construction: The FAA selected the design and construction criteria in this section to address airworthiness requirements where the flight testing demonstration alone may not be sufficient to demonstrate an appropriate level of safety.

D&R.100 UA Signal Monitoring and Transmission: To address the risks associated with loss of control of the UA, the applicant would be required to design the UA to monitor and transmit to the AE all information necessary for continued safe flight and operation. Some of the AE are located separately from the UA, and therefore are a unique feature to UAS. As a result, no regulatory airworthiness standards exist that directly apply to this part of the system. The FAA based some of the proposed criteria on existing regulations that address the information that must be provided to a pilot in the flightdeck of a manned aircraft, and modified them as appropriate to the UAS. These proposed criteria list the specific minimum types of information the FAA finds are necessary for the UA to transmit for continued safe flight and operation; however, the applicant must determine whether additional parameters are necessary.

D&R.105 UAS AE Required for Safe UA Operations: Because safe UAS operations depend and rely on both the UA and the AE, the FAA considers the AE in assessing whether the UA meets the criteria that comprise the certification basis. While the AE items themselves will be outside the scope of the UA type design, the applicant must provide sufficient specifications for any aspect of the AE, including the control station, which could affect airworthiness. The proposed criteria would require a complete and unambiguous identification of the AE and their interface with the UA, so that their availability or use is readily apparent.

As explained in FAA Policy Memorandum AIR600–21–AIR–600–PM01, dated July 13, 2021, the FAA will approve either the specific AE or minimum specifications for the AE, as identified by the applicant, as part of the type certificate by including them as an operating limitation in the type certificate data sheet and flight manual. The FAA may impose additional operating limitations specific to the AE through conditions and limitations for inclusion in the operational approval (*i.e.,* waivers, exemptions, operating certificates, or a combination of these). In this way, the FAA will consider the entirety of the UAS for operational approval and oversight.

D&R.110 Software: Software for manned aircraft is certified under the regulations applicable to systems, equipment, and installations (*e.g.,* §§ 23.2510, 25.1309, 27.1309, or 29.1309). Two regulations specifically prescribe airworthiness standards for software: Engine airworthiness standards (§ 33.28) and propeller airworthiness standards (§ 35.23). The proposed UA software criteria are based on these regulations and tailored for the risks posed by UA software.

D&R.115 Cyber Security: The location of the pilot, separate from the UA, requires a continuous wireless connection (command and control link) with the UA for the pilot to monitor and control it. Because the purpose of this link is to control the aircraft, this makes the UA susceptible to cyber security threats in a unique way.

The current regulations for the certification of systems, equipment, and installations (*e.g.,* §§ 23.2510, 25.1309, 27.1309, and 29.1309) do not adequately address potential security vulnerabilities exploited by unauthorized access to aircraft systems, data buses, and services. Therefore for manned aircraft, the FAA issues special conditions for particular designs with network security vulnerabilities.

To address the risks to the UA associated with intentional unauthorized electronic interactions, the applicant would be required to design the UAS' systems and networks to protect against intentional unauthorized electronic interactions and mitigate potential adverse effects. The FAA based the language for the proposed criteria on recommendations in the final report dated August 22, 2016, from the Aircraft System Information Security/Protection (ASISP)

working group, under the FAA's Aviation Rulemaking Advisory Committee. Although the recommendations pertained to manned aircraft, the FAA has reviewed the report and determined the recommendations are also appropriate for UA. The wireless connections used by UA make these aircraft susceptible to the same cyber security risks, and therefore require similar criteria as manned aircraft.

D&R.120 Contingency Planning: The location of the pilot and the controls for the UAS, separate from the UA, is a unique feature to UAS. As a result, no regulatory airworthiness standards exist that directly apply to this feature of the system.

To address the risks associated with loss of communication between the pilot and the UA, and thus the pilot's inability to control the UA, the proposed criteria would require that the UA be designed to automatically execute a predetermined action. Because the pilot needs to be aware of the particular predetermined action the UA will take when there is a loss of communication between the pilot and the UA, the proposed criteria would require that the applicant identify the predetermined action in the UA Flight Manual. The proposed criteria would also include requirements for preventing takeoff when the quality of service is inadequate.

D&R.125 Lightning: Because of the size and physical limitations of this UA, it would be unlikely that this UA would incorporate traditional lightning protection features. To address the risks that would result from a lightning strike, the proposed criteria would require an operating limitation in the UA Flight Manual that prohibits flight into weather conditions conducive to lightning. The proposed criteria would also allow design characteristics to protect the UA from lightning as an alternative to the prohibition.

D&R.130 Adverse Weather Conditions: Because of the size and physical limitations of this UA, adverse weather such as rain, snow, and icing pose a greater hazard to the UA than to manned aircraft. For the same reason, it would be unlikely that this UA would incorporate traditional protection features from icing. The FAA based the proposed criteria on the icing requirements in 14 CFR 23.2165(b) and (c) and applied them to all of these adverse weather conditions. The proposed criteria would allow design characteristics to protect the UA from adverse weather conditions. As an alternative, the proposed criteria would require an operating limitation in the UA Flight Manual that prohibits flight into known adverse weather conditions, and either also prevent inadvertent flight into adverse weather or provide a means to detect and to avoid or exit adverse weather conditions.

D&R.135 Flight Essential Parts: The proposed criteria for flight essential parts are substantively the standards for normal category rotorcraft critical parts in § 27.602, with changes to reflect UA terminology and failure conditions. Because part criticality is dependent on safety risk to those on board the aircraft, the term ''flight essential'' is used for those components of an unmanned aircraft whose failure may result in loss of flight or unrecoverable loss of UA control.

Operating Limitations and Information: Similar to manned aircraft, the FAA determined that the UA applicant must provide airworthiness instructions, operating limitations, and flight and performance information necessary for the safe operation and continued operational safety of the UA.

D&R.200 Flight Manual: The proposed criteria for the UA Flight Manual are substantively the same as those in § 23.2620, with minor changes to reflect UA terminology.

D&R.205 Instructions for Continued Airworthiness: The proposed criteria for the Instructions for Continued Airworthiness (ICA) are substantively the same as those in § 23.1529, with minor changes to reflect UA terminology.

Testing: Traditional certification methodologies for manned aircraft are based on design requirements verified at the component level by inspection, analysis, demonstration, or test. Due to the difference in size and complexity, the FAA determined testing methodologies that demonstrate reliability at the aircraft (UA) level, in addition to the design and construction criteria identified in this proposal, will achieve the same safety objective. The proposed testing criteria in sections D&R.300 through D&R.320 utilize these methodologies.

D&R.300 Durability and Reliability: The FAA intends for the proposed testing criteria in this section to cover key design aspects and prevent unsafe features at an appropriate level tailored for this UA. The proposed durability and reliability testing would require the applicant to demonstrate safe flight of the UA across the entire operational envelope and up to all operational limitations for all phases of flight and all aircraft configurations. The UA would only be certificated for operations within the limitations prescribed for its operating environment, as defined in the applicant's proposed CONOPS and demonstrated by test. The FAA intends for this process to be similar to the process for establishing limitations prescribed for special purpose operations for restricted category aircraft. The proposed criteria would require that all flights during the testing be completed with no failures that result in a loss of flight, loss of control, loss of containment, or emergency landing outside of the operator's recovery zone.

For some aircraft design requirements imposed by existing airworthiness standards (*e.g.,* §§ 23.2135, 23.2600, 25.105, 25.125, 27.141, 27.173, 29.51, 29.177), the aircraft must not require exceptional piloting skill or alertness. These rules recognize that pilots have varying levels of ability and attention. In a similar manner, the proposed criteria would require that the durability and reliability flight testing be performed by a pilot with average skill and alertness.

Flight testing will be used to determine the aircraft's ability to withstand flight loads across the range of operating limits and the flight envelope. Because of the size of this UA, it may be subjected to significant ground loads when handled, lifted, carried, loaded, maintained, and transported physically by hand; therefore, the proposed criteria would require that the aircraft used for testing endure the same worst-case ground loads as those the UA will experience in operation after type certification.

D&R.305 Probable Failures: The FAA intends the proposed testing criteria to evaluate how the UA functions after failures that are probable to occur. The applicant will test the UA by inducing certain failures and demonstrating that the failure will not result in a loss of containment or control of the UA. The proposed criteria contain the minimum types of failures the FAA finds are probable; however, the applicant must determine the probable failures related to any other equipment that will be addressed for this requirement.

D&R.310 Capabilities and Functions: The proposed criteria for this section address the minimum capabilities and functions the FAA finds are necessary in the design of the UA and would require the applicant to demonstrate these capabilities and functions by test. Due to the location of the pilot and the controls for UAS, separate from the UA, communication between the pilot and the UA is significant to the design. Thus, the proposed criteria would require the applicant to demonstrate the capability of the UAS to regain command and control after a loss. As with manned aircraft, the electrical

system of the UA must have a capacity sufficient for all anticipated loads; the proposed criteria would require the applicant to demonstrate this by test.

The proposed criteria contain functions that allow the pilot to command the UA to deviate from its flight plan or from its pre-programmed flight path. For example, in the event the pilot needs to deconflict the airspace, the UA must respond to pilot inputs that override any pre-programming.

In the event an applicant requests approval for certain features, such as geo-fencing or external cargo, the proposed criteria contain requirements to address the associated risks. The proposed criteria in this section would also require the design of the UA to safeguard against unintended discontinuation of flight or release of cargo, whether by human action or malfunction.

D&R.315 Fatigue: The FAA intends the proposed criteria in this section to address the risks from reduced structural integrity and structural failure due to fatigue. The proposed criteria would require the applicant to establish an airframe life limit and demonstrate that loss of flight or loss of control due to structural failure will be avoided throughout the operational life of the UA. These proposed criteria would require the applicant to demonstrate this by test while maintaining the UA in accordance with the ICA.

D&R.320 Verification of Limits: This section would evaluate structural safety and address the risks associated with inadequate structural design. While the proposed criteria in D&R.300 address testing to demonstrate that the UA structure adequately supports expected loads throughout the flight and operational envelopes, the proposed criteria in this section would require an evaluation of the performance, maneuverability, stability, and control of the UA with a factor of safety.

Applicability

These proposed airworthiness criteria, established under the provisions of § 21.17(b), are applicable to the DroneSentry Model ASY02C+ UA. Should Asylon Incorporated apply at a later date for a change to the type certificate to include another model, these airworthiness criteria would apply to that model as well, provided the FAA finds them appropriate in accordance with the requirements of subpart D to part 21.

Conclusion

This action affects only the airworthiness criteria for one model UA. It is not a standard of general applicability.

Authority Citation

The authority citation for these airworthiness criteria is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Airworthiness Criteria

The FAA proposes to establish the following airworthiness criteria for type certification of the Asylon Incorporated DroneSentry Model ASY02C+ UA. The FAA proposes that compliance with the following would mitigate the risks associated with the proposed design and Concept of Operations appropriately and would provide an equivalent level of safety to existing rules:

General

D&R.001 Concept of Operations

The applicant must define and submit to the FAA a concept of operations (CONOPS) proposal describing the unmanned aircraft system (UAS) operation in the national airspace system for which unmanned aircraft (UA) type certification is requested. The CONOPS proposal must include, at a minimum, a description of the following information in sufficient detail to determine the parameters and extent of testing and operating limitations:

(a) The intended type of operations;

(b) UA specifications;

(c) Meteorological conditions;

(d) Operators, pilots, and personnel responsibilities;

(e) Control station, support equipment, and other associated elements (AE) necessary to meet the airworthiness criteria;

(f) Command, control, and communication functions;

(g) Operational parameters (such as population density, geographic operating boundaries, airspace classes, launch and recovery area, congestion of proposed operating area, communications with air traffic control, line of sight, and aircraft separation); and

(h) Collision avoidance equipment, whether onboard the UA or part of the AE, if requested.

D&R.005 Definitions

For purposes of these airworthiness criteria, the following definitions apply.

(a) *Loss of control:* Loss of control means an unintended departure of an aircraft from controlled flight. It includes control reversal or an undue loss of longitudinal, lateral, and directional stability and control. It also includes an upset or entry into an unscheduled or uncommanded attitude with high potential for uncontrolled impact with terrain. A loss of control means a spin, loss of control authority, loss of aerodynamic stability, divergent flight characteristics, or similar occurrence, which could generally lead to crash.

(b) *Loss of flight:* Loss of flight means a UA's inability to complete its flight as planned, up to and through its originally planned landing. It includes scenarios where the UA experiences controlled flight into terrain, obstacles, or any other collision, or a loss of altitude that is severe or non-reversible. Loss of flight also includes deploying a parachute or ballistic recovery system that leads to an unplanned landing outside the operator's designated recovery zone.

Design and Construction

D&R.100 UA Signal Monitoring and Transmission

The UA must be designed to monitor and transmit to the AE all information required for continued safe flight and operation. This information includes, at a minimum, the following:

(a) Status of all critical parameters for all energy storage systems;

(b) Status of all critical parameters for all propulsion systems;

(c) Flight and navigation information as appropriate, such as airspeed, heading, altitude, and location; and

(d) Communication and navigation signal strength and quality, including contingency information or status.

D&R.105 UAS AE Required for Safe UA Operations

(a) The applicant must identify and submit to the FAA all AE and interface conditions of the UAS that affect the airworthiness of the UA or are otherwise necessary for the UA to meet these airworthiness criteria. As part of this requirement—

(1) The applicant may identify either specific AE or minimum specifications for the AE.

(i) If minimum specifications are identified, they must include the critical requirements of the AE, including performance, compatibility, function, reliability, interface, operator alerting, cyber security, and environmental requirements.

(ii) Critical requirements are those that if not met would impact the ability to operate the UA safely and efficiently.

(2) The applicant may use an interface control drawing, a requirements document, or other reference, titled so that it is clearly designated as AE interfaces to the UA.

(b) The applicant must show the FAA that the AE or minimum specifications

identified in paragraph (a) of this section meet the following:

(1) The AE provide the functionality, performance, reliability, cyber security, and information to assure UA airworthiness in conjunction with the rest of the design;

(2) The AE are compatible with the UA capabilities and interfaces;

(3) The AE must monitor and transmit to the operator all information required for safe flight and operation, including but not limited to those identified in D&R.100; and

(4) The minimum specifications, if identified, are correct, complete, consistent, and verifiable to assure UA airworthiness.

(c) The FAA will establish the approved AE or minimum specifications as operating limitations and include them in the UA type certificate data sheet and Flight Manual.

(d) The applicant must develop any maintenance instructions necessary to address implications from the AE on the airworthiness of the UA. Those instructions will be included in the instructions for continued airworthiness (ICA) required by D&R.205.

D&R.110 Software

To minimize the existence of software errors, the applicant must:

(a) Verify by test, all software that may impact the safe operation of the UA;

(b) Utilize a configuration management system that tracks, controls, and preserves changes made to software throughout the entire life cycle; and

(c) Implement a problem reporting system that captures and records defects and modifications to the software.

D&R.115 Cyber Security

(a) UA equipment, systems, and networks, addressed separately and in relation to other systems, must be protected from intentional unauthorized electronic interactions that may result in an adverse effect on the security or airworthiness of the UA. Protection must be ensured by showing that the security risks have been identified, assessed, and mitigated as necessary.

(b) When required by paragraph (a) of this section, procedures and instructions to ensure security protections are maintained must be included in the ICA.

D&R.120 Contingency Planning

(a) The UA must be designed so that, in the event of a loss of the command and control (C2) link, the UA will automatically and immediately execute a safe predetermined flight, loiter, landing, or termination.

(b) The applicant must establish the predetermined action in the event of a loss of the C2 link and include it in the UA Flight Manual.

(c) The UA Flight Manual must include the minimum performance requirements for the C2 data link, defining when the C2 link is degraded to a level where remote active control of the UA is no longer ensured. Takeoff when the C2 link is degraded below the minimum link performance requirements must be prevented by design or prohibited by an operating limitation in the UA Flight Manual.

D&R.125 Lightning

(a) Except as provided in paragraph (b) of this section, the UA must have design characteristics that will protect the UA from loss of flight or loss of control due to lightning.

(b) If the UA has not been shown to protect against lightning, the UA Flight Manual must include an operating limitation to prohibit flight into weather conditions conducive to lightning activity.

D&R.130 Adverse Weather Conditions

(a) For purposes of this section, ''adverse weather conditions'' means rain, snow, and icing.

(b) Except as provided in paragraph (c) of this section, the UA must have design characteristics that will allow the UA to operate within the adverse weather conditions specified in the CONOPS without loss of flight or loss of control.

(c) For adverse weather conditions for which the UA is not approved to operate, the applicant must develop operating limitations to prohibit flight into known adverse weather conditions and either:

(1) Develop operating limitations to prevent inadvertent flight into adverse weather conditions; or

(2) Provide a means to detect any adverse weather conditions for which the UA is not certificated to operate and show the UA's ability to avoid or exit those conditions.

D&R.135 Flight Essential Parts

(a) A flight essential part is a part, the failure of which could result in a loss of flight or unrecoverable loss of UA control.

(b) If the type design includes flight essential parts, the applicant must establish a flight essential parts list. The applicant must develop and define mandatory maintenance instructions or life limits, or a combination of both, to prevent failures of flight essential parts. Each of these mandatory actions must be included in the Airworthiness Limitations section of the ICA.

Operating Limitations and Information

D&R.200 Flight Manual

The applicant must provide a flight manual with each UA.

(a) The UA flight manual must contain the following information:

(1) UA operating limitations;

(2) UA operating procedures;

(3) Performance information;

(4) Loading information; and

(5) Other information that is necessary for safe operation because of design, operating, or handling characteristics.

(b) Those portions of the UA Flight Manual containing the information specified in paragraph (a)(1) of this section must be approved by the FAA.

D&R.205 Instructions for Continued Airworthiness

The applicant must prepare ICA for the UA in accordance with Appendix A to Part 23, as appropriate, that are acceptable to the FAA. The ICA may be incomplete at type certification if a program exists to ensure their completion prior to delivery of the first UA or issuance of a standard airworthiness certificate, whichever occurs later.

Testing

D&R.300 Durability and Reliability

The UA must be designed to be durable and reliable when operated under the limitations prescribed for its operating environment, as documented in its CONOPS and included as operating limitations on the type certificate data sheet and in the UA Flight Manual. The durability and reliability must be demonstrated by flight test in accordance with the requirements of this section and completed with no failures that result in a loss of flight, loss of control, loss of containment, or emergency landing outside the operator's recovery area.

(a) Once a UA has begun testing to show compliance with this section, all flights for that UA must be included in the flight test report.

(b) Tests must include an evaluation of the entire flight envelope across all phases of operation and must address, at a minimum, the following:

(1) Flight distances;

(2) Flight durations;

(3) Route complexity;

(4) Weight;

(5) Center of gravity;

(6) Density altitude;

(7) Outside air temperature;

(8) Airspeed;

(9) Wind;

(10) Weather;
(11) Operation at night, if requested;
(12) Energy storage system capacity; and
(13) Aircraft to pilot ratio.
(c) Tests must include the most adverse combinations of the conditions and configurations in paragraph (b) of this section.
(d) Tests must show a distribution of the different flight profiles and routes representative of the type of operations identified in the CONOPS.
(e) Tests must be conducted in conditions consistent with the expected environmental conditions identified in the CONOPS, including electromagnetic interference (EMI) and high intensity radiated fields (HIRF).
(f) Tests must not require exceptional piloting skill or alertness.
(g) Any UAS used for testing must be subject to the same worst-case ground handling, shipping, and transportation loads as those allowed in service.
(h) Any UA used for testing must use AE that meet, but do not exceed, the minimum specifications identified under D&R.105. If multiple AE are identified, the applicant must demonstrate each configuration.
(i) Any UAS used for testing must be maintained and operated in accordance with the ICA and UA flight manual. No maintenance beyond the intervals established in the ICA will be allowed to show compliance with this section.
(j) If cargo operations or external-load operations are requested, tests must show, throughout the flight envelope and with the cargo or the external load at the most critical combinations of weight and center of gravity, that—
(1) The UA is safely controllable and maneuverable; and
(2) The cargo or the external load is retainable and transportable.

D&R.305 Probable Failures

The UA must be designed such that a probable failure will not result in a loss of containment or control of the UA. This must be demonstrated by test.
(a) Probable failures related to the following equipment, at a minimum, must be addressed:
(1) Propulsion systems;
(2) C2 link;
(3) Global Positioning System (GPS);
(4) Flight control components with a single point of failure;
(5) Control station; and
(6) Any other AE identified by the applicant.
(b) Any UA used for testing must be operated in accordance with the UA Flight Manual.
(c) Each test must occur at the critical phase and mode of flight, and at the highest aircraft-to-pilot ratio.

D&R.310 Capabilities and Functions

(a) All of the following required UAS capabilities and functions must be demonstrated by test:
(1) Capability to regain command and control of the UA after the C2 link has been lost.
(2) Capability of the electrical system to power all UA systems and payloads.
(3) Ability for the pilot to safely discontinue the flight.
(4) Ability for the pilot to dynamically re-route the UA.
(5) Ability to safely abort a takeoff.
(6) Ability to safely abort a landing and initiate a go-around.
(b) The following UAS capabilities and functions, if requested for approval, must be demonstrated by test:
(1) Continued flight after degradation of the propulsion system.
(2) Geo-fencing that contains the UA within a designated area, in all operating conditions.
(3) Positive transfer of the UA between control stations that ensures only one control station can control the UA at a time.
(4) Capability to release an external cargo load to prevent loss of control of the UA.
(5) Capability to detect and avoid other aircraft and obstacles.
(c) The UA must be designed to safeguard against inadvertent discontinuation of the flight and inadvertent release of cargo or external load.

D&R.315 Fatigue

The structure of the UA must be shown to withstand the repeated loads expected during its service life without failure. A life limit for the airframe must be established, demonstrated by test, and included in the ICA.

D&R.320 Verification of Limits

The performance, maneuverability, stability, and control of the UA within the flight envelope described in the UA Flight Manual must be demonstrated at a minimum of 5% over maximum gross weight with no loss of control or loss of flight.

Issued in Washington, DC, on February 2, 2023.

James David Foltz,

Acting Manager, Strategic Policy Management, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2023–03890 Filed 2–24–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–0421; Project Identifier MCAI–2022–01360–A]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Pilatus Aircraft Ltd. (Pilatus) Model PC–12, PC–12/45, PC–12/47, and PC–12/47E airplanes. This proposed AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI identifies the unsafe condition as insufficient grounding of the vapor cycle cooling system (VCCS) compressor/condenser. This proposed AD would require inspecting the power return and chassis grounding cable attachment points at frame 37, including the attachment parts, and depending on the inspection results, corrective action. This proposed AD would also require modifying the installation of the VCCS compressor/condenser power return cables and installing an additional isolated VCCS chassis ground cable. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this NPRM by April 13, 2023.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–0421; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket

contains this NPRM, the MCAI, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

• For service information identified in this NPRM, contact Pilatus Aircraft Ltd., Customer Support General Aviation, CH–6371 Stans, Switzerland; phone: +41 848 24 7 365; email: *techsupport.ch@pilatus-aircraft.com;* website: pilatus-aircraft.com.

• You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–0421; Project Identifier MCAI–2022–01360–A'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Doug Rudolph, Aviation Safety Engineer, FAA, General Aviation & Rotorcraft Section, International Validation Branch, 901 Locust, Room 301, Kansas City, MO 64106. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2022–0212, dated October 18, 2022 (referred to after this as ''the MCAI''), to correct an unsafe condition on certain serial-numbered Pilatus Model PC–12, PC–12/45, PC–12/47, and PC–12/47E airplanes.

The MCAI was prompted by a reported occurrence of a burning odor coming from the air conditioning vents during the climb phase of a Pilatus Model PC–12/47E airplane. An investigation identified that insufficient grounding of the VCCS compressor/condenser at frame 37 resulted in severe heat damage to the baseplate and adjacent metal support structure. It was determined that this condition may occur on airplanes equipped in production with the large oxygen bottle installed on the right-hand side of the rear fuselage.

To address the unsafe condition, the MCAI requires a one-time inspection of the power return and chassis grounding cable attachment point at frame 37, including the attachment parts, and modification of the installation of the VCCS.

This condition, if not addressed, could, in the case of damage to the oxygen supply line, lead to an uncontrolled fire with damage to the airplane and injury to the occupants.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–0421.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Pilatus PC–12 Service Bulletin 21–016, dated August 15, 2022, which specifies procedures for inspecting the power return and chassis grounding cable attachment point on the airframe at frame 37, including the attachment parts, modifying the installation of the VCCS compressor/condenser power return cables, and installing an additional isolated VCCS chassis ground cable. This service bulletin also specifies contacting Pilatus if any damage is found.

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

FAA's Determination

These products have been approved by the aviation authority of another country and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI and service information described above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of these same type designs.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the MCAI, except as discussed under ''Differences Between this Proposed AD and the MCAI.''

Differences Between This Proposed AD and the MCAI

The MCAI requires contacting the manufacturer for approved corrective action instructions if any discrepancy is found during the inspection. This proposed AD would require contacting either the Manager, International Validation Branch, FAA; or EASA; or Pilatus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 8 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspect	3 work-hours × $85 per hour = $255	Not Applicable	$255	$2,040
Modify	5 work-hours × $85 per hour = $425	667	1,092	8,736

The repair instructions that may be needed as a result of the inspection could vary significantly from airplane to airplane. The FAA has no data to determine the costs to accomplish the repair or the number of airplanes that would need this repair.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Pilatus Aircraft Ltd.: Docket No. FAA–2023–0421; Project Identifier MCAI–2022–01360–A.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by April 13, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Pilatus Aircraft Ltd. Model PC–12, PC–12/45, PC–12/47, and PC–12/47E airplanes, serial numbers 466, 467, 725, 861, 1032, 1052, 1082, 1115, 1232, 1411, 1428, 1439, 1530, 1541, 1663, 1725, and 1802, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 2197, Air Conditioning System Wiring.

(e) Unsafe Condition

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI identifies the unsafe condition as insufficient grounding of the vapor cycle cooling system (VCCS) compressor/condenser. The FAA is issuing this AD to address this condition. The unsafe condition, if not addressed, could, in the case of damage to the oxygen supply line, lead to an uncontrolled fire with damage to the airplane, and injury to the occupants.

(f) Compliance

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

(g) Required Actions

(1) Within 2 months after the effective date of this AD, inspect the power return and chassis grounding cable attachment points at frame 37, including the attachment parts, for physical and heat damage, de-lamination, and corrosion in accordance with steps (2) through (6) of Section 3.B. of the Accomplishment Instructions in Pilatus PC–12 Service Bulletin (SB) 21–016, dated August 15, 2022 (Pilatus PC–12 SB 21–016).

(2) If, during the inspection required by paragraph (g)(1) of this AD, any physical or heat damage, de-lamination, or corrosion as identified in steps (2) through (6) of Section 3.B. of the Accomplishment Instructions in Pilatus PC–12 SB 21–016 is detected, before further flight, repair using a method approved by the Manager, International Validation Branch, FAA; the European Union Aviation Safety Agency (EASA); or Pilatus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) Within 2 months after the effective date of this AD, modify the installation of the VCCS compressor/condenser power return cables and install an additional isolated VCCS chassis ground cable in accordance with Section 3.C. of the Accomplishment Instructions in Pilatus PC–12 SB 21–016. Where the service bulletin specifies discarding the stop angle, this AD requires removing the stop angle from service.

(h) Alternative Methods of Compliance (AMOCs)

The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in § 39.19. In accordance with § 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, mail it to the address identified in paragraph (i)(2) of this AD or email to: *9-AVS-AIR-730-AMOC@faa.gov.* If mailing information, also submit information by email. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(i) Additional Information

(1) Refer to EASA AD 2022–0212, dated October 18, 2022, for related information. This EASA AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2023–0421.

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

(j) Material Incorporated by Reference

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

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

(i) Pilatus PC–12 Service Bulletin 21–016, dated August 15, 2022.

(ii) [Reserved]

(3) For service information identified in this AD, contact Pilatus Aircraft Ltd., Customer Support General Aviation, CH–6371 Stans, Switzerland; phone: +41 848 24 7 365; email: *techsupport.ch@pilatus-aircraft.com;* website: *pilatus-aircraft.com.*

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on February 17, 2023.

Christina Underwood,

Acting Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–03924 Filed 2–24–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–0169; Project Identifier MCAI–2022–00462–T]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Bombardier, Inc., Model BD–700–1A10, and BD–700–1A11 airplanes. This proposed AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate more restrictive airworthiness limitations. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by April 13, 2023.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–0169; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For Bombardier service information identified in this NPRM, contact Bombardier Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–2999; email *ac.yul@aero.bombardier.com;* website *bombardier.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

FOR FURTHER INFORMATION CONTACT: Gabriel Kim, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–0169; Project Identifier MCAI–2022–00462–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

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

Confidential Business Information

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

Background

Transport Canada, which is the aviation authority for Canada, has issued Transport Canada AD CF–2022–15, dated April 7, 2022 (Transport Canada AD CF–2022–15) (also referred to after this as the MCAI), to correct an unsafe condition on certain Bombardier, Inc., Model BD–700–1A10, and BD–700–1A11 airplanes. The MCAI states that during a design review, it was discovered that three candidate certification maintenance requirements (CCMRs) which were dispositioned as maintenance review board report (MRBR) tasks had reached or exceeded the limit for escalation and that exceeding the CCMR limitations could result in unsafe conditions. The MCAI also states that Bombardier issued

certification maintenance requirements (CMRs) to prevent escalation and reduce the interval, as applicable, for these tasks, which consist of a functional test of the landing-gear emergency extension; an operational test of the brake shutoff valve; and a visual check of the passenger-door vent-flap mechanism.

The FAA is proposing this AD to address the following unsafe conditions:

- Dormant failure of the landing gear emergency extension system, which could lead to failure to extend the landing gear when normal gear extension has failed. This unsafe condition, if not addressed, could result in an annunciated failure to extend both main landing gears or all landing gears.
- Dormant failure of the brake shut off valve in the open state. This unsafe condition, if not addressed, could result in uncommanded braking during take-off.
- Dormant failure of the vent flap assembly where it fails in the closed position, which could result in the failure to prevent the initiation of cabin pressurization when the passenger door is not fully closed, latched and locked. This unsafe condition, if not addressed, could result in the passenger door opening under pressure on ground or during flight.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–0169.

Related Service Information Under 1 CFR Part 51

The FAA reviewed the following airplane maintenance manual (AMM) tasks from Bombardier.

- Tasks 32–34–00–101, ''Functional Test of the Landing-Gear Emergency Extension;'' 32–43–25–101, ''Operational Test of the Brake Shutoff Valve;'' and 52–11–00–106, ''Visual Check of the Passenger-Door Vent-Flap Mechanism;'' of Part 2, ''Airworthiness Limitations,'' of the Bombardier Global Express Time Limits/Maintenance Checks (TLMC), Publication No. BD–700 TLMC, Revision 34, dated March 1, 2022. (For obtaining the tasks for Bombardier Global Express TLMC, Publication No. BD–700 TLMC, use Document Identification No. GL 700 TLMC.)
- Tasks 32–34–00–101, ''Functional Test of the Landing-Gear Emergency Extension;'' 32–43–25–101, ''Operational Test of the Brake Shutoff Valve;'' and 52–11–00–101, ''Visual Check of the Passenger-Door Vent-Flap Mechanism;'' of Part 2, ''Airworthiness Limitations,'' of the Bombardier Global Express XRS TLMC, Publication No. BD–700 XRS TLMC, Revision 21, dated March 1, 2022. (For obtaining the tasks for Bombardier Global Express XRS TLMC, Publication No. BD–700 XRS TLMC, use Document Identification No. GL XRS TLMC.)
- Tasks 32–34–00–101, ''Functional Test of the Landing-Gear Emergency Extension;'' 32–43–25–101, ''Operational Test of the Brake Shutoff Valve;'' and 52–11–00–106, ''Visual Check of the Passenger-Door Vent-Flap Mechanism;'' of Part 2, ''Airworthiness Limitations,'' of the Bombardier Global 5000 TLMC, Publication No. BD–700 TLMC, Revision 25, dated March 1, 2022. (For obtaining the tasks for Bombardier Global 5000 TLMC, Publication No. BD–700 TLMC, use Document Identification No. GL 5000 TLMC.)
- Tasks 32–34–00–101, ''Functional Test of the Landing-Gear Emergency Extension;'' 32–43–25–101, ''Operational Test of the Brake Shutoff Valve;'' and 52–11–00–106, ''Visual Check of the Passenger-Door Vent-Flap Mechanism;'' of Part 2, ''Airworthiness Limitations,'' of the Bombardier Global 5000 Featuring Global Vision Flight Deck (GVFD) TLMC, Publication No. GL 5000 GVFD TLMC, Revision 15, dated March 1, 2022. (For obtaining the tasks for Bombardier Global 5000 Featuring GVFD TLMC, Publication No. GL 5000 GVFD TLMC, use Document Identification No. GL 5000 GVFD TLMC.)
- Tasks 32–34–00–101, ''Functional Test of the Landing-Gear Emergency Extension;'' 32–43–25–101, ''Operational Test of the Brake Shutoff Valve;'' and 52–11–00–106, ''Visual Check of the Passenger-Door Vent-Flap Mechanism;'' of Part 2, ''Airworthiness Limitations,'' of the Bombardier Global 6000 TLMC, Publication No. GL 6000 TLMC, Revision 15, dated March 1, 2022. (For obtaining the tasks for Bombardier Global 6000 TLMC, Publication No. GL 6000 TLMC, use Document Identification No. GL 6000 TLMC.)

This service information specifies more restrictive airworthiness limitations for CMRs. These documents are distinct since they apply to different airplane models in different configurations.

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

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI and service information described above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require revising the existing maintenance or inspection program as applicable to incorporate more restrictive airworthiness limitations.

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

Differences Between This NPRM and the MCAI

Where Transport Canada AD CF–2022–15 references associated MRBRs tasks, Figure 1 to paragraph (g) of this proposed AD references AMM tasks instead. The FAA has determined that CCMRs cannot be mandated by the FAA. However, equivalent AMM tasks may be mandated in lieu of CCMRs.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 413 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

The FAA has determined that revising the maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the agency estimates the average total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. FAA–2023–0169; Project Identifier MCAI–2022–00462–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by April 13, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., Model BD–700–1A10 and BD–700–1A11 airplanes, certificated in any category, having serial numbers 9002 through 9860 inclusive, 9862 through 9871 inclusive, 9873 through 9879 inclusive, 60005, 60024, 60030, 60032, 60037, 60043, 60045, 60049, 60056, 60057, 60061 and 60068.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Unsafe Condition

This AD was prompted by a determination that more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address the unsafe conditions identified in paragraphs (e)(1) through (3) of this AD.

(1) Dormant failure of the landing gear emergency extension system, which could lead to failure to extend the landing gear when normal gear extension has failed. This unsafe condition, if not addressed, could result in an annunciated failure to extend both main landing gears or all landing gears.

(2) Dormant failure of the brake shut off valve in the open state. This unsafe condition, if not addressed, could result in uncommanded braking during take-off.

(3) Dormant failure of the vent flap assembly where it fails in the closed position, which could result in the failure to prevent the initiation of cabin pressurization when the passenger door is not fully closed, latched and locked. This unsafe condition, if not addressed, could result in the passenger door opening under pressure on ground or during flight.

(f) Compliance

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

(g) Maintenance or Inspection Program Revision

Within 30 days from the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in the certification maintenance requirements (CMR) tasks identified in Figure 1 to paragraph (g) of this AD of Part 2, ''Airworthiness Limitations,'' of the applicable Time Limits/Maintenance Checks (TLMC) manuals identified in Figure 2 to paragraph (g) of this AD. The initial compliance time for doing the tasks is at the applicable time specified in Figure 1 to paragraph (g) of this AD, or within 30 days after the effective date of this AD, whichever occurs later.

Figure 1 to paragraph (g)—*New CMR Tasks*

Chapter 5 Task Number	Task Title	Associated AMM Task Number	Initial Compliance Time
32-34-00-101	Functional Test of the Landing-Gear Emergency Extension	32-34-00-720-801	Before the accumulation of 1,550 total flight hours, or within 1,550 flight hours after the most recent accomplishment of the associated AMM task, whichever occurs later
32-43-25-101	Operational Test of the Brake Shutoff Valve	32-43-25-710-801	Before the accumulation of 750 total flight hours, or within 750 flight hours after the most recent accomplishment of the associated AMM task, whichever occurs later
52-11-00-106	Visual Check of the Passenger-Door Vent-Flap Mechanism	52-11-00-210-807	Before the accumulation of 750 total flight hours, or within 750 flight hours after the most recent accomplishment of the associated AMM task, whichever occurs later

Figure 2 to paragraph (g)—*Applicable TLMCs*

Airplane Model (Marketing Designation)	TLMC Manual Title	TLMC Revision Level	TLMC Revision Date
BD-700-1A10 airplanes (Global Express)	Bombardier Global Express TLMC, Publication No. BD-700 TLMC[1]	34	March 1, 2022
BD-700-1A10 airplanes (Global Express XRS)	Bombardier Global Express XRS TLMC, Publication No. BD-700 XRS TLMC[2]	21	March 1, 2022
BD-700-1A10 airplanes (Global 6000)	Bombardier Global 6000 TLMC, Publication No. GL 6000 TLMC[3]	15	March 1, 2022
BD-700-1A11 airplanes (Global 5000)	Bombardier Global 5000 TLMC, Publication No. BD-700 TLMC[4]	25	March 1, 2022
BD-700-1A11 airplanes (Global 5000 featuring Global Vision Flight Deck (GVFD))	Bombardier Global 5000 Featuring Global Vision Flight Deck TLMC, Publication No. GL 5000 GVFD TLMC[5]	15	March 1, 2022

[1] For obtaining the tasks for Bombardier Global Express TLMC, Publication No. BD-700 TLMC, use Document Identification No. GL 700 TLMC.

[2] For obtaining the tasks for Bombardier Global Express XRS TLMC, Publication No. BD-700 XRS TLMC, use Document Identification No. GL XRS TLMC.

[3] For obtaining the tasks for Bombardier Global 6000 TLMC, Publication No. GL 6000 TLMC, use Document Identification No. GL 6000 TLMC.

[4] For obtaining the tasks for Bombardier Global 5000 TLMC, Publication No. BD-700 TLMC, use Document Identification No. GL 5000 TLMC.

[5] For obtaining the tasks for Bombardier Global 5000 Featuring GVFD TLMC, Publication No. GL 5000 GVFD TLMC, use Document Identification No. GL 5000 GVFD TLMC.

(h) No Alternative Actions or Intervals

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

(i) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the New York ACO Branch, mail it to ATTN: Program Manager, Continuing Operational Safety, at the address

identified in paragraph (j)(2) of this AD or email to: *9-avs-nyaco-cos@faa.gov.* If mailing information, also submit information by email. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

(j) Additional Information

(1) Refer to Transport Canada AD CF–2022–15, dated April 7, 2022, for related information. This Transport Canada AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2023–0169.

(2) For more information about this AD, contact Gabriel Kim, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) Task 32–34–00–101, ''Functional Test of the Landing-Gear Emergency Extension,'' of Part 2, ''Airworthiness Limitations,'' of the Bombardier Global Express Time Limit/Maintenance Check manual (TLMC), Publication No. BD–700 TLMC, Revision 34, dated March 1, 2022.

Note 1 to paragraph (k)(2)(i): For obtaining the tasks specified in paragraphs (k)(2)(i) through (iii) of this AD for Bombardier Global Express TLMC, Publication No. BD–700 TLMC, Revision 34, dated March 1, 2022, use Document Identification No. GL 700 TLMC.

(ii) Task 32–43–25–101, ''Operational Test of the Brake Shutoff Valve,'' of Part 2, ''Airworthiness Limitations,'' of the Bombardier Global Express TLMC, Publication No. BD–700 TLMC, Revision 34, dated March 1, 2022.

(iii) Task 52–11–00–106, ''Visual Check of the Passenger-Door Vent-Flap Mechanism,'' of Part 2, ''Airworthiness Limitations,'' of the Bombardier Global Express TLMC, Publication No. BD–700 TLMC, Revision 34, dated March 1, 2022.

(iv) Task 32–34–00–101, ''Functional Test of the Landing-Gear Emergency Extension,'' of Part 2, ''Airworthiness Limitations,'' of the Bombardier Global Express XRS TLMC, Publication No. BD–700 XRS TLMC, Revision 21, dated March 1, 2022.

Note 2 to paragraph (k)(2)(iv): For obtaining the tasks specified in paragraphs (k)(2)(iv) through (vi) of this AD for Bombardier Global Express XRS TLMC, Publication No. BD–700 XRS TLMC, use Document Identification No. GL XRS TLMC.

(v) Task 32–43–25–101, ''Operational Test of the Brake Shutoff Valve,'' of Part 2, ''Airworthiness Limitations,'' of the Bombardier Global Express XRS TLMC, Publication No. BD–700 XRS TLMC, Revision 21, dated March 1, 2022.

(vi) Task 52–11–00–106, ''Visual Check of the Passenger-Door Vent-Flap Mechanism,'' of Part 2, ''Airworthiness Limitations,'' of the Bombardier Global Express XRS TLMC, Publication No. BD–700 XRS TLMC, Revision 21, dated March 1, 2022.

(vii) Task 32–34–00–101, ''Functional Test of the Landing-Gear Emergency Extension,'' of Part 2, ''Airworthiness Limitations,'' of the Bombardier Global 5000 TLMC, Publication No. BD–700 TLMC, Revision 25, dated March 1, 2022.

Note 3 to paragraph (k)(2)(vii): For obtaining the tasks specified in paragraphs (k)(2)(vii) through (ix) of this AD for Bombardier Global 5000 TLMC, Publication No. BD–700 TLMC, use Document Identification No. GL 5000 TLMC.

(viii) Task 32–43–25–101, ''Operational Test of the Brake Shutoff Valve,'' of Part 2, ''Airworthiness Limitations,'' of the Bombardier Global 5000 TLMC, Publication No. BD–700 TLMC, Revision 25, dated March 1, 2022.

(ix) Task 52–11–00–106, ''Visual Check of the Passenger-Door Vent-Flap Mechanism,'' of Part 2, ''Airworthiness Limitations,'' of the Bombardier Global 5000 TLMC, Publication No. BD–700 TLMC, Revision 25, dated March 1, 2022.

(x) Task 32–34–00–101, ''Functional Test of the Landing-Gear Emergency Extension,'' of Part 2, ''Airworthiness Limitations,'' of the Bombardier Global 5000 Featuring Global Vision Flight Deck (GVFD) TLMC, Publication No. GL 5000 GVFD TLMC, Revision 15, dated March 1, 2022.

Note 4 to paragraph (k)(2)(x): For obtaining the tasks specified in paragraphs (k)(2)(x) through (xii) of this AD for Bombardier Global 5000 Featuring GVFD TLMC, Publication No. GL 5000 GVFD TLMC, use Document Identification No. GL 5000 GVFD TLMC.

(xi) Task 32–43–25–101, ''Operational Test of the Brake Shutoff Valve,'' of Part 2, ''Airworthiness Limitations,'' of the Bombardier Global 5000 Featuring GVFD TLMC, Publication No. GL 5000 GVFD TLMC, Revision 15, dated March 1, 2022.

(xii) Task 52–11–00–106, ''Visual Check of the Passenger-Door Vent-Flap Mechanism,'' of Part 2, ''Airworthiness Limitations,'' of the Bombardier Global 5000 Featuring GVFD, Publication No. GL 5000 GVFD TLMC, Revision 15, dated March 1, 2022.

(xiii) Task 32–34–00–101, ''Functional Test of the Landing-Gear Emergency Extension,'' of Part 2, ''Airworthiness Limitations,'' of the Bombardier Global 6000 TLMC, Publication No. GL 6000 TLMC, Revision 15, dated March 1, 2022.

Note 5 to paragraph (k)(2)(xiii): For obtaining the tasks specified in paragraphs (xiii) through (xv) of this AD for Bombardier Global 6000 TLMC, Publication No. GL 6000 TLMC, use Document Identification No. GL 6000 TLMC.

(xiv) Task 32–43–25–101, ''Operational Test of the Brake Shutoff Valve,'' of Part 2, ''Airworthiness Limitations,'' of the Bombardier Global 6000 TLMC, Publication No. GL 6000 TLMC, Revision 15, dated March 1, 2022.

(xv) Task 52–11–00–106, ''Visual Check of the Passenger-Door Vent-Flap Mechanism,'' of Part 2, ''Airworthiness Limitations,'' of the Bombardier Global 6000 TLMC, Publication No. GL 6000 TLMC, Revision 15, dated March 1, 2022.

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

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

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

Issued on February 15, 2023.

Christina Underwood,

Acting Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2023–03636 Filed 2–24–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. FDA–2023–C–0544]

Innophos, Inc.; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of petition.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that we have filed a petition, submitted by Innophos, Inc., proposing that the color additive regulations be amended to provide for the safe use of tricalcium phosphate in poultry (chicken thigh), icing, white chocolate candy melts, doughnut sugar, and sugar for coated candies.

DATES: The color additive petition was filed on February 1, 2023.

ADDRESSES: For access to the docket to read background documents or

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.

FOR FURTHER INFORMATION CONTACT: Rachel Morissette, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–1212.

SUPPLEMENTARY INFORMATION: Under section 721(d)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379e(d)(1)), we are giving notice that we have filed a color additive petition (CAP 3C0324), submitted by Innophos, Inc., 259 Prospect Plains Road, Building A, Cranbury, New Jersey 08512. The petition proposes to amend the color additive regulations in part 73 (21 CFR part 73), ''Listing of Color Additives Exempt from Certification,'' to provide for the safe use of tricalcium phosphate in (1) poultry (chicken thigh), (2) icing, (3) white chocolate candy melts, (4) doughnut sugar, and (5) sugar for coated candies.

The petitioner has claimed that this action is categorically excluded under 21 CFR 25.32(k) because the substance is intended to remain in food through ingestion by consumers and is not intended to replace macronutrients in food. If FDA determines a categorical exclusion applies, neither an environmental assessment nor an environmental impact statement is required. If FDA determines a categorical exclusion does not apply, we will request an environmental assessment and make it available for public inspection.

Dated: February 22, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–03955 Filed 2–24–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–122286–18]

RIN 1545–BO98

Use of Forfeitures in Qualified Retirement Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document sets forth proposed regulations that would provide rules relating to the use of forfeitures in qualified retirement plans, including a deadline for the use of forfeitures in defined contribution plans. These proposed regulations would affect participants in, beneficiaries of, administrators of, and sponsors of qualified retirement plans.

DATES: Written or electronic comments must be received by May 30, 2023.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–122286–18) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish to the IRS's public docket, for public availability, any comments submitted, whether electronically or on paper. Send paper submissions to: CC:PA:LPD:PR (REG–122286–18), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, call Brandon M. Ford or Joyce I. Kahn at (202) 317–4148; concerning submission of comments and requests for a public hearing, call Vivian Hayes at (202) 317–5306 (not toll-free numbers) or email *publichearings@irs.gov.*

SUPPLEMENTARY INFORMATION:

Background

General Forfeiture Rules for Qualified Plans

Section 401(a)(7) of the Internal Revenue Code (Code) provides that a trust forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of its employees or their beneficiaries will not constitute a qualified trust under section 401(a) unless its related stock bonus, pension, or profit-sharing plan satisfies the requirements of section 411 (relating to minimum vesting standards).[1] Section 411(a) generally provides that an employee's right to accrued benefits derived from employer contributions must become nonforfeitable after a specified period of service. Section 411(a) also provides exceptions to this general rule under which an employee's benefit is permitted to be forfeited without violating section 411, conditions under which forfeited amounts must be restored upon a participant's repayment of a withdrawal, and other rules related to vesting.

Section 2(2) of the Self-Employed Individuals Tax Retirement Act of 1962, Public Law 87–792, 76 Stat. 809, added section 401(a)(8) of the Code, providing that a trust forming part of a pension plan will not constitute a qualified trust under section 401(a) unless the plan provides that forfeitures must not be applied to increase the benefits any employee would otherwise receive under the plan.

Section 1.401–7(a), promulgated in 1963, generally provides, in the case of a trust forming a part of a qualified pension plan, that the plan must expressly provide that forfeitures arising from severance of employment, from death, or for any other reason may not be applied to increase the benefits any employee would otherwise receive under the plan at any time prior to the termination of the plan or the complete discontinuance of employer contributions under the plan, and that the amounts so forfeited must be used as soon as possible to reduce the employer's contributions under the plan. Section 1.401–7(a) also provides that a qualified pension plan may anticipate the effect of forfeitures in determining costs under the plan, and that a qualified plan will not be disqualified merely because a determination of the amount of forfeitures under the plan is made only once during each taxable year of the employer.

Section 1.401–1(b)(1)(i) provides that a pension plan is a plan established and maintained by an employer primarily to provide systematically for the payment of definitely determinable benefits to employees over a period of years, usually for life, after retirement. Section 1.401–1(b)(1)(i) further provides that benefits under a pension plan are not definitely determinable if funds arising from forfeitures on termination of service, or other reason, may be used to provide increased benefits for the remaining participants. Section 1.401–1(b)(1)(i) specifically refers to § 1.401–7, relating to the treatment of forfeitures under a qualified pension plan, in setting forth the requirement that forfeitures not be used to provide increased benefits for participants.

[1] There are parallel vesting requirements in section 203 of the Employee Retirement Income Security Act of 1974, Public Law 93–406, 88 Stat. 829 (ERISA). The IRS has interpretive authority over that section pursuant to Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1, 92 Stat. 3790. (Reorganization Plan No. 4).

Section 1119(a) of the Tax Reform Act of 1986, Public Law 99–514, 100 Stat. 2085 (TRA 86), amended section 401(a)(8) of the Code to replace the term ''pension plan'' (which includes a defined contribution money purchase pension plan) with the term ''defined benefit plan'' (which does not include a money purchase pension plan). The conference report accompanying TRA 86 (Conference Report) explained that, prior to TRA 86, forfeitures under a money purchase pension plan could not be used to increase benefits, but were required to be applied to reduce future employer contributions or to offset administrative expenses of the plan, and that forfeitures in a defined contribution plan that is not a money purchase pension plan could be reallocated to the remaining participants under a nondiscriminatory formula, used to reduce future employer contributions, or used to offset administrative expenses of the plan. H.R. Rept. No. 99–841, at II–442 (1986). The Conference Report also noted that the changes made by TRA 86 provided uniform rules regarding the use of forfeitures under any defined contribution plan and stated that, following these changes, ''forfeitures arising in any defined contribution plan (including a money purchase pension plan) can be either (1) reallocated to the accounts of other participants in a nondiscriminatory fashion, or (2) used to reduce future employer contributions or administrative costs.'' Id.

Forfeitures in Defined Contribution Plans

Section 414(i) provides that a defined contribution plan is a plan that provides for an individual account for each participant and for benefits based solely on the amount contributed to the participant's account, and any income, expenses, gains and losses, and any forfeitures of accounts of other participants which may be allocated to the participant's account.

Section 1.401–1(b)(1) provides rules related to specific types of qualified retirement plans. Section 1.401–1(b)(1)(i) provides that a pension plan (including a money purchase pension plan) is a plan established and maintained by an employer primarily to provide systematically for the payment of definitely determinable benefits and that a plan will be considered a pension plan if employer contributions can be determined actuarially on the basis of definitely determinable benefits, or, as in the case of money purchase pension plans, such contributions are fixed without being geared to profits. Section 1.401–1(b)(1)(ii) provides that a profit-sharing plan must provide a definite predetermined formula for allocating the contributions made to the plan among the participants and for distributing the funds accumulated under the plan. Section 1.401–1(b)(1)(iii) applies similar requirements to a stock bonus plan.

Rev. Rul. 80–155, 1980–1 CB 84, provides that profit-sharing plans, stock bonus plans, and money purchase pension plans are required to provide for distributions in accordance with amounts stated or ascertainable and credited to participants. The revenue ruling further provides that amounts that are to be allocated or distributed to a particular participant are ascertainable only if the plan provides for a valuation at least annually.

A 2010 Newsletter of the Employee Plans office of the IRS's Tax Exempt and Government Entities Division (*Retirement News for Employers,* Vol. 7, Spring 2010) (the 2010 Newsletter) [2] noted that some defined contribution plan administrators place forfeited amounts into a plan suspense account, allowing them to accumulate over several years, but that the Code does not allow this practice. It advised that a plan document should have provisions detailing how and when a plan will use or allocate plan forfeitures, and it described deadlines for the use or allocation of forfeitures.[3]

Forfeitures in Defined Benefit Plans

As originally enacted, section 401(a)(8) provided that a trust forming part of a pension plan will not constitute a qualified trust under section 401(a) unless the plan provides that forfeitures must not be applied to increase the benefits any employee would otherwise receive under the plan. As noted in the section of this preamble titled ''General Forfeiture Rules for Qualified Plans,'' section 1119(a) of TRA 86 amended section 401(a)(8) of the Code to replace the term ''pension plan'' with the term ''defined benefit plan,'' with the result that defined benefit plans continue to be subject to the rule that forfeitures may not be used to increase benefits.

The use of forfeitures in defined benefit plans has also changed since the issuance in 1963 of § 1.401–7 (which provides that amounts forfeited in pension plans must be used as soon as possible to reduce employer contributions), due to the enactment of new minimum funding requirements applicable to defined benefit plans. For example, in 1974 ERISA added section 412 to the Code, which requires qualified defined benefit plans (and certain qualified defined contribution plans) to satisfy a minimum funding standard.[4] Subsequently, the minimum funding standards have been modified to provide differing standards for different types of plans. See sections 430, 431, and 433.

None of the provisions that set forth minimum funding requirements for qualified defined benefit plans allow required contributions to be offset by forfeitures of accrued benefits. Instead, all of these provisions require the use of reasonable actuarial assumptions to determine the effect of expected forfeitures on plan liabilities. See sections 430(h), 431(c)(3), and 433(c)(3). Any difference between actual forfeitures and expected forfeitures is reflected in future contributions required under section 412 pursuant to the funding method used for the plan under section 430, 431, or 433.

Explanation of Provisions

Use of Forfeitures in Defined Contribution Plans

Consistent with changes made by TRA 86 providing uniform rules for the use of forfeitures in defined contribution plans (as described in the Conference Report), the proposed regulations would clarify that forfeitures arising in any defined contribution plan (including in a money purchase pension plan) may be used for one or more of the following purposes, as specified in the plan: (1) to pay plan administrative expenses, (2) to reduce employer contributions under the plan, or (3) to increase benefits in other participants' accounts in accordance with plan terms.[5] The use of forfeitures to reduce employer contributions includes the restoration of inadvertent benefit overpayments and the restoration of conditionally forfeited participant accounts that might otherwise require

[2] *www.irs.gov/pub/irs-pdf/p4278.pdf.*

[3] In particular, the newsletter advised that generally ''[n]o forfeitures in a suspense account should remain unallocated beyond the end of the plan year in which they occurred,'' and that ''[f]or those plans that use forfeitures to reduce plan expenses or employer contributions, there should be plan language and administrative procedures to ensure that current year forfeitures will be used up promptly in the year in which they occurred or in appropriate situations no later than the immediately succeeding plan year.''

[4] Section 302 of title I of ERISA sets forth minimum funding standards that are parallel to the minimum funding standards in section 412 of the Code. The IRS has interpretive authority over section 302 of title I of ERISA pursuant to Reorganization Plan No. 4.

[5] Additionally, under section 6001, plan administrators must keep records necessary to demonstrate compliance with the qualification requirements of section 401(a), including records related to the use of forfeitures.

additional employer contributions, for example, the restoration of accounts conditionally forfeited under § 1.411(a)–7(d) (relating to certain distributions and cash-outs of accrued benefits).

Timing for Use of Forfeitures in a Defined Contribution Plan

The proposed regulations would generally require that plan administrators use forfeitures no later than 12 months after the close of the plan year in which the forfeitures are incurred. This deadline is intended to simplify administration by providing a single deadline for the use of forfeitures that applies for all types of defined contribution plans and to alleviate administrative burdens that may arise in using or allocating forfeitures if forfeitures are incurred late in a plan year. The deadline in the proposed regulations is similar to the deadline under § 1.401(k)–2(b)(2)(v) for a section 401(k) plan to correct excess contributions by making corrective distributions, which is 12 months after the close of the plan year in which the excess contributions arise. The proposed regulations would not affect generally applicable deadlines related to the timing of contributions and allocations under a plan, such as the deadline for correcting excess contributions to avoid excise taxes under section 4979 as set forth in § 1.401(k)–2(b)(5)(i).

The proposed regulations provide a transition rule related to the 12-month deadline. Under this rule, forfeitures incurred during any plan year that begins before January 1, 2024, are treated as having been incurred in the first plan year that begins on or after January 1, 2024; accordingly, those forfeitures must be used no later than 12 months after the end of that first plan year. As described in the section of this preamble titled ''Proposed Applicability Date,'' these regulations are proposed to apply for plan years beginning on or after January 1, 2024.

Although nothing in the proposed regulations would preclude a plan document from specifying only one use for forfeitures, the plan may fail operationally if forfeitures in a given year exceed the amount that may be used for that one purpose. For example, if (1) a plan provides that forfeitures may be used solely to offset plan administrative expenses, (2) plan participants incur $25,000 of forfeitures in a plan year, and (3) the plan incurs only $10,000 in plan administrative expenses before the end of the 12-month period following the end of that plan year, there will be $15,000 of forfeitures that remain unused after the deadline established in these proposed regulations. Thus, the plan would incur an operational qualification failure because forfeitures remain unused at the end of the 12-month period following the end of that plan year. The plan could avoid this failure if it were amended to permit forfeitures to be used for more than one purpose.

Use of Forfeitures in Defined Benefit Plans

The proposed regulations would update rules relating to the use of forfeitures in defined benefit plans to reflect the enactment, after the issuance of § 1.401–7, of new minimum funding requirements applicable to defined benefit plans. In addition, the requirement in existing § 1.401–7(a) that forfeitures under pension plans be used as soon as possible to reduce employer contributions would be eliminated because it is inconsistent with those minimum funding requirements. The minimum funding requirements of sections 412, 430, 431, and 433 do not allow the use of forfeitures to reduce required employer contributions to a defined benefit plan in the manner contemplated by existing § 1.401–7. Instead, reasonable actuarial assumptions are used to determine the effect of expected forfeitures on the present value of plan liabilities under the plan's funding method. Differences between actual forfeitures and expected forfeitures will increase or decrease the plan's minimum funding requirement for future years pursuant to the plan's funding method.

Proposed Applicability Date

These regulations are proposed to apply for plan years beginning on or after January 1, 2024. Thus, for example, the deadline for the use of defined contribution plan forfeitures incurred in a plan year beginning during 2024 will be 12 months after the end of that plan year. Taxpayers, however, may rely on these proposed regulations for periods preceding the applicability date.

Special Analyses

These proposed regulations are not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

It is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6). The Treasury Department and the IRS understand that (1) plans typically provide for the use of (and use) forfeitures in a manner consistent with the proposed regulations and (2) defined contribution plans typically use forfeitures by the deadline set forth in the proposed regulations (consistent with the 2010 Newsletter). Accordingly, for most plans, the proposed regulations are not expected to require changes to plan terms or plan operations, or otherwise have a significant economic impact on plans or plan sponsors. If any plans have terms or operations that are inconsistent with the proposed regulations, it is not expected that these proposed regulations will have a significant economic impact on those plans or the sponsors of those plans. For example, the proposed regulations do not require any additional employer contributions or impose burdensome operational requirements.

Notwithstanding this certification that the proposed regulations would not have a significant economic impact on a substantial number of small entities, the Treasury Department and the IRS invite comments on the impacts these proposed regulations may have on small entities. Pursuant to section 7805(f), these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the Treasury Department and the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules. Specifically, comments are requested on the following topics:

- Whether the rules for the use of forfeitures in defined benefit and defined contribution plans can be further simplified to reduce administrative costs and burdens; and
- Whether any issues arise concerning other unallocated amounts (in addition to forfeitures) with respect to qualified retirement plans, and, if issues do arise, whether guidance should be provided addressing those issues.

All comments will be available for public inspection and copying at *www.regulations.gov* or upon request. A public hearing will be scheduled if requested in writing by any person who timely submits written comments. If a

public hearing is scheduled, notice of the date, time, and place of the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Brandon Ford, Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). However, other personnel from the Treasury Department and the IRS participated in the development of these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 1 as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

§ 1.401–1 [Amended]

■ **Par. 2.** Section 1.401–1 is amended by removing the fourth sentence of paragraph (b)(1)(i).

■ **Par. 3.** Section 1.401–7 is revised to read as follows:

§ 1.401–7 Forfeitures under a qualified retirement plan.

(a) *Forfeitures under a qualified defined benefit plan.* In the case of a trust forming a part of a qualified defined benefit plan (as described in section 414(j)), the plan must expressly provide that forfeitures may not be applied to increase the benefits any employee would otherwise receive under the plan at any time prior to the termination of the plan or the complete discontinuance of employer contributions thereunder. However, the effect of forfeitures may be anticipated in determining the costs under the plan. See sections 430(h)(1), 431(c)(3), and 433(c)(3), as applicable, regarding the use of reasonable actuarial assumptions in determining the amount of contributions required to be made under a plan to which one of those sections applies.

(b) *Forfeitures under a qualified defined contribution plan.* In the case of a trust forming a part of a qualified defined contribution plan (as described in section 414(i)) that provides for forfeitures, the plan must provide that:

(1) Forfeitures will be used for one or more of the following purposes:

(i) To pay plan administrative expenses;

(ii) To reduce employer contributions under the plan; or

(iii) To increase benefits in other participants' accounts in accordance with plan terms; and

(2) Forfeitures will be used no later than 12 months following the close of the plan year in which the forfeitures were incurred under plan terms.

(c) *Transition rule for forfeitures incurred during plan years beginning before January 1, 2024.* For purposes of paragraph (b)(2) of this section, forfeitures incurred during any plan year that begins before January 1, 2024, will be treated as having been incurred in the first plan year that begins on or after January 1, 2024.

(d) *Applicability date.* This section applies for plan years beginning on or after January 1, 2024.

Melanie R. Krause,

Acting Deputy Commissioner for Services and Enforcement.

[FR Doc. 2023–03778 Filed 2–24–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

[Docket No. FWS–R7–SM–2022–0105; FXRS12610700000 FF07J00000 234]

RIN 1018–BG72

Subsistence Management Regulations for Public Lands in Alaska—2024–25 and 2025–26 Subsistence Taking of Wildlife Regulations

AGENCY: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish regulations for hunting and trapping seasons, harvest limits, and methods and means related to taking of wildlife for subsistence uses during the 2024–25 and 2025–26 regulatory years. The Federal Subsistence Board (Board) is on a schedule of completing the process of revising subsistence taking of wildlife regulations in even-numbered years and subsistence taking of fish and shellfish regulations in odd-numbered years; public proposal and review processes take place during the preceding year. The Board also addresses customary and traditional use determinations during the applicable cycle. When final, the resulting rulemaking will replace the existing subsistence wildlife taking regulations. This proposed rule could also amend the general regulations on subsistence taking of fish and wildlife.

DATES:

Public meetings: The Federal Subsistence Regional Advisory Councils (Councils) will hold public meetings to receive comments and make proposals to change this proposed rule February 22 through April 4, 2023, and will hold another round of public meetings to discuss and receive comments on the proposals, and make recommendations on the proposals to the Federal Subsistence Board, on several dates between September 19 and November 1, 2023. The Board will discuss and evaluate proposed regulatory changes during a public meeting in Anchorage, AK, in April 2024. See **SUPPLEMENTARY INFORMATION** for specific information on dates and locations of the public meetings.

Public comments: Comments and proposals to change this proposed rule must be received or postmarked by April 12, 2023.

Information collection requirements: If you wish to comment on the information collection requirements in this proposed rule, please note that the Office of Management and Budget (OMB) is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this proposed rule in the **Federal Register**. Therefore, comments should be submitted to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, (see ''Information Collection'' section below under **ADDRESSES**) by April 28, 2023.

ADDRESSES:

Public meetings: The public meetings of the Federal Subsistence Board and the Federal Subsistence Regional Advisory Councils are held at various locations in Alaska. See **SUPPLEMENTARY INFORMATION** for specific information on dates and locations of the public meetings.

Public comments: You may submit comments by one of the following methods:

Electronically: Go to the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Search box, enter Docket number FWS–R7–SM–2022–0105. Then, click on the Search

button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment.''

By hard copy: Submit by U.S. mail or hand delivery: Public Comments Processing, Attn: FWS–R7–SM–2022–0105; U.S. Fish and Wildlife Service; 5275 Leesburg Pike, MS: PRB (JAO/3W); Falls Church, VA 22041–3803.

If in-person Federal Subsistence Regional Advisory Council meetings are held, you may also deliver a hard copy to the Designated Federal Official attending any of the Council public meetings. See **SUPPLEMENTARY INFORMATION** for additional information on locations of the public meetings.

We will post all comments on *https://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Review Process section below for more information).

Information collection requirements: Send your comments on the information collection request by mail to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, by email to *Info_Coll@fws.gov;* or by mail to 5275 Leesburg Pike, MS: PRB (JAO/3W), Falls Church, VA 22041–3803. Please reference OMB Control Number 1018–0075 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Sue Detwiler, Assistant Regional Director, Office of Subsistence Management; (907) 786–3888 or *subsistence@fws.gov.* For questions specific to National Forest System lands, contact Gregory Risdahl, Regional Subsistence Program Leader, USDA, Forest Service, Alaska Region; (907) 302–7354 or *gregory.risdahl@usda.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Background

Under title VIII of the Alaska National Interest Lands Conservation Act (ANILCA; 16 U.S.C. 3111–3126), the Secretary of the Interior and the Secretary of Agriculture (hereafter referred to as ''the Secretaries'') jointly implement the Federal Subsistence Management Program (hereafter referred to as ''the Program''). The Program provides a preference for take of fish and wildlife resources for subsistence uses on Federal public lands and waters in Alaska. Only Alaska residents of areas identified as rural are eligible to participate in the Program. The Secretaries published temporary regulations to carry out the Program in the **Federal Register** on June 29, 1990 (55 FR 27114), and final regulations on May 29, 1992 (57 FR 22940). Program officials have subsequently amended these regulations a number of times.

Because the Program is a joint effort between the Departments of the Interior and Agriculture, these regulations are located in two titles of the Code of Federal Regulations (CFR): The Agriculture regulations are at title 36, ''Parks, Forests, and Public Property,'' and the Interior regulations are at title 50, ''Wildlife and Fisheries,'' at 36 CFR 242.1–28 and 50 CFR 100.1–28, respectively. Consequently, to indicate that identical changes are proposed for regulations in both titles 36 and 50, in this document we will present references to specific sections of the CFR as shown in the following example: § __.24.

The Program regulations contain subparts as follows: Subpart A, General Provisions; Subpart B, Program Structure; Subpart C, Board Determinations; and Subpart D, Subsistence Taking of Fish and Wildlife. Consistent with subpart B of these regulations, the Secretaries established a Federal Subsistence Board to administer the Program. The Board comprises:

- A Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture;
- The Alaska Regional Director, U.S. Fish and Wildlife Service;
- The Alaska Regional Director, National Park Service;
- The Alaska State Director, Bureau of Land Management;
- The Alaska Regional Director, Bureau of Indian Affairs;
- The Alaska Regional Forester, USDA Forest Service; and
- Two public members appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture.

Through the Board, these agencies and public members participate in the development of regulations for subparts C and D. Subpart C sets forth important Board determinations regarding program eligibility, *i.e.,* which areas of Alaska are considered rural and which species are harvested in those areas as part of a ''customary and traditional use'' for subsistence purposes. Subpart D sets forth specific harvest seasons and limits.

In administering the Program, the Secretaries divided Alaska into 10 subsistence resource regions, each of which is represented by a Federal Subsistence Regional Advisory Council. The Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Federal public lands in Alaska. The Council members represent varied geographical, cultural, and user interests within each region.

Public Review Process—Comments, Proposals, and Public Meetings

The Federal Subsistence Regional Advisory Councils will have a substantial role in reviewing this proposed rule and making recommendations for the final rule. The Federal Subsistence Board, through the Councils, will hold public meetings, or teleconference meetings if public health and safety restrictions are in effect, on this proposed rule at the following locations in Alaska, on the following dates:

Region 1—Southeast Regional Council Juneau February 28, 2023
Region 2—Southcentral Regional Council Anchorage March 15, 2023
Region 3—Kodiak/Aleutians Regional Council Kodiak March 29, 2023
Region 4—Bristol Bay Regional Council Naknek March 8, 2023
Region 5—Yukon–Kuskokwim Delta Regional Council St. Mary's April 4, 2023
Region 6—Western Interior Regional Council Aniak April 4, 2023
Region 7—Seward Peninsula Regional Council Nome March 22, 2023
Region 8—Northwest Arctic Regional Council Kotzebue March 6, 2023
Region 9—Eastern Interior Regional Council Arctic Village March 1, 2023
Region 10—North Slope Regional Council Kaktovik February 22, 2023

During April 2023, the written proposals to change the regulations at subpart D, take of wildlife, and subpart C, customary and traditional use determinations, will be compiled and distributed for public review. Written public comments will be accepted on the distributed proposals during a second 30-day public comment period, which will be announced in statewide newspaper and radio ads and posted to the program web page and social media. The Board, through the Councils, will hold a second series of public meetings

or teleconference meetings in September through November 2023, to receive comments on specific proposals and to develop recommendations to the Board on the following dates:

Region 1—Southeast Regional Council Sitka October 24, 2023
Region 2—Southcentral Regional Council Kenai October 2, 2023
Region 3—Kodiak/Aleutians Regional Council King Cove September 19, 2023
Region 4—Bristol Bay Regional Council Dillingham October 24, 2023
Region 5—Yukon–Kuskokwim Delta Regional Council Anchorage October 10, 2023
Region 6—Western Interior Regional Council Fairbanks October 11, 2023
Region 7—Seward Peninsula Regional Council Nome November 1, 2023
Region 8—Northwest Arctic Regional Council Kotzebue October 16, 2023
Region 9—Eastern Interior Regional Council Tok October 4, 2023
Region 10—North Slope Regional Council Utqiagvik November 1, 2023

A notice will be published of specific dates, times, and meeting locations in local and statewide newspapers prior to both series of meetings; in addition, this information will be shared on local radio and television announcements and postings to social media and the program website at *https://www.doi.gov/subsistence/regions.* Locations and dates may change based on weather or local circumstances, and teleconferences will substitute for in-person meetings based on current public health and safety restrictions in effect. In the case of teleconferences, a public notice of specific dates, times, call-in number(s), and how to participate and provide public testimony will be published in local and statewide newspapers prior to each meeting.

The amount of work on each Council's agenda determines the length of each Council meeting, but typically the meetings are scheduled to last 2 days. Occasionally a Council will lack information necessary during a scheduled meeting to make a recommendation to the Board or to provide comments on other matters affecting subsistence in the region. If this situation occurs, the Council may announce on the record a later teleconference to address the specific issue when the requested information or data is available; please note that any followup teleconference would be an exception and must be approved, in advance, by the Assistant Regional Director for the Office of Subsistence Management. These teleconferences would be open to the public, along with opportunities for public comment; the date and time would be announced during the scheduled meeting, and that same information would be announced through news releases and local radio, television, and social media ads.

The Board will discuss and evaluate proposed changes to the subsistence management regulations during a public meeting scheduled to be held in Anchorage, Alaska, in April 2024. The Federal Subsistence Regional Advisory Council Chairs, or their designated representatives, will present their respective Councils' recommendations at the Board meeting. Additional oral testimony may be provided on specific proposals before the Board at that time. At that public meeting, the Board will deliberate and take final action on proposals received that request changes to this proposed rule.

Proposals to the Board to modify the general fish and wildlife regulations, wildlife harvest regulations, and customary and traditional use determinations must include the following information:

a. Name, address, and telephone number of the requester;

b. Each section and/or paragraph designation in this proposed rule for which changes are suggested, if applicable;

c. A description of the regulatory change(s) desired;

d. A statement explaining why each change is necessary;

e. Proposed wording changes; and

f. Any additional information that you believe will help the Board in evaluating the proposed change.

The Board immediately rejects proposals that fail to include the above information, or proposals that are beyond the scope of authorities in § _.24, subpart C (the regulations governing customary and traditional use determinations) and §§ _.25 and _.26 of subpart D (the general and specific regulations governing the subsistence take of wildlife). If a proposal needs clarification, prior to being distributed for public review, the proponent may be contacted, and the proposal could be revised based on their input. Once a proposal is distributed for public review, no additional changes may be made as part of the original submission. During the April 2024 meeting, the Board may defer review and action on some proposals to allow time for cooperative planning efforts, or to acquire additional needed information. The Board may elect to defer taking action on any given proposal if the workload of staff, Councils, or the Board becomes excessive. These deferrals may be based on recommendations by the affected Council(s) or staff members, or on the basis of the Board's intention to do least harm to the subsistence user and the resource involved. A proponent of a proposal may withdraw the proposal provided it has not been considered, and a recommendation has not been made, by a Council. The Board may consider and act on alternatives that address the intent of a proposal while differing in approach.

You may submit written comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES.** If you submit a comment via *https://www.regulations.gov,* your entire comment, including any personal identifying information, will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *https://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *https://www.regulations.gov* at Docket No. FWS–R7–SM–2022–0105, or by appointment, provided no public health or safety restrictions are in effect, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays, at: USFWS, Office of Subsistence Management, 1011 East Tudor Road, Anchorage, AK 99503.

Reasonable Accommodations

The Federal Subsistence Board is committed to providing access to these meetings for all participants. Please direct all requests for sign language interpreting services, closed captioning, or other accommodation needs to Robbin LaVine, 907–786–3880, *subsistence@fws.gov,* or 800–877–8339 (TTY), 7 business days prior to the meeting you would like to attend.

Tribal Consultation and Comment

As expressed in Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments,'' the Federal officials that have been delegated authority by the Secretaries are committed to honoring the unique government-to-government political relationship that exists between the Federal Government and federally recognized Indian Tribes (Tribes) as listed in 82 FR 4915 (January 17, 2017). Consultation with Alaska Native corporations is based on Public Law

108–199, div. H, Sec. 161, Jan. 23, 2004, 118 Stat. 452, as amended by Public Law 108–447, div. H, title V, Sec. 518, Dec. 8, 2004, 118 Stat. 3267, which provides that: ''The Director of the Office of Management and Budget and all Federal agencies shall hereafter consult with Alaska Native corporations on the same basis as Indian tribes under Executive Order No. 13175.''

ANILCA does not provide specific rights to Tribes for the subsistence taking of wildlife, fish, and shellfish. However, because Tribal members are affected by subsistence fishing, hunting, and trapping regulations, the Secretaries, through the Board, will provide federally recognized Tribes and Alaska Native corporations an opportunity to consult on this proposed rule.

The Board will engage in outreach efforts for this proposed rule, including a notification letter, to ensure that Tribes and Alaska Native corporations are advised of the mechanisms by which they can participate. The Board provides a variety of opportunities for consultation: proposing changes to the existing rule; commenting on proposed changes to the existing rule; engaging in dialogue at the Regional Council meetings; engaging in dialogue at the Board's meetings; and providing input in person, by mail, email, or phone at any time during the rulemaking process. The Board will commit to efficiently and adequately providing an opportunity to Tribes and Alaska Native corporations for consultation in regard to subsistence rulemaking.

The Board will consider Tribes' and Alaska Native corporations' information, input, and recommendations, and address their concerns as much as practicable.

Developing the 2024–25 and 2025–26 Wildlife Seasons and Harvest Limit Proposed Regulations

In titles 36 and 50 of the CFR, the subparts C and D regulations are subject to periodic review and revision. The Board currently completes the process of revising subsistence take of wildlife regulations in even-numbered years and fish and shellfish regulations in odd-numbered years; public proposal and review processes take place during the preceding year. The Board also addresses customary and traditional use determinations during the applicable cycle.

Based on Board policy, the Board reviews closures to the take of fish/shellfish and wildlife during each applicable cycle. The following table lists the current closures being reviewed for this cycle. In reviewing a closure, the Board may maintain, modify, or rescind the closure. If a closure is rescinded, the regulations will revert to the existing regulations in place prior to the closure, or if no regulations were in place, any changes or the establishment of seasons, methods and means, and harvest limits must go through the full public review process. The public is encouraged to comment on these closures, and anyone recommending that a closure be rescinded should submit a proposal to establish regulations for the area that was closed.

TABLE 1—WILDLIFE CLOSURES TO BE REVIEWED BY THE FEDERAL SUBSISTENCE BOARD FOR THE 2024–2025 AND 2025–2026 REGULATORY YEARS

Unit and area descriptor	Species	Closure
7, draining into King's Bay	Moose	Closed except for residents of Chenega Bay and Tatitlek.
9C, remainder	Caribou	Closed except for residents of Unit 9C and Egegik.
9C, remainder	Caribou	Closed except for residents of Unit 9C and Egegik.
22B	Musk ox	Closed to non-federally qualified users.
22D, remainder	Moose	Closed to non-federally qualified users.
23, south of Kotzebue Sound and west of and including the Buckland River drainage.	Musk ox	Closed to non-federally qualified users.
24, Kanuti Controlled Use Area	Moose	Closed to non-federally qualified users.
25A, Arctic Village Sheep Management Area	Sheep	Closed to non-federally qualified users.
22D, west of the Tisuk River drainage and Canyon Creek.	Musk ox	Closed except for residents of Nome and Teller.
22D, remainder	Musk ox	Closed except for residents of Elim, White Mountain, Nome, Teller, and Brevig Mission.
22E	Musk ox	Closed to non-federally qualified users.
26B, remainder and 26C	Moose	Closed except for residents of Kaktovik.
12, east of the Nabesna River and the Nabesna Glacier and south of the Winter Trail running southeast from Pickerel Lake to the Canadian border.	Caribou (Chisana caribou herd).	Closed to non-federally qualified users.
18, Kuskokwim River hunt area	Moose	Closed except for residents of Tuntutuliak, Eek, Napakiak, Napaskiak, Kasigluk, Nunapitchuk, Atmautlauk, Oscarville, Bethel, Kwethluk, Akiachak, Akiak, Tuluksak, Lower Kalskag, and Kalskag.
6C	Moose	Closed to non-federally qualified users during the months of November and December.
12, within Wrangell-St. Elias National Park that lies west of the Nabesna River and the Nabesna Glacier.	Caribou (Mentasta caribou herd).	Closed to all users.
19A, remainder	Moose	Closed except for residents of Tuluksak, Lower Kalskag, Upper Kalskag, Aniak, Chuathbaluk, and Crooked Creek.
22D, Kuzitrin River drainage	Musk ox	Closed except for residents of Council, Golovin, White Mountain, Nome, Teller, and Brevig Mission.

The current subsistence program regulations form the starting point for consideration during each new rulemaking cycle. Consequently, in this rulemaking action pertaining to wildlife, the Board will consider proposals to revise the regulations in any of the following sections of titles 36 and 50 of the CFR:

- § _.24: customary and traditional use determinations;

• § _.25: general provisions governing the subsistence take of wildlife, fish, and shellfish; and

• § _.26: specific provisions governing the subsistence take of wildlife.

As such, the text of the proposed 2024–26 subparts C and D subsistence regulations in titles 36 and 50 is the combined text of previously issued rules that revised these sections of the regulations. The following **Federal Register** citation shows when these CFR sections were last revised. Therefore, the regulations established by the cited final rule constitute the text of this proposed rule:

The text of the proposed amendments to 36 CFR 242.24, 242.25, and 242.26 and 50 CFR 100.24, 100.25, and 100.26 is the final rule for the 2022–2024 regulatory period for wildlife (87 FR 44846, July 26, 2022).

The regulations established by the July 26, 2022, final rule (87 FR 44846) will remain in effect until subsequent Board action changes elements of them as a result of the public review process outlined above in this document and a final rule is published.

Compliance With Statutory and Regulatory Authorities

National Environmental Policy Act

A draft environmental impact statement that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. The final environmental impact statement (FEIS) was published on February 28, 1992. The Record of Decision (ROD) on Subsistence Management for Federal Public Lands in Alaska was signed April 6, 1992. The selected alternative in the FEIS (Alternative IV) defined the administrative framework of an annual regulatory cycle for subsistence regulations.

A 1997 environmental assessment dealt with the expansion of Federal jurisdiction over fisheries and is available at the office listed under **FOR FURTHER INFORMATION CONTACT**. The Secretary of the Interior, with concurrence of the Secretary of Agriculture, determined that expansion of Federal jurisdiction does not constitute a major Federal action significantly affecting the human environment and, therefore, signed a finding of no significant impact.

Section 810 of ANILCA

An ANILCA section 810 analysis was completed as part of the FEIS process on the Federal Subsistence Management Program. The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. The final section 810 analysis determination appeared in the April 6, 1992, ROD and concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting subsistence regulations, may have some local impacts on subsistence uses, but will not likely restrict subsistence uses significantly.

During the subsequent environmental assessment process for extending fisheries jurisdiction, an evaluation of the effects of the subsistence program regulations was conducted in accordance with section 810. That evaluation also supported the Secretaries' determination that the regulations will not reach the ''may significantly restrict'' threshold that would require notice and hearings under ANILCA section 810(a).

Paperwork Reduction Act of 1995 (PRA)

This proposed rule contains existing and new information collections. All information collections require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*). 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. The OMB has reviewed and approved the information collection requirements associated with subsistence management regulations on public lands in Alaska and assigned the OMB Control Number 1018–0075.

In accordance with the PRA and its implementing regulations at 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on our proposal to renew, with revisions, OMB Control Number 1018–0075. This input will help us assess the impact of our information collection requirements and minimize the public's reporting burden, and it will help the public understand these requirements and provide the requested data in the desired format.

As part of our continuing effort to reduce paperwork and respondent burdens, and in accordance with 5 CFR 1320.8(d)(1), we invite the public and other Federal agencies to comment on any aspect of this proposed information collection, including:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this proposed rulemaking are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

We also propose to renew the existing reporting and/or recordkeeping requirements identified below:

(1) *Form 3–2326,* ''*Federal Subsistence Hunt Application, Permit, and Report*''—Completed by Federally qualified subsistence users who want to harvest wildlife.

• Applicants provide information on the permit to identify:

(1) They are a federally qualified subsistence user;

(2) Their community of primary residence for community harvest allocations; and

(3) The unit, season, hunt number, and permit number.

• Question 1 identifies whether the applicant hunted or used a designated hunter.

• Questions 2a through 2e identify success rates by time, location, and take of animal.

• Question 3 identifies date of take and biological data of animal.

(2) *Form 3–2327,* ''*Designated Hunter Application, Permit, and Report*''—Completed by Federally qualified subsistence users who want to harvest wildlife for other federally qualified subsistence users.

• Applicants provide information on the permit to identify:

(1) They are a federally qualified subsistence user;

(2) Their community of primary residence for community harvest allocations; and

(3) The unit, season, hunt number, and permit number.

• Applicants provide a list of names of other persons they hunted for, their harvest ticket/registration permit and their community to ensure they are federally qualified subsistence users.

• Remaining information provides harvest data such as unit, drainage or specific location, and number, by sex, of animals taken.

(3) *Form 3–2328, ''Federal Subsistence Fishing Application, Permit, and Report''*—Completed by federally qualified subsistence users who want to harvest fish.

• Applicants provide information on the permit to identify:

(1) They are a federally qualified subsistence user;

(2) Their community of primary residence for community harvest allocations; and

(3) The unit, season, hunt number, and permit number.

• Remaining information identifies dates, locations, types of gear, fish species, and number of fish harvested for biological and anthropological analysis.

• Depending on in-season management requirements, a condition may be included for certain fisheries that requires a time-specific reporting requirement. This management tool is used only when conservation concerns exist that may require the emergency closure of the fishery to prevent overharvest.

• Must be completed and returned by date designated on permit.

(4) *Form 3–2378, ''Designated Fishing Application, Permit, and Report''*—Completed by federally qualified subsistence users who want to harvest fish for other federally qualified subsistence users. Federally qualified subsistence users may designate another federally qualified subsistence user to take fish on their behalf. The designated subsistence user must obtain a designated harvest permit prior to attempting to harvest fish and must return a completed harvest report. The designated subsistence user may fish for any number of beneficiaries but may have no more than two harvest limits in their possession at any one time. Subsistence users may not designate more than one person to take or attempt to take fish on their behalf at one time. Subsistence users may not personally take or attempt to take fish at the same time that their designated subsistence user is taking or attempting to take fish on their behalf.

• Applicants provide information on the permit to identify:

(1) They are a federally qualified subsistence user;

(2) Their community of primary residence for community harvest allocations; and

(3) The unit, season, hunt number, and permit number.

• Applicants identify both for whom they fished and their subsistence permit number. The permit number verifies they are federally qualified users and tracks usage by communities.

• Remaining information tracks species taken, number retained, and gear for biological and anthropological analysis.

(5) *Form 3–2379, ''Federal Subsistence Customary Trade Recordkeeping Form''*—Completed by federally qualified subsistence users who want to take part in customary trade. Staff anthropologists use the information to make customary and traditional use determinations and to write an analysis based on the provisions in section 804 of ANILCA. These analyses further reduce the pool of eligible subsistence users and may allocate harvests by community, in part, based on documented uses of the resource.

• Applicants provide information on the permit to identify:

(1) They are a federally qualified subsistence user;

(2) Their community of primary residence for community harvest allocations; and

(3) The unit, season, hunt number, and permit number.

• Remaining information tracks date of sales, buyers, and buyers' addresses, total dollar amount, species taken, and fish parts.

(6) *Petition to Repeal Subsistence Rules and Regulations (Nonform Requirement)*—If the State of Alaska enacts and implements laws that are consistent with sections 803, 804, and 805 of ANILCA, the State may submit a petition to the Secretary of the Interior for repeal of Federal subsistence rules. The State's petition shall:

(1) Be submitted to the Secretary of the Interior and the Secretary of Agriculture;

(2) Include the entire text of applicable State legislation indicating compliance with sections 803, 804, and 805 of ANILCA; and

(3) Set forth all data and arguments available to the State in support of legislative compliance with sections 803, 804, and 805 of ANILCA.

If the Secretaries find that the State's petition contains adequate justification, a rulemaking proceeding for repeal of the regulations in this part will be initiated. If the Secretaries find that the State's petition does not contain adequate justification, the petition will be denied by letter or other notice, with a statement of the ground for denial.

(7) *Propose Changes to Federal Subsistence Regulations*—The Board will accept proposals for changes to the Federal subsistence regulations in subparts C or D of 356 CFR part 242 or 50 CFR part 100 according to a published schedule, except for proposals for emergency and temporary special actions, which the Board will accept according to procedures set forth in § _.19. Members of the public may propose changes to the subsistence regulations by providing:

• Contact information (name, organization, address, phone number, fax number, email address).

• Type of change (harvest season, harvest limit, method and means of harvest, customary and traditional use determination).

• Regulation to be changed.

• Language for proposed regulation.

• Why the change should be made.

• Impact on populations.

• How the change will affect subsistence uses.

• How the change will affect other uses.

• Communities that have used the resource.

• Where the resource has been harvested.

• Months in which the resource has been harvested.

(8) *Proposals for Emergency or Temporary Special Actions*—A special action is an out-of-cycle change in a season, harvest limit, or method of harvest. The Federal Subsistence Board may take a special action to restrict, close, open, or reopen the taking of fish and wildlife on Federal public lands: (1) to ensure the continued viability of a particular fish or wildlife population; (2) to ensure continued subsistence use; and (3) for reasons of public safety or administration. Members of the public may request a special action by providing:

• Contact information (name, organization, address, telephone number, fax number, email address).

• Description of the requested action.

• Any unusual or significant changes in resource abundance or unusual conditions affecting harvest opportunities that could not reasonably have been anticipated and that potentially could have significant adverse effects on the health of fish and wildlife populations or subsistence users.

• The necessity of the requested action if required for reasons of public safety or administration.

• Extenuating circumstances that necessitate a regulatory change before the next regulatory review.

(9) *Requests for Reconsideration*—Any person adversely affected by a new regulation may request that the Federal Subsistence Board reconsider its decision by filing a written request within 60 days after a regulation takes effect or is published in the **Federal Register**, whichever comes first. Requests for reconsideration must provide the Board with sufficient narrative evidence and argument to show why the action by the Board should be reconsidered. The Board will accept a request for reconsideration only if it is based upon information not previously considered by the Board, demonstrates that the existing information used by the Board is incorrect, or demonstrates that the Board's interpretation of information, applicable law, or regulation is in error or contrary to existing law. Requests for reconsideration must include:

• Contact information (name, organization, address, telephone number, fax number, email address).

• Regulation and the date of **Federal Register** publication.

• Statement of how the person is adversely affected by the action.

• Statement of the issues raised by the action, with specific reference to: (1) information not previously considered by the Board; (2) information used by the Board that is incorrect; and (3) how the Board's interpretation of information, applicable law, or regulation is in error or contrary to existing law.

(10) *Other Permits and Reports*

a. Traditional/Cultural/Educational Permits—Organizations desiring to harvest fish or wildlife for traditional, cultural, or educational reasons must provide a letter stating that the requesting program has instructors, enrolled students, minimum attendance requirements, and standards for successful completion. Harvest must be reported, and any animals harvested will count against any established Federal harvest quota for the area in which it is harvested.

b. Fishwheel, Fyke Net, and Under Ice Permits—Persons who want to set up and operate fishwheels and fyke nets, or use a net under the ice must provide:

(1) Name and contact information and other household member who will use the equipment. Fishwheels must be marked with registration permit number; organization's name and address (if applicable), and primary contact person name and telephone number; under ice nets must be marked with the permittee's name and address.

(2) Species of fish take, number of fish taken, and dates of use.

The new reporting and/or recordkeeping requirements identified below require approval by OMB:

(1) *Reports and Recommendations*—Subsistence Regional Advisory Councils are required to send an annual report to the Federal Subsistence Board informing them of regional concerns or problems pertaining to subsistence on Federal public lands. In turn, the Board is required to respond to each of the Councils' annual reports and address their concerns and possible courses of actions or solutions.

(2) *Customary Trade Sales*—The Board manages each region differently regarding customary trade, based primarily on cultural beliefs and traditional practices. As needed, decisions also include conservation concerns. This requirement is in place to monitor customary trade and ensure that subsistence resources are for subsistence users and not commercial trade.

(3) *Transfer of Subsistence-Caught Fish, Wildlife, or Shellfish*—This reporting requirement safeguards the harvester and individual who receives the harvested animal. It protects both parties to show that an illegal commercial enterprise is not ongoing or that the animal was not poached.

(4) *Meeting Request*—The Board shall meet at least twice per year and at such other times as deemed necessary. Meetings shall occur at the call of the Chair, but any member may request a meeting. There is no specified format to request a meeting. Usually, the Service recommends to the Board that they have a meeting on a special topic, such as pending litigation. This is not a common occurrence.

(5) *Cooperative Agreements*—The Board may enter into cooperative agreements or otherwise cooperate with Federal agencies, the State, Native organizations, local governmental entities, and other persons and organizations, including international entities to effectuate the purposes and policies of the Federal subsistence management program or to coordinate respective management responsibilities. Currently, cooperative agreements are not generally used, and we are reporting a placeholder burden of one response.

(6) *Alternative Permitting Processes*—Developing alternative permitting processes relating to the subsistence taking of fish and wildlife ensures continued opportunities for subsistence. Currently, this requirement is not generally used and we are reporting a placeholder burden of one response in our burden estimate.

(7) *Request for Individual Customary and Traditional Use Determinations*—The Federal Subsistence Board has determined that rural Alaska residents of the listed communities, areas, and individuals have customary and traditional use of the specified species on Federal public land in the specified areas. Persons granted individual customary and traditional use determinations will be notified in writing by the Board. The Service and the local NPS Superintendent will maintain the list of individuals having customary and traditional use on National Parks and Monuments. A copy of the list is available upon request. Currently, this requirement is not generally used, and we are reporting a placeholder burden of one response in our burden estimate.

(8) *Management Plans*—Management plans are not routinely used. When created by the State or Alaska Native communities for overall management of a specific area, the plans are submitted to the appropriate Federal agencies for review/comment. Currently, this requirement is not generally used, and we are reporting a placeholder burden of one response in our burden estimate.

(9) *Labeling/Marking Requirements*

• *Bear Baiting*—The requirement to mark bear baiting stations and provide contact information is for public safety since attempting to draw bears into a certain area could cause a significant hazard for the public not involved in hunting activities. Requirements to register a bait station with the State is to provide a single location for the public to find information of possible hazards prior to using public lands.

• *Evidence of sex and identity*—In certain areas and with certain species of both wildlife and fish, evidence of sex and identity are required for biological purposes and the data is used for future management decisions. This information is critical to assist in assessing the health of a population, the male/female ratios, ages of harvested animals, identifying different genetic populations, and other important factors needed for sound management decisions.

• *Marking of fish gear*—The marking of various fishing gear types (fishwheels, crab pots, certain types of nets or their supporting buoys, stakes, etc.) with contact information is based on the fact that these gear types are generally unattended while catching fish. This information is used to differentiate between users harvesting under Federal or State regulations and

also to protect the owners of the gear should it be damaged or carried away. The contact information can be used to return the often expensive gear to the proper owner. Requirements as to the location of the contact information on the gear types is to ease the task of field managers so they can, if needed, identify gear from a boat and not have to land to search for the contact information. In marine waters, the information is used by the USCG for safety in navigation concerns. The above reasons also hold true regarding registering a fishwheel with the State or the Federal program.

• *Marking of subsistence-caught fish*—Requirements in certain areas to mark subsistence-caught fish by removal of the tips of the tail or dorsal fin is used to identify fish harvested under Federal regulations and not under State sport or commercial regulations. This is needed as Federal subsistence harvest limits are often larger than sport fishing bag limits and protects the user from possible citations from State law enforcement.

• *Sealing requirements*—Sealing requirements for animals, primarily bears and wolves, differ in parts of the State. This requirement not only allows biologists to gather important data to evaluate the health of the various populations but is also integral in preventing the illegal harvest and trafficking of animals and their parts reporting a placeholder burden of one response in our burden estimate.

(10) *3rd Party Notifications (Tags, Marks, or Collar Notification and Return)*—Users must present the tags, markings, or collars to ADF&G, or the agency conducting the research. Much of this equipment may be used again, and the information regarding the take of the animal is important to management decisions.

Copies of the forms used with this information collection are available to the public by submitting a request to the Service Information Collection Clearance Officer using one of the methods identified in **ADDRESSES**.

Title of Collection: Federal Subsistence Regulations and Associated Forms, 50 CFR part 100 and 36 CFR part 242.

OMB Control Number: 1018–0075.

Form Numbers: Forms 3–2300, 3–2321 through 3–2323, 3–2326 through 3–2328, 3–2378, and 3–2379.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Individuals and State, local, and Tribal governments. Most respondents are individuals who are federally defined rural residents in Alaska.

Total Estimated Number of Annual Respondents: 15,426.

Total Estimated Number of Annual Responses: 15,426.

Estimated Completion Time per Response: Varies from 5 minutes to 40 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 6,947.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion for applications; annually or on occasion for reports, recordkeeping, and labeling/marking requirements.

Total Estimated Annual Non-hour Burden Cost: None.

Send your written comments and suggestions on this information collection by the date indicated in **DATES** to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB/PERMA (JAO), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov.* Please reference OMB Control Number 1018–0075 in the subject line of your comments.

Regulatory Planning and Review (Executive Order 12866)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this proposed rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant economic impact on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. In general, the resources to be harvested under this proposed rule are already being harvested and consumed by the local harvester and do not result in an additional dollar benefit to the economy. However, we estimate that two million pounds of meat are harvested by subsistence users annually and, if given an estimated dollar value of $3.00 per pound, this amount would equate to about $6 million in food value statewide. Based upon the amounts and values cited above, the Departments certify that this rulemaking will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this proposed rule is not a major rule. It will not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Executive Order 12630

Title VIII of ANILCA requires the Secretaries to administer a subsistence priority on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these proposed regulations have no potential takings of private property implications as defined by Executive Order 12630.

Unfunded Mandates Reform Act

The Secretaries have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that this proposed rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation of this proposed rule would be by Federal agencies, with no cost imposed on any State or local entities or Tribal governments.

Executive Order 12988

The Secretaries have determined that these proposed regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

Executive Order 13132

In accordance with Executive Order 13132, this proposed rule does not have

sufficient federalism implications to warrant the preparation of a federalism assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands unless it meets certain requirements.

Executive Order 13175

Title VIII of ANILCA does not provide specific rights to Tribes for the subsistence taking of wildlife, fish, and shellfish. However, as described above under *Tribal Consultation and Comment,* the Secretaries, through the Board, will provide federally recognized Tribes and Alaska Native corporations a variety of opportunities for consultation: commenting on proposed changes to the existing rule; engaging in dialogue at the Regional Council meetings; engaging in dialogue at the Board's meetings; and providing input in person, by mail, email, or phone at any time during the rulemaking process.

Executive Order 13211

This Executive order requires agencies to prepare statements of energy effects when undertaking certain actions. However, this proposed rule is not a significant regulatory action under E.O. 13211, affecting energy supply, distribution, or use, and no statement of energy effects is required.

Drafting Information

Theo Matuskowitz drafted this proposed rule under the guidance of Sue Detwiler of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional assistance was provided by:

- Chris McKee, Alaska State Office, Bureau of Land Management;
- Eva Patton, Alaska Regional Office, National Park Service;
- Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs;
- Jill Klein, Alaska Regional Office, U.S. Fish and Wildlife Service; and
- Gregory Risdahl, Alaska Regional Office, USDA–Forest Service.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

Proposed Regulation Promulgation

■ For the reasons set out in the preamble, the Federal Subsistence Board proposes to amend 36 CFR part 242 and 50 CFR part 100 for the 2024–25 and 2025–26 regulatory years:

The text of the proposed amendments to 36 CFR 242.24, 242.25, and 242.26 and 50 CFR 100.24, 100.25, and 100.26 is the final rule for the 2022–2024 regulatory period for wildlife (87 FR 44846, July 26, 2022).

Sue Detwiler,

Assistant Regional Director, U.S. Fish and Wildlife Service.

Gregory Risdahl,

Subsistence Program Leader, USDA–Forest Service.

[FR Doc. 2023–03825 Filed 2–24–23; 8:45 am]

BILLING CODE 4333–15–P, 3411–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AQ99

Bar to Approval

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its regulations that govern VA's administration of educational assistance programs to implement a provision of the Veterans Benefits and Transition Act of 2018, which requires a State Approving Agency (SAA), or the Secretary of VA (when acting as the SAA), to disapprove programs of education provided by educational institutions that do not permit individuals using benefits under certain VA educational assistance programs to attend or participate in courses while awaiting payment from VA and that impose a penalty on an individual for failure to meet financial obligations due to a delayed VA payment. We would also implement a provision that would allow educational institutions to require a claimant using education benefits to submit certain documents. In addition, we would make clear that an educational institution may require a claimant to pay certain fees or charges if VA delays payment and ultimately pays less than what an educational institution anticipated receiving.

DATES: Comments must be received on or before April 28, 2023.

ADDRESSES: Comments must be submitted through *www.regulations.gov*. Except as provided below, comments received before the close of the comment period will be available at *www.regulations.gov* for public viewing, inspection, or copying, including any personally identifiable or confidential business information that is included in a comment. We post the comments received before the close of the comment period on the following website as soon as possible after they have been received: *https://www.regulations.gov*. VA will not post on *Regulations.gov* public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm the individual. VA encourages individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments. Any public comment received after the comment period's closing date is considered late and will not be considered in the final rulemaking.

FOR FURTHER INFORMATION CONTACT: Cheryl A. Amitay, Chief, Policy and Regulation Development Staff (225C), Education Service, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–9800 (This is not a toll-free telephone number).

SUPPLEMENTARY INFORMATION: Prior to August 1, 2019, an educational institution could prohibit an individual utilizing educational assistance under chapter 31 or chapter 33 of title 38, U.S.C., from attending classes if either part or all the claimant's tuition and fees had not been paid, even if the delinquent tuition and fee payment was due to a delay in VA paying the school. On December 31, 2018, sec. 103 of the Veterans Benefits and Transition Act of 2018, Public Law 115–407, added subsection (e) to 38 U.S.C. 3697. Section 3679(e) requires a State Approving Agency (SAA), or the Secretary of the Department of Veterans Affairs (VA) when acting as a SAA, to disapprove, programs of education that do not permit individuals using benefits under either chapter 31 or chapter 33 to attend or participate in courses while awaiting payment from VA. Specifically, beginning on August 1, 2019, an educational institution is prohibited from employing a policy which prevents an individual from attending classes or participating in a program of education while awaiting payment from VA if the individual provides the school with a ''certificate of eligibility.'' In addition, an educational institution must not impose any penalty on an individual for failure to meet financial obligations due

to a delayed VA payment under chapter 31 or chapter 33. However, the law authorizes VA to waive any of these requirements as considered appropriate.

VA proposes to add 38 CFR 21.4259A to implement these statutory provisions. We would make clear in § 21.4259A(a)(1) that an educational institution will face disapproval if it does not permit a claimant using benefits under chapter 31 or chapter 33 to attend courses within their program of education beginning on the date the claimant provides the necessary eligibility documentation until the earlier of the date VA provides payment to the educational institution or 90 days after the date the educational institution certifies its tuition and fees charges to VA following receipt of the claimant's eligibility documentation.

Section 103 does not explicitly define ''certificate of eligibility'' and does not otherwise refer to any one VA document or form that provides eligibility documentation. We interpret the term ''certificate of eligibility'' as used in sec. 103 as referring to any verifiable and authoritative document describing a claimant's entitlement to education benefits, to include the amount or percentage of benefits and the last date to use the benefits awarded, such as a decision or notice of a decision on a claimant's application for educational assistance, a letter from VA, an updated award letter from VA, a print-out of eligibility (statement of benefits) from e-Benefits, or a Statement of Benefits from the Post-9/11 GI Bill Benefits tool.

In addition, § 21.4259A(a)(2) would make clear that an educational institution must ensure that it does not impose any penalty, including the assessment of late fees, denial of access to classes, libraries, or other institutional facilities, or require a claimant using benefits under chapter 31 or chapter 33 to borrow additional funds due to the inability to meet his or her financial obligations to the institution, as a result of delayed payments of educational assistance from VA.

In § 21.4259A(b), we would define a covered individual for purposes of this section as any individual who is entitled to educational assistance under 38 U.S.C. chapter 31 or chapter 33. Section 21.4259A(c) would contain the authorized provision allowing VA to waive any of the requirements regarding the educational institutions' responsibilities in § 21.4259A.

Under new sec. 3679(e)(4), educational institutions would nonetheless be permitted to require a claimant using benefits under chapter 31 or chapter 33 to take the following actions:

- Submit verifiable and authoritative proof of eligibility for entitlement to educational assistance not later than the first day of a course of education for which the claimant has indicated he or she wishes to use entitlement to educational assistance.
- Submit a written request to use such entitlement.
- Provide additional information necessary to the proper certification of enrollment by the educational institution.

We would include these submissions that an educational institution may require in § 21.4259A(d)(1). In addition, in § 21.4259A(d)(1)(iii), to give notice to students attending an educational institution and to facilitate VA's oversight of educational institutions' compliance with the law, we would require an educational institution to clearly state any requirements for the submission of additional information for certifying enrollment in their published catalog and would also require approval by the SAA of any requirements to submit additional information.

Section 103(c) further provides that an educational institution may collect additional payments or fees from a claimant in an amount that is the difference between the amount owed and the amount VA paid if the claimant is unable to meet his or her financial obligations to the institution because of delayed payments of educational assistance from VA under chapter 31 or chapter 33 and the amount that VA eventually pays is less than what the educational institution anticipated receiving. Thus, when a claimant is not entitled to payment of the full amount of tuition, but the educational institution anticipated receiving full tuition, the educational institution may collect the difference between the amount VA has paid to the educational institution on the claimant's behalf and the total amount owed by the claimant to the educational institution. We would implement this requirement in § 21.4259A(d)(2).

We interpret the permissibility of allowing a school to collect the additional payment in cases when VA does not ultimately pay the amount the educational institution anticipates receiving as indicating Congress' intent to allow a school to require a claimant to pay fees or charges that VA does not ordinarily pay in any event. VA ordinarily pays subsistence, tuition, fees, and other educational costs. *See* 38 U.S.C. 3313(a); *see also* 38 CFR 21.9620 (noting tuition and fees are payable). VA does not ordinarily pay for room and board and certain optional fees. According to 38 CFR 21.9505, ''fees'' means ''any mandatory charges (other than tuition, room, and board) that are applied by the institution of higher learning for pursuit of an approved program of education.'' Also, according to § 21.9505, ''fees do not include those charged for a study abroad course(s) unless the course(s) is a mandatory requirement for completion of the approved program of education.'' On the other hand, pursuant to § 21.9505, payable fees include, but are not limited to, health premiums, freshman fees, graduation fees, and lab fees. Therefore, for example, if a claimant is living in a dormitory, section 3679(e) does not prohibit the school from following its standard procedures for charging and collecting payment (including assessing late fees or penalties) for dormitory fees. Another example is that the school is not prohibited from charging and collecting optional fees such as for parking permits. However, the school is prohibited from charging the claimant for mandatory freshman fees, health premiums, graduation fees, or lab fees, or assessing late fees due to VA's delayed payment of these mandatory fees. We would make clear in § 21.4259A(d)(2)(i) that a school would not be prohibited from requiring a claimant to pay fees or charges that VA does not ordinarily pay, and in § 21.4259A(d)(2)(ii), that a school may use standard debt collection policies for collecting these fees.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this proposed rule is not a significant regulatory action under Executive Order 12866. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov*.

Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies that this proposed

regulatory action would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Although this proposed rule includes provisions that entail costs to training institutions, such as the loss of late fees that institutions are prohibited from assessing when a student is unable to meet financial obligations to the institution, and the cost of publication of the requirements for submitting additional information needed for certifying enrollment, the provisions merely restate existing provisions of statute, and thus will have no additional impact on such small entities. Therefore, under 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This proposed rule includes a provision constituting a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) that requires approval by the Office of Management and Budget (OMB). Accordingly, under 44 U.S.C. 3507(d), VA has submitted a copy of this rulemaking action to OMB for review.

OMB assigns control numbers to collections of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Proposed 38 CFR 21.4259A contains a collection of information under the Paperwork Reduction Act of 1995. If OMB does not approve the collection of information as requested, VA will immediately remove the provision containing a collection of information or take such other action as is directed by OMB.

Comments on the new collection of information contained in this rulemaking should be submitted through HYPERLINK ''*https://www.regulations.gov/*''. Comments should indicate that they are submitted in response to ''RIN 2900–AQ99; Bar To Approval'' and should be sent within 60 days of publication of this rulemaking. The collection of information associated with this rulemaking can be viewed at: HYPERLINK ''*https://www.reginfo.gov/public/do/PRAMain*''.

OMB is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed rule.

The Department considers comments by the public on proposed collections of information in—

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

The collection of information contained in 38 CFR 21.4259A is described immediately following this paragraph, under its respective title.

Title: Publishing of Requirement to Submit Additional Information Necessary for Certification of Enrollment.

OMB Control No.: 2900–xxxx.

CFR Provision: 38 CFR 21.4259A(d)(1)(iii).

- *Summary of collection of information:* This new collection of information in proposed § 21.4259(d)(1)(iii) would require educational institutions to give notice to enrolled and potential students of any information in addition to the information already enumerated in their catalogs that the educational institution requires for certification of claimants' enrollment. The educational institutions would be required to publish any additional information, after it is approved by the SAA, in their online or print catalogs.
- *Description of need for information and proposed use of information:* The information collected will be used by VA to facilitate VA's oversight of educational institutions and to ensure their compliance with § 21.4259A.
- *Description of likely respondents:* Educational institutions.
- *Estimated total number of respondents:* 16,084 educational institutions.
- *Estimated frequency of responses:* Once.
- *Estimated average burden per response:* Two hours or less.
- *Estimated total annual reporting and recordkeeping burden:* VA estimates the total annual reporting and recordkeeping burden to be 32,168 burden hours. Using the annual number of responses, VA estimates a total annual reporting and recordkeeping burden of 32,168 hours for respondents.
- *Estimated cost to respondents per year:* VA estimates the annual cost to respondents to be $901,025.68 (16,084 respondents per year × 2 hours per application × $28.01*).

* To estimate the total information collection burden cost, VA used the Bureau of Labor Statistics (BLS) median hourly wage for ''all occupations'' of $28.01 per hour. This information is available at: *https://www.bls.gov/oes/current/oes_nat.htm#00-0000.*

Assistance Listing

The Assistance Listing numbers and titles for the programs affected by this document are 64.027, Post-9/11 Veterans Educational Assistance; 64.028, Post-9/11 Veterans Educational Assistance; 64.032, Montgomery GI Bill Selected Reserve; Reserve Educational Assistance Program; 64.117, Survivors and Dependents Educational Assistance; 64.120, Post-Vietnam Era Veterans' Educational Assistance; 64.124, All-Volunteer Force Educational Assistance.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Claims, Colleges and universities, Education, Employment, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on February 21, 2023, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication

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

Luvenia Potts,

Regulation Development Coordinator, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR part 21 as set forth below:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart D—Administration of Educational Assistance Programs

■ 1. The authority citation for part 21, subpart D continues to read as follows:

Authority: 10 U.S.C. 2141 note, ch. 1606; 38 U.S.C. 501(a), chs. 30, 32, 33, 34, 35, 36, and as noted in specific sections.

■ 2. Add § 21.4259A to read as follows:

§ 21.4259A Bar to approval.

(a) Beginning on August 1, 2019, a State approving agency, or the Secretary when acting in the role of the State approving agency, shall disapprove a program of education provided by an educational institution that has in effect a policy that is inconsistent with any of the following:

(1) A policy that permits any covered individual to attend or participate in the program of education during the period beginning on the date on which the individual provides to the educational institution any verifiable and authoritative VA document demonstrating entitlement to educational assistance under 38 U.S.C. chapter 31 or chapter 33 (such as a decision or notice of decision on entitlement, letter from VA, updated award letter from VA, print-out of eligibility (statement of benefits) from e-Benefits, or Statement of Benefits from the Post-9/11 GI Bill Benefits tool) and ending on the earlier of the following dates:

(i) The date on which payment from VA is made to the institution.

(ii) The date that is 90 days after the date on which the educational institution certifies tuition and fees following receipt of the verifiable and authoritative VA document proving entitlement to educational assistance under 38 U.S.C. chapter 31 or chapter 33.

(2) A policy that ensures an educational institution will not impose any penalty, including the assessment of late fees, the denial of access to classes, libraries, or other institutional facilities, or the requirement that a covered individual borrow additional funds, on any covered individual because of the individual's inability to meet his or her financial obligations to the institution due to the delayed disbursement of a payment to be provided by VA under 38 U.S.C. chapter 31 or chapter 33.

(b) For purposes of this section, a covered individual is any individual who is entitled to educational assistance under 38 U.S.C. chapter 31 or chapter 33.

(c) The Secretary (or designee) may waive such requirements of paragraph (a) of this section as the Secretary (or designee) considers appropriate.

(d) It shall not be inconsistent with a policy described in paragraph (a) of this section for an educational institution:

(1) To require a covered individual to take the following additional actions:

(i) Submit any verifiable and authoritative VA document to prove entitlement to educational assistance under 38 U.S.C. chapter 31 or chapter 33 not later than the first day of a program of education for which the individual has indicated the individual wishes to use the individual's entitlement to educational assistance.

(ii) Submit a written request to use such entitlement.

(iii) Provide additional information necessary to the proper certification of enrollment by the educational institution. If an educational institution intends to require additional information necessary for proper certification of enrollment, any such requirement must be included in the school's published catalog and also must be approved by the State approving agency, or the Secretary when acting in the role of the State approving agency, as being necessary for proper certification and not overly burdensome to submit.

(2) In a case in which a covered individual is unable to meet a financial obligation to an educational institution due to the delayed disbursement of a payment to be provided by VA under 38 U.S.C. chapter 31 or chapter 33 and the amount of such disbursement is less than the educational institution anticipated, to require additional payment of or impose a fee for the amount that is the difference between the amount of the financial obligation and the amount of the disbursement.

(i) Such additional payment may include the amount of a financial obligation associated with charges for which VA does not pay benefits (*e.g.,* room and board, any portion of tuition for which a claimant does not qualify).

(ii) An educational institution may utilize its standard debt collection policies for these amounts, including the assessment of late fees.

(Authority: 38 U.S.C. 3697(e))

[FR Doc. 2023–03964 Filed 2–24–23; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 38

RIN 2900–AR37

Reconsideration of Prior Interment and Memorialization Decisions

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its regulations to implement VA's authority to reconsider a prior decision to inter or honor the memory of a person in a VA national cemetery. As of December 20, 2013, VA was authorized to reconsider a prior decision to inter or memorialize an individual who was convicted of a Federal or State capital crime or tier III sex offense. In addition, VA was authorized to reconsider a prior decision to inter or memorialize an individual who committed a Federal or State capital crime but was not convicted of such crime because that individual was not available for trial due to death or flight to avoid prosecution. This proposed rule would implement review criteria and procedures for reconsideration of prior interment or memorialization decisions.

DATES: Written comments must be received on or before April 28, 2023.

ADDRESSES: Comments must be submitted through *www.regulations.gov.* Except as provided below, comments received before the close of the comment period will be available at *www.regulations.gov* for public viewing, inspection, or copying, including any personally identifiable or confidential business information that is included in a comment. We post the comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://www.regulations.gov.* VA will not post on *Regulations.gov* public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm the individual. VA encourages individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments. Any public

comment received after the comment period's closing date is considered late and will not be considered in the final rulemaking.

FOR FURTHER INFORMATION CONTACT: Artis Parker, Executive Director, Office of Field Programs, National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420. Telephone: (314) 416–6304 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On June 5, 2012, the National Cemetery Administration (NCA) found Michael LaShawn Anderson eligible for burial at Fort Custer National Cemetery and buried him on June 7, 2012. On July 27, 2012, NCA was informed by a concerned individual that before Mr. Anderson died, he shot and killed Ms. Alicia Koehl before he killed himself. At that time, VA had no authority to reconsider burial decisions for eligible individuals, which were considered permanent and final.

On December 20, 2013, the Alicia Dawn Koehl Respect for National Cemeteries Act (the ''Act''), Public Law 113–65, was enacted, which specifically authorized VA to disinter the remains of Michael LaShawn Anderson from Fort Custer National Cemetery. VA was required to notify Mr. Anderson's next of kin of record of the impending disinterment of his remains and, upon disinterment, relinquish the remains to the next of kin of record or arrange for an appropriate disposition of remains if the next of kin of record is unavailable.

In addition, the Act amended 38 U.S.C. 2411 to authorize VA to reconsider prior decisions to inter or memorialize individuals who were convicted of a Federal capital crime, a State capital crime, or a Federal or State tier III sex offense, in which the conviction was final. VA may also reconsider prior decisions to inter or memorialize individuals who were later found to have committed a Federal or State capital crime but were not convicted due to death or flight to avoid prosecution. The term ''Federal capital crime'' is defined at section 2411(f)(1) to mean ''an offense under Federal law for which a sentence of imprisonment for life or the death penalty may be imposed.'' The term ''State capital crime'' is defined at section 2411(f)(2) to mean, ''under State law, the willful, deliberate, or premeditated unlawful killing of another human being for which a sentence of imprisonment for life or the death penalty may be imposed.'' The term ''tier III sex offense'' is defined at section 2411(b)(4) to mean ''a Federal or State crime causing the person to be a tier III sex offender for purposes of the Sex Offender Registration and Notification Act'' (now found at 34 U.S.C. 20901 *et seq.*). An individual who was convicted of a Federal or State tier III sex offense must also have been sentenced to a minimum of life imprisonment. VA's reconsideration authority applies to any interment or memorialization in a VA national cemetery after the date of the Act's enactment on December 20, 2013.

VA proposes to add new 38 CFR 38.622 to implement this statutory reconsideration authority. Section 38.622(a) would provide general information about the reconsideration authority and designate the Under Secretary for Memorial Affairs (USMA) as the appropriate Federal official who may reconsider prior interment and memorialization decisions. This level of decision-making authority for reconsideration purposes would be consistent with existing authority for cases involving application of the section 2411 bar for interment and memorialization at national cemeteries. See 38 CFR 38.617 (referring to ''the affected cemetery director, or the [USMA], or his or her designee'' to make determinations involving the section 2411 bar); 38.618 (requiring the USMA to make a finding of whether a deceased individual committed a Federal or State capital crime for which he or she was not convicted due to death or flight).

Proposed § 38.622(b) and (c) would describe instances that may result in reconsideration of prior interment and memorialization decisions under criteria defined in 38 U.S.C. 2411(d)(2)(A). In the analysis that follows, we explain each circumstance in which VA would reconsider a prior interment or memorialization decision and include references to the applicable statutory provision that imposes the bar to benefits. We propose, to the extent practicable, to continue to apply existing standards and procedures relating to the bar to interment and memorialization benefits under section 2411 to implement the reconsideration authority to maintain clarity and consistency in VA's decision-making.

Basis for Application of the Reconsideration Authority

Proposed § 38.622(b) would describe two scenarios where reconsideration of a prior interment or memorialization decision may be established by a Federal or State criminal conviction. Under proposed § 38.622(b)(1), VA may reconsider a prior interment decision if VA receives written notification (38 U.S.C. 2411(a)(2), (d)(1), (e)(1)(A)) from the United States Attorney General or an appropriate State official of a final conviction of a person interred or memorialized in a national cemetery who was convicted of a Federal capital crime (38 U.S.C. 2411(b)(1)), a State capital crime (38 U.S.C. 2411(b)(2)), or a Federal or State tier III sex offense meeting the requirements of 38 U.S.C. 2411(b)(4).

Under proposed § 38.622(b)(2), VA may reconsider a prior interment or memorialization decision if VA has not received notification described in § 38.622(b)(1), but VA has reason to believe that a person interred or memorialized in a national cemetery may have been convicted of a Federal or State capital crime meeting the requirements of 38 U.S.C. 2411(b)(1) or (2), respectively, or may have been convicted of a Federal or State tier III sex offense meeting the requirements of 38 U.S.C. 2411(b)(4). These proposed provisions for reconsidering a prior interment or memorialization decision correspond to the two bases for applying the section 2411 bar to decedents convicted of a Federal or State capital crime or sex offense.

In proposed § 38.622(c), VA may reconsider a prior interment or memorialization decision when a cemetery director, after completing an official inquiry, determines that there appears to be clear and convincing evidence that a person interred or memorialized in a national cemetery committed a Federal or State capital crime but was not convicted due to death or flight to avoid prosecution (38 U.S.C. 2411(b)(3) and (c)). In such a case, the cemetery director would recommend that the USMA reconsider VA's decision to inter or memorialize the decedent. This proposed provision for reconsideration of prior interment or memorialization decisions would correspond to application of the statutory bar to benefits for decedents who avoided prosecution and conviction of a Federal or State capital crime due to death or flight.

When a cemetery director forwards a case to the USMA for decision, for one of the three circumstances described in § 38.622(b)(1), (b)(2), or (c), and the USMA decides to reconsider VA's prior interment or memorialization decision, the USMA must provide written notification as proposed in § 38.622(d).

Procedural Guidance for Reconsideration of Prior Interment and Memorialization Decisions—Conviction

Under proposed § 38.622(d)(1), if VA learns that the deceased was convicted of a Federal or State capital crime or sexual offense, either based on notification of the conviction

(§ 38.622(b)(1)) or after an inquiry (§ 38.622(b)(2)), and if the USMA decides to disinter or remove a memorial headstone or marker, NCA would provide a copy of the written notice of the USMA's reversal decision to the decedent's next of kin or other person authorized to arrange for the interment or memorialization of the decedent (*i.e.,* personal representative) (38 U.S.C. 2411(d)(2)(A)(i)). The USMA's written notice of decision would be in accordance with 38 U.S.C. 5104 (Decisions and notices of decisions) and include the following information: (1) identification of the issues adjudicated; (2) a summary of the evidence considered by the USMA; (3) a summary of the applicable laws and regulations; (4) identification of findings favorable to the claimant; (5) identification of elements leading to the decision to disinter; (6) an explanation of how to obtain or access evidence used in making the decision; and (7) an explanation of appeal rights, which includes the notice of the opportunity to file a notice of disagreement with the decision of the USMA within 60 days from the date of the notice (38 U.S.C. 2411(d)(2)(B) and (3)(A)).

Procedural Guidance for Reconsideration of Prior Interment and Memorialization Decisions—Death or Flight

Proposed § 38.622(d)(2) would outline the process that VA would follow for cases where the cemetery director determines that there appears to be clear and convincing evidence that the decedent avoided being convicted for a Federal or State capital crime due to death or flight. In these instances, if the USMA decides to reconsider the interment or memorialization decision, the USMA would provide the decedent's next of kin or other person authorized to arrange for the interment or memorialization of the decedent (*i.e.,* personal representative) with written notice that VA has reason to believe that the decedent may have committed a Federal or State capital crime and the USMA is reconsidering VA's prior decision to inter or memorialize the decedent. This notice would also provide the next of kin or personal representative with procedural options should they disagree. The notice of procedural options would inform the decedent's next of kin or personal representative that they may, within 15 days of receipt of notice: request a hearing on the matter; submit a written statement, with or without supporting documentation, for inclusion in the record; or waive a hearing and submission of a written statement. If a hearing is requested, the District Executive Director would conduct the hearing.

The purpose of the hearing would be to permit the personal representative of the deceased to present evidence concerning whether the deceased committed a crime that would render the deceased ineligible for interment or memorialization in a national cemetery. Testimony at the hearing would be presented under oath, and the personal representative would have the right to representation by counsel and the right to call witnesses. The VA official conducting the hearing would have the authority to administer oaths. The hearing would be conducted in an informal manner and court rules of evidence would not apply. The hearing would be recorded on audiotape and, unless the personal representative waives transcription, a transcript of the hearing would be produced and included in the record. After the completion of the procedural options period (including hearing, if requested), the USMA would then decide whether there is clear and convincing evidence that the decedent committed a Federal or State capital crime for which the decedent was not convicted due to the decedent's unavailability for trial due to death or flight to avoid prosecution.

If the USMA decides that clear and convincing evidence does not exist, NCA would notify the next of kin or personal representative that the decedent may remain interred or that the decedent's memorial headstone or marker may remain in the national cemetery. If the USMA decides that clear and convincing evidence does exist, and the USMA further decides to disinter the remains or remove the memorialization, NCA would provide written notice of the decision to the decedent's next of kin or personal representative in accordance with 38 U.S.C. 5104 that includes notice of appellate rights in accordance with 38 CFR 19.25, following the same notification of decision process in cases of Federal or State capital crime or sexual offense convictions (38 U.S.C. 2411(d)(2)(B) and (3)(A)) in proposed § 38.622(d)(1).

Appeal of Decision To Disinter or Remove Memorialization

Proposed § 38.622(d)(3) references VA actions after receiving a notice of disagreement from the next of kin or personal representative. As mentioned above, a notification of decision letter from NCA would include an opportunity to file a notice of disagreement with the decision within 60 days of the date of the notice (38 U.S.C. 2411(d)(3)(A)). Once the notice of disagreement is reviewed and the appellate process is completed, if the Board of Veterans' Appeals overturns the USMA's decision to disinter the decedent or remove the decedent's memorial headstone or marker, NCA would notify the next of kin or personal representative that the decedent may remain interred or memorialized. However, if the USMA's decision to disinter the decedent or remove the decedent's memorial headstone or marker is affirmed at the completion of the appellate process, the cemetery director would provide written notification to the decedent's next of kin or personal representative of this decision.

Disinterment and Removal of Memorialization

Proposed § 38.622(e) would describe VA actions when the decision to disinter or remove a memorial headstone or marker becomes final given the next of kin's or personal representative's failure to timely appeal the decision or by final disposition of the appeal. VA would take the following actions as applicable: disinter the remains and provide for reinterment or other appropriate disposition of remains in a place other than a Veterans cemetery (which includes but is not limited to a VA national cemetery or State or Tribal Veterans Cemetery) or remove the memorial headstone or marker placed to honor the memory of the deceased (38 U.S.C. 2411(d)(4)).

In the case of disinterment, the cemetery director would contact the next of kin or other person authorized to arrange for the deceased's interment or memorialization (*i.e.,* personal representative) to coordinate the transfer of remains from the national cemetery to another location. The next of kin or personal representative would have 30 days to respond to this notification. If the next of kin or personal representative responds to the notice within the 30-day period, VA would attempt to coordinate a date and time for the disinterment and release of the decedent's remains to the next of kin or personal representative. VA would perform the disinterment. However, the decedent's next of kin or personal representative would have to bear the responsibility and cost of transporting remains from the cemetery, in compliance with applicable state laws concerning the disinterment and transport of remains from the national cemetery, as well as costs associated with subsequent disposition of the remains.

If the next of kin or personal representative does not respond to the notice within the 30-day period, declines to accept the decedent's remains, or does not appear at the agreed upon time and place to accept the remains, VA would determine a suitable cemetery for the disposition of the decedent's remains and would make all necessary arrangements to disinter, transport, reinter, and mark the grave of the decedent with a non-government headstone or marker in accordance with sec. 2411(d)(4)(A) within a reasonable time frame. VA would then notify the next of kin or personal representative of the date and time on which the disinterment was performed and the new location of the decedent's remains.

In the case of a memorial headstone or marker, the cemetery director would remove the headstone or marker from the cemetery, dispose of it in accordance with NCA policy, and notify the next of kin or personal representative of the date on which this action was taken.

Paperwork Reduction Act

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

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed rule directly affects the individuals and establishments that may be involved with the transfer of remains process (*e.g.,* next of kin or personal representative of the decedent and funeral homes). However, based on the anticipated aggregate number of cases involving disinterment or removal of memorialization headstones or markers, the VA does not consider the economic impact to be significant to small entities. Since the 2013 enactment of the reconsideration authority in 38 U.S.C. 2411, VA has made only 7 reconsideration decisions in total. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of sections 603 and 604 do not apply.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov.*

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

List of Subjects in 38 CFR Part 38

Administrative practice and procedure, Cemeteries, Claims, Grants programs, Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on February 7, 2023, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Luvenia Potts,

Regulation Development Coordinator, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 38 is proposed to be amended as follows:

PART 38—NATIONAL CEMETERIES OF THE DEPARTMENT OF VETERANS AFFAIRS

■ 1. The authority citation for part 38 continues to read as follows:

Authority: 38 U.S.C. 107, 501, 512, 2306, 2400, 2402, 2403, 2404, 2407, 2408, 2411, 7105.

■ 2. Add § 38.622 to read as follows:

§ 38.622 Reconsideration of prior interment and memorialization decisions.

(a) *General.* (1) The Under Secretary for Memorial Affairs (USMA) is the appropriate Federal official who may reconsider a prior decision to inter the remains or honor the memory of a person in a national cemetery.

(2) This section sets out the evaluative criteria and procedures for VA to reconsider prior interment and memorialization decisions for decedents who are subsequently found to have committed or to have been convicted of certain criminal acts that would prohibit them from receiving benefits to which they are otherwise entitled.

(b) *Capital Crime or Sex Offense Conviction.* (1) Upon written notification from the United States Attorney General or an appropriate State official that a person interred or memorialized in a national cemetery after December 20, 2013, was convicted of a Federal or State capital crime and whose conviction meets the requirements of 38 U.S.C. 2411(b)(1) or (2), respectively, or was convicted of a Federal or State tier III sex offense and meets the requirements of 38 U.S.C. 2411(b)(4), the USMA may, upon reconsideration, decide to disinter the remains or remove the memorial headstone or marker of such person from the cemetery.

(2) If VA has not initially received notification referred to in paragraph (b)(1) of this section, but a cemetery director has reason to believe that a person interred or memorialized in a national cemetery after December 20, 2013, may have been convicted of a Federal or State capital crime meeting the requirements of 38 U.S.C. 2411(b)(1) or (2), respectively, or may have been convicted of a Federal or State tier III sex offense meeting the requirements of 38 U.S.C. 2411(b)(4), the cemetery director will initiate an inquiry to the United States Attorney General or appropriate State official for confirmation and provide the results of such inquiry to the USMA in cases where a conviction is confirmed, which will initiate a reconsideration. The USMA will render a decision on disinterment or memorial headstone or marker removal after reviewing the results of the inquiry submitted by the cemetery director.

(c) *Avoidance of Capital Crime Conviction Due to Death or Flight.* (1) If a cemetery director has reason to believe that a person interred or memorialized in a national cemetery after December 20, 2013, may have committed a Federal or State capital crime but avoided conviction of such crime by reason of unavailability for trial due to death or

flight to avoid prosecution, the cemetery director will initiate an official inquiry seeking information from Federal, State, or local law enforcement officials, or other sources of potentially relevant information.

(2) If, after conducting the inquiry, the cemetery director determines that there appears to be clear and convincing evidence that the decedent committed a Federal or State capital crime for which the decedent was not convicted because the decedent was unavailable for trial due to death or flight to avoid prosecution, the cemetery director will provide this information to the USMA who will decide whether to reconsider the prior decision to inter or memorialize the decedent. If the USMA decides to reconsider the prior interment or memorialization decision, the USMA will provide notice of procedural options and follow the procedures in paragraph (d)(2).

(d) *VA Notice of Decision.* (1) For cases involving a Federal or State capital crime or a tier III sexual offense conviction, where the USMA decides to disinter or remove a memorial headstone or marker, NCA will provide written notice of that decision to the decedent's next of kin or personal representative. The written notice of decision will be in accordance with 38 U.S.C. 5104 and will include a notice of appellate rights in accordance with 38 CFR 19.25. This notice of appellate rights will include notice of the opportunity to file a notice of disagreement with the decision of the USMA within 60 days from the date of the decision notice.

(2) In cases in which a cemetery director has reason to believe that a person interred or memorialized in a national cemetery after December 20, 2013, may have committed a Federal or State capital crime, as described in 38 U.S.C. 2411(f)(1) and (2), but avoided conviction of such crime by reason of unavailability for trial due to death or flight to avoid prosecution, should the USMA decide to reconsider the prior interment or memorialization, prior to rendering written notice of final decision, VA will follow the following process:

(i) NCA will provide a notice of procedural options, which will inform the decedent's next of kin or personal representative that VA is reconsidering the prior interment or memorialization of the decedent and that they may, within 15 days of receipt of notice: request a hearing on the matter; submit a written statement, with or without supporting documentation, for inclusion in the record; or waive a hearing and submission of a written statement.

(ii) If a hearing is requested, the District Executive Director will conduct the hearing. The purpose of the hearing is to permit the personal representative of the deceased to present evidence concerning whether the deceased committed a crime that would render the deceased ineligible for interment or memorialization in a national cemetery. Testimony at the hearing will be presented under oath, and the personal representative will have the right to representation by counsel and the right to call witnesses. The VA official conducting the hearing will have the authority to administer oaths. The hearing will be conducted in an informal manner and court rules of evidence will not apply. The hearing will be recorded on audiotape and, unless the personal representative waives transcription, a transcript of the hearing will be produced and included in the record.

(iii) Following a hearing or the timely submission of a written statement, or in the event a hearing is waived or no hearing is requested and no written statement is submitted within the time specified, the USMA will decide whether there is clear and convincing evidence that the decedent committed a Federal or State capital crime for which the decedent was not convicted due to the decedent's unavailability for trial due to death or flight to avoid prosecution. If the USMA decides that clear and convincing evidence does not exist, the USMA will notify the next of kin or personal representative that the decedent may remain interred or that the decedent's memorial headstone or marker may remain in the national cemetery. If the USMA decides that clear and convincing evidence exists, the USMA will provide written notice of the decision to disinter the decedent or remove the decedent's memorial headstone or marker. The written notice of decision will be in accordance with 38 U.S.C. 5104 and will include a notice of appellate rights in accordance with 38 CFR 19.25. This notice of appellate rights will include notice of the opportunity to file a notice of disagreement with the decision of the USMA within 60 days from the date of the notice.

(3) Action following receipt of a notice of disagreement with reversal of an interment or memorialization decision under this section will be in accordance with 38 CFR part 19.

(e) *Disinterment or Removal of Memorialization.* A decision to disinter the remains or remove a memorial headstone or marker becomes final either by failure of the next of kin or personal representative to appeal the decision or by final disposition of the appeal. In such cases, the cemetery director shall take the following actions:

(1) In the case of disinterment, the cemetery director will contact the next of kin or personal representative to coordinate the transfer of remains from the national cemetery to another location. The next of kin or personal representative will have 30 days to respond to the cemetery director.

(i) If the next of kin or personal representative responds to the notice within the 30-day period, the cemetery director will coordinate a date and time for the disinterment and release of the decedent's remains to the next of kin or personal representative for transport from the national cemetery to a place determined by the next of kin or personal representative. The cemetery director will perform the disinterment. The next of kin or personal representative will bear responsibility and cost for transportation of the remains from the cemetery, including compliance with applicable state laws concerning the disinterment and transport of remains from the national cemetery, and any costs associated with the subsequent disposition of remains.

(ii) If the next of kin or personal representative does not respond to the notice within the 30-day period, indicates refusal to accept the decedent's remains, or fails to appear, the cemetery director will determine a suitable cemetery for the disposition of the decedent's remains and, at government expense, will make all necessary arrangements to disinter, transport, reinter, and mark the grave of the decedent with a non-government headstone or marker within a reasonable time frame. The non-government headstone or marker will include the decedent's name, date of birth, and date of death. The cemetery director will then notify the next of kin or personal representative of the date and time on which the disinterment was performed and the new location of the decedent's remains.

(2) In the case of a memorial headstone or marker, the cemetery director will remove the headstone or marker from the cemetery and notify the next of kin or personal representative of the date on which this action was taken.

(Authority: 38 U.S.C. 512, 2411)

[FR Doc. 2023–03942 Filed 2–24–23; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2021–0479; FRL–10665–01–R3]

Air Plan Approval; Pennsylvania; Infrastructure State Implementation Plan Revision Clean Air Act Section 110 Applicable Requirements for the 2015 8-Hour Ozone National Ambient Air Quality Standard (NAAQS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the Commonwealth of Pennsylvania. Whenever EPA promulgates a new or revised national ambient air quality standard (NAAQS or standard), the Clean Air Act (CAA) requires states to make SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS. The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. Pennsylvania has formally submitted a SIP revision addressing the following infrastructure elements, or portions thereof, of certain sections of the CAA for the 2015 8-hour ozone NAAQS. EPA is proposing to approve Pennsylvania's submittal addressing the infrastructure requirements for the 2015 ozone NAAQS in accordance with the requirements of the CAA apart from visibility protection, which was not submitted with the current action.

DATES: Written comments must be received on or before March 29, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2021–0479 at *www.regulations.gov,* or via email to *Gordon.Mike@epa.gov*. For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *www.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Michael O'Shea, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2064. Dr. O'Shea can also be reached via electronic mail at *OShea.Michael@epa.gov*.

SUPPLEMENTARY INFORMATION: On April 20, 2021, the Pennsylvania Department of Environmental Protection (PADEP) submitted a revision to its SIP to satisfy most of the requirements of section 110(a) of the CAA for the 2015 ozone NAAQS.

I. Background

Under the CAA, EPA establishes NAAQS for criteria pollutants to protect human health and the environment. On October 26, 2015, EPA issued a final rule revising both the primary and secondary ozone NAAQS for ground-level ozone to 0.070 parts per million (ppm), based on the fourth-highest maximum daily 8-hour ozone concentration per year, averaged over three years. 80 FR 65292.

Whenever EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to make SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS. This type of SIP submission is commonly referred to as an ''infrastructure SIP.'' These submissions must meet the various requirements of CAA section 110(a)(2), as applicable, within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(1) of the CAA provides the procedural and timing requirements for SIPs, while section 110(a)(2) lists specific elements that states must meet for infrastructure SIP requirements related to a newly established or revised NAAQS. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program framework and adequate legal authority that are designed to assure attainment and maintenance of the NAAQS. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The content of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 2015 ozone NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with the 1997 and 2008 ozone NAAQS.

Due to ambiguity in some of the language of CAA section 110(a)(2), EPA believes that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. EPA has previously provided comprehensive guidance on the application of these provisions through a guidance document for infrastructure SIP submissions and through regional actions on infrastructure submissions.[1] Unless otherwise noted below, EPA is following that existing approach in acting on Pennsylvania's submission. In addition, in the context of acting on such infrastructure submissions, EPA evaluates the submitting state's SIP for facial compliance with statutory and regulatory requirements, not for the state's implementation of its SIP.[2] EPA has other authority to address any issues concerning a state's implementation of the rules, regulations, consent orders, etc. that comprise its SIP.

II. Summary of SIP Revision and EPA Analysis

On April 20, 2021, the Commonwealth of Pennsylvania formally submitted, through PADEP, a SIP revision to satisfy the infrastructure requirements of CAA section 110(a) for the 2015 ozone NAAQS (referred to as ''Pennsylvania's submittal'').

[1] EPA explains and elaborates on these ambiguities and its approach to address them in ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act sections 110(a)(1) and 110(a)(2),'' Memorandum from Stephen D. Page, September 13, 2013 (also referred to as ''2013 Infrastructure Guidance''), included in the docket for this rulemaking action available at *www.regulations.gov,* Docket ID Number EPA–R03–OAR–2021–0479.

[2] See *Mont. Envtl. Info. Ctr.* v. *Thomas,* 902 F.3d 971 (9th Cir. 2018).

Pennsylvania's submittal addresses the following infrastructure elements, or portions thereof, for the 2015 ozone NAAQS: CAA section 110(a)(2)(A), (B), (C), (D)(i)(II) (prevention of significant deterioration (PSD)), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

Pennsylvania's submittal does not address the following elements of CAA section 110(a)(2): sub-element (D)(i)(I) related to interstate transport; and element (I), which pertains to the nonattainment requirements of part D, title I of the CAA. Also, the Pennsylvania infrastructure SIP submittal addressed the PSD portion of section 110(a)(2)(D)(i)(II) but provided only narrative context regarding the history of the visibility protection portion of section110(a)(2)(D)(i)(II). Therefore, EPA is not taking action on the visibility protection element of 110(a)(2)(D)(i)(II) at this time.

With respect to element (I), according to EPA's 2013 Infrastructure Guidance, element (I) pertains to part D of title I of the CAA, which addresses SIP requirements and submission deadlines for areas designated nonattainment for a NAAQS. This element pertains to SIP revisions that are collectively referred to as nonattainment SIPs or attainment plans. Such SIP revisions are required if an area is designated nonattainment and, if required, would be due to EPA by the dates statutorily prescribed in CAA part D, subparts 2 through 5. Because the CAA directs states to submit these plan elements on a separate schedule, EPA does not believe it is necessary for states to include these elements in the infrastructure SIP submission due three years after adoption or revision of a NAAQS.[3] Pennsylvania's submittal also did not address the portion of CAA section 110(a)(2)(D)(i)(I) related to interstate transport for the 2015 ozone NAAQS. Therefore, EPA is not proposing any action related to Pennsylvania's obligations under section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS. Based upon EPA's review of Pennsylvania's submittal, EPA is proposing to determine that Pennsylvania's submittal satisfies the infrastructure elements of CAA section 110(a)(2)(A), (B), (C), (D)(i)(II) (PSD), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) for the 2015 ozone NAAQS.

A detailed summary of EPA's review and rationale for approving Pennsylvania's submittal may be found in the technical support document (TSD) for this proposed rulemaking action included in the docket for this rulemaking action and available at *www.regulations.gov,* Docket ID Number EPA–R03–OAR–2021–0479.

[3] See ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act sections 110(a)(1) and 110(a)(2),'' Memorandum from Stephen D. Page, September 13, 2013, for reference.

III. Proposed Action

EPA is proposing to find that Pennsylvania's April 20, 2021 submittal satisfies the following infrastructure requirements of CAA section 110(a) for the 2015 ozone NAAQS: CAA section 110(a)(2)(A), (B), (C), (D)(i)(II) (PSD), (D)(ii), (E) (F), (G), (H), (J), (K), (L), and (M). Pennsylvania's submittal did not address the following infrastructure elements: CAA section 110(a)(2)(D)(i)(I) related to interstate transport; and CAA section 110(a)(2)(I) pertaining to the nonattainment requirements of part D, title I of the CAA. Therefore, EPA is not taking action on these elements. Furthermore, Pennsylvania's submittal included only narrative historical information pertaining to the visibility protection element of section 110(a)(2)(D)(i)(II). Therefore, EPA is not taking action on that element at this time. EPA is soliciting public comments on the approvability of these infrastructure SIP elements as set forth here and in the Technical Support Document in the docket for this action. These comments will be considered before taking final action. Please refer to the TSD for this rulemaking which is available online at *www.regulations.gov,* Docket number EPA–R03–OAR–2021–00479, for further discussion of each element being associated with this approval.

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

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

In addition, this proposed rulemaking, pertaining to Pennsylvania's 110 (a) infrastructure requirements for the 2015 ozone NAAQS, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Adam Ortiz,

Regional Administrator, Region III.

[FR Doc. 2023–03860 Filed 2–24–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2022–0788; FRL–10425–01–R5]

Air Plan Approval; Ohio; Consumer Products Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve, under the Clean Air Act (CAA), a State Implementation Plan (SIP) revision submitted by the Ohio Environmental Protection Agency (Ohio EPA) on September 7, 2022. Ohio EPA requests that EPA approve revised volatile organic compounds (VOCs) control rules under Chapter 3745–112 of the Ohio Administrative Code (OAC) into Ohio's SIP. The revised rules will reduce emissions that contribute to ozone formation and assist with efforts to achieve and maintain the 2015 ozone National Ambient Air Quality Standard (NAAQS). EPA finds that these rules are approvable because they are SIP strengthening measures.

DATES: Comments must be received on or before March 29, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2022–0788 at *https://www.regulations.gov,* or via email to *arra.sarah@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Katie Mullen, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–3490, *mullen.kathleen@epa.gov.* The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19.

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

I. What is EPA proposing?

EPA is proposing to approve rule revisions to OAC Chapter 3745–112. The revised rules include OAC 3745–112–01 to OAC 3745–112–08 and are intended to assist in achieving and maintaining the 2015 ozone NAAQS through the regulation of VOCs in consumer products. We find that these rules are approvable because they are SIP strengthening measures.

II. What is the background for these actions?

On August 13, 2009 (74 FR 40745), EPA approved OAC Chapter 3745–112, ''Consumer Products'' into Ohio's SIP, which was part of Ohio's strategy to attain the 1997 ozone NAAQS. The rules in OAC Chapter 3745–112 contain regulations for the content of VOCs in consumer products sold, supplied, offered for sale, or manufactured for use in the state of Ohio. These rules adopted the standards in the model rule developed by the Ozone Transport Commission (OTC). The OTC develops model rules for states to consider when adopting consumer products regulations and has since provided updated versions of the model rules, called ''phases'', for states to consider in subsequent adoption or revision of consumer products standards.

The rules in OAC Chapter 3745–112 were originally based on the 2006 Phase II OTC model rule for consumer products. Ohio has updated these rules to adopt more recent versions of the OTC model rule; specifically, up through the 2012 Phase IV OTC model rule (this includes adopting the limits in the 2010 Phase III model rule, as well as the 2013 technical update). This update is part of Ohio's strategy to attain the 2015 ozone NAAQS.

As a result of its routine 5-year review process, Ohio EPA also made various minor changes to this chapter, as well as changes to OAC rule 3745–112–01 to update information on referenced materials. These changes are minor in nature, and do not affect the scope or intent of the rules.

III. What is EPA's analysis of Ohio's SIP revision?

Ohio EPA has requested that EPA approve revised rules under Chapter 3745–112 of the OAC. These rules include 3745–112–01 (Definitions); 3745–112–02 (Applicability); 3745–112–03 (Standards); 3745–112–04 (Exemptions); 3745–112–05 (Administrative Requirements); 3745–112–06 (Reporting Requirements); 3745–112–07 (Variances); and 3745–112–08 (Test Methods). These revised rules are intended to assist in achieving and maintaining the 2015 ozone NAAQS through the regulation of volatile organic compounds in consumer products. The revisions are described in detail below. EPA is determining that these revisions are approvable since they serve as SIP strengthening measures.

A. 3745–112–01 Definitions

This rule contains the applicable definitions and referenced material for OAC Chapter 3745–112. The rule is being amended to adopt new and revised definitions and referenced material consistent with the updated version of the OTC model rule. Since the revised definitions do not make this rule less stringent, EPA finds that 3745–112–01 is approvable.

B. 3745–112–02 Applicability

This rule identifies entities affected by this rule and the date of compliance with the rules contained in OAC Chapter 3745–112. The proposed rule revisions update the date of compliance. Since specifying implementation and compliance dates do not make the rules less stringent, EPA finds that the revisions to 3745–112–02 are approvable.

C. 3745–112–03 Standards

This rule identifies the specific consumer products regulated and their associated VOC content limits. This rule is being amended to adopt new and revised VOC limits consistent with the updated version of the OTC model rule. Since this rule adopts new and more stringent VOC content limits, EPA finds that the revisions strengthen the SIP and are approvable.

D. 3745–112–04 Exemptions

This rule specifies the exemptions applicable to Chapter 3745–112 of the OAC. The rule is being amended to

include minor changes to correct typos and update the rule language in this chapter to meet agency style and formatting guidelines. Since the minor changes to this rule do not make this rule any less stringent, EPA finds that the revisions to 3745–112–04 are approvable.

E. 3745–112–05 Administrative Requirements

This rule specifies the administrative requirements applicable to OAC Chapter 3745–112. The rule is being amended to establish effective dates consistent with the updated version of the OTC model rule and to make minor changes to conform with formatting standards. Since the changes to the administrative requirements do not make this rule any less stringent, EPA finds that the revisions to 3745–112–05 are approvable.

F. 3745–112–06 Reporting Requirements

This rule specifies the reporting requirements for consumer products regulated under OAC Chapter 3745–112. This rule is being amended to conform to agency formatting standards. Since the changes to the reporting requirements do not make this rule any less stringent, EPA finds that the revisions to 3745–112–06 are approvable.

G. 3745–112–07 Variances

This rule details the procedures for a facility to apply for a variance from the requirements specified in OAC rule 3745–112–03. This rule is being amended to conform to agency formatting standards. Since the changes to the variances do not make this rule any less stringent, EPA finds that the revisions to 3745–112–07 are approvable.

H. 3745–112–08 Test Methods

This rule specifies the test methods that shall be employed to show compliance with the VOC content limits of consumer products listed in OAC Chapter 3745–112. This rule is being amended to eliminate unnecessary restrictions and conform to agency formatting standards. Since the changes to the test methods do not make this rule any less stringent, EPA finds that the revisions to 3745–112–08 are approvable.

IV. What action is EPA taking?

EPA is proposing to approve rule revisions to Chapter 3745–112 of the OAC. The revised rules include OAC 3745–112–01 to OAC 3745–112–08 and are intended to assist in achieving and maintaining the 2015 ozone NAAQS through the regulation of VOCs in consumer products. As discussed above, EPA finds that these rules are approvable because they strengthen the SIP.

V. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Ohio Administrative Code Chapter 3745–112, effective on June 20, 2022, discussed in section III of this preamble. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 15, 2023.

Debra Shore,

Regional Administrator, Region 5.

[FR Doc. 2023–03599 Filed 2–24–23; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2022–0082; FF09E21000 FXES1111090FEDR 234]

RIN 1018–BG07

Endangered and Threatened Wildlife and Plants; Endangered Species Status for the San Francisco Bay-Delta Distinct Population Segment of the Longfin Smelt

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period and announcement of public hearing.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are reopening the public comment period on our October 7, 2022, proposed rule to list the San Francisco Bay-Delta distinct

population segment (DPS) of longfin smelt (*Spirinchus thaleichthys*) (Bay-Delta longfin smelt), a fish species of the Pacific Coast, as an endangered species under the Endangered Species Act of 1973, as amended (Act). We are taking this action to conduct a public hearing and allow all interested parties additional time to comment on the proposal to list the Bay-Delta longfin smelt as endangered. Comments previously submitted need not be resubmitted and will be fully considered in preparation of the final rule.

DATES:

Comment submission: The comment period on the proposed rule that published October 7, 2022, at 87 FR 60957, is reopened. We will accept comments received or postmarked on or before March 29, 2023. Please note that comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. eastern time on the closing date to ensure consideration.

Public hearing: On March 14, 2023, we will hold a public hearing on the Bay-Delta longfin smelt proposed listing from 5:00 to 7:00 p.m., Pacific time, using the Zoom online platform (for more information, see Public Hearing, below).

ADDRESSES:

Availability of documents: You may obtain copies of the October 7, 2022, proposed rule and associated documents on the internet at *https://www.regulations.gov* under Docket No. FWS–R8–ES–2022–0082.

Written comments: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal:

https://www.regulations.gov. In the Search box, enter FWS–R8–ES–2022–0082, which is the docket number for this proposed rule. Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment.''

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R8–ES–2022–0082, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *https://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Public Comments, below, for more information).

FOR FURTHER INFORMATION CONTACT: Donald Ratcliff, Field Supervisor, U.S. Fish and Wildlife Service, San Francisco Bay-Delta Fish and Wildlife Office, 650 Capitol Mall Suite 8–300, Sacramento, CA 95814; telephone 916–930–5603. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Background

On October 7, 2022, we published a proposed rule (87 FR 60957) to list the Bay-Delta longfin smelt as endangered under the Act. The proposed rule established a 60-day public comment period, ending December 6, 2022. During the open comment period, we received a request for a public hearing. Therefore, we are reopening the comment period and announcing a public hearing to allow the public an additional opportunity to provide comments on the proposed rule.

For a description of previous Federal actions concerning the Bay-Delta longfin smelt and information on the types of comments that would be helpful to us in promulgating this rulemaking action, please refer to the October 7, 2022, proposed rule (87 FR 60957).

Public Hearing

We are holding a public hearing to accept comments on the proposed rule to list the Bay-Delta longfin smelt on the date and at the time listed in **DATES**. We are holding the public hearing via the Zoom online video platform and via teleconference so that participants can attend remotely. For security purposes, registration is required. All participants must register in order to listen and view the hearing via Zoom, listen to the hearing by telephone, or provide oral public comments at the public hearing by Zoom or telephone. For information on how to register, or if you encounter problems joining Zoom the day of the meeting, visit *https://www.fws.gov/office/san-francisco-bay-delta-fish-and-wildlife.* Registrants will receive the Zoom link and the telephone number for the public hearing. If applicable, interested members of the public not familiar with the Zoom platform should view the Zoom video tutorials (*https://support.zoom.us/hc/en-us/articles/206618765-Zoom-video-tutorials*) prior to the public hearing.

The public hearing will provide interested parties an opportunity to present verbal testimony (formal, oral comments) regarding the October 7, 2022, proposed rule to list the Bay-Delta longfin smelt (87 FR 60957). The purpose of the public hearing is to provide a forum for accepting formal verbal testimony, which will then become part of the record for the proposed rule. In the event there is a large attendance, the time allotted for verbal testimony may be limited. Therefore, anyone wishing to provide verbal testimony at the public hearing is encouraged to provide a prepared written copy of their statement to us through the Federal eRulemaking Portal, or U.S. mail (see **ADDRESSES**, above). There are no limits on the length of written comments submitted to us. Anyone wishing to provide verbal testimony at the public hearing must register before the hearing (*https://www.fws.gov/office/san-francisco-bay-delta-fish-and-wildlife*). The use of a virtual public hearing is consistent with our regulations at 50 CFR 424.16(c)(3).

Reasonable Accommodation

The Service is committed to providing access to the public hearing for all participants. Closed captioning will be available during the public hearing. Further, a full audio and video recording and transcript of the public hearing will be posted online at *https://www.fws.gov/office/san-francisco-bay-delta-fish-and-wildlife* after the hearing. Participants will also have access to live audio during the public hearing via their telephone or computer speakers. Persons with disabilities requiring reasonable accommodations to participate in the hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** at least 5 business days prior to the date of the hearing to help ensure availability. An accessible version of the Service's public hearing presentation will also be posted online at *https://www.fws.gov/office/san-francisco-bay-delta-fish-and-wildlife* prior to the hearing (see **DATES**, above). See *https://www.fws.gov/office/san-francisco-bay-delta-fish-and-wildlife* for more information about reasonable accommodation.

Public Comments

If you submit information via *https://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via hard copy that includes personal identifying information, you

may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *https://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule, will be available for public inspection on *https://www.regulations.gov.*

Authors

The primary author of this document is Ecological Services staff of the Pacific Southwest Regional Office, U.S. Fish and Wildlife Service, Sacramento, California.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Wendi Weber,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2023–03916 Filed 2–24–23; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register
Vol. 88, No. 38
Monday, February 27, 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 AGRICULTURE

Agricultural Marketing Service

[Docket No. AMS–SC–23–0010]

Meeting of the Fruit and Vegetable Industry Advisory Committee

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the Agricultural Marketing Service (AMS), U.S. Department of Agriculture (USDA), is announcing a meeting of the Fruit and Vegetable Industry Advisory Committee (FVIAC). This meeting is being convened to examine the full spectrum of fruit and vegetable industry issues and provide recommendations and ideas on how USDA can tailor programs and services to better meet the needs of the U.S. produce industry. Agenda items may include, but are not limited to, administrative matters; presentations by subject matter experts as requested by the FVIAC; and consideration of recommendations pertaining to labor and production, food safety, infrastructure and sustainability, consumption and nutrition, and data reporting and analysis.

DATES: An in-person meeting will be held April 19–20, 2023, from 9 a.m. to approximately 4 p.m. Eastern Time (ET) each day. In-person oral comments will be heard on Wednesday, April 19, 2023. The deadline to submit written comments and/or sign up for oral comments is 11:59 p.m. ET, Monday, April 3, 2023.

Written Comments: Written public comments will be accepted until 11:59 p.m. ET on Monday, April 3, 2023, via *https://www.regulations.gov:* Document # AMS–SC–23–0010. Comments submitted after this date will be provided to AMS, but the Committee may not have adequate time to consider those comments prior to the meeting. AMS, Specialty Crops Program, strongly prefers that written comments be submitted electronically. However, written comments may also be submitted (*i.e.,* postmarked) via mail to the person listed in the **FOR FURTHER INFORMATION CONTACT** section by or before the deadline.

Oral Comments: FVIAC will hear oral public comments on Wednesday, April 19, 2023. Persons or organizations wishing to make oral comments must pre-register by 11:59 p.m. ET, April 3, 2023, and can register for only one speaking slot. Instructions for registering and participating in the meeting can be obtained by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section by or before the deadline.

ADDRESSES: The Committee meeting will be held in Room 107–A of the Whitten Building at 1400 Independence Avenue SW, Washington, DC 20250. Entry to the Whitten Building is through the front building entrance on Jefferson Drive; valid photo identification is required. Detailed information pertaining to the in-person meeting can be found at *https://www.ams.usda.gov/event/usda-fruit-and-vegetable-industry-advisory-committee-meeting-2.*

FOR FURTHER INFORMATION CONTACT: Darrell Hughes, Designated Federal Officer, Fruit and Vegetable Industry Advisory Committee, USDA–AMS-Specialty Crops Program, 1400 Independence Avenue SW, Suite 1575, STOP 0235, Washington, DC 20250–0235; Telephone: (202) 378–2576; Email: *SCPFVIAC@usda.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2), the Secretary of Agriculture (Secretary) established the Committee in 2001 to examine the full spectrum of issues faced by the fruit and vegetable industry and to provide suggestions and ideas to the Secretary on how USDA can tailor its programs to meet the U.S. fruit and vegetable industry's needs.

The AMS Chief of Staff for the Specialty Crops Program serves as the Committee's Designated Federal Officer, leading the effort to administer the Committee's activities. Representatives from USDA mission areas and other government agencies affecting the fruit and vegetable industry are periodically called upon to participate in the Committee's meetings as determined by the Committee. AMS is giving notice of the Committee meeting to the public so that they may participate and present their views via written comments. The meeting is open to the public on a first-come, first-served basis. Space is limited. The meeting agenda will be made available on the web page listed in the **ADDRESSES** section.

Written Comments: Written public comments will be accepted until 11:59 p.m. ET on Monday, April 3, 2023 via *https://www.regulations.gov*: Document # AMS–SC–23–0010. Comments submitted after this date will be provided to AMS, but the Committee may not have adequate time to consider those comments prior to the meeting. AMS, Specialty Crops Program, strongly prefers that written comments be submitted electronically. However, written comments may also be submitted (*i.e.,* postmarked) via mail to the person listed in the **FOR FURTHER INFORMATION CONTACT** section by or before the deadline.

Oral Comments: FVIAC will hear oral public comments on Wednesday, April 19, 2023. Persons or organizations wishing to make oral comments must pre-register by 11:59 p.m. ET, April 3, 2023, and can register for only one speaking slot. Instructions for registering and participating in the meeting can be obtained by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section by or before the deadline.

Meeting Accommodations: The meeting location is compliant with the Americans with Disabilities Act, and the USDA provides reasonable accommodation to individuals with disabilities where appropriate. If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpretation, assistive listening devices, or other reasonable accommodation to the person listed under the **FOR FURTHER INFORMATION CONTACT** section. Determinations for reasonable accommodation will be made on a case-by-case basis.

Dated: February 13, 2023.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2023–03978 Filed 2–24–23; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2023–0012]

Notice of Request for Revision to and Extension of Approval of an Information Collection; Swine Health Protection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision to and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a revision to and extension of approval of an information collection associated with the swine health protection program.

DATES: We will consider all comments that we receive on or before April 28, 2023.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Enter APHIS–2023–0012 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2023–0012, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *regulations.gov* or in our reading room, which is located in room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the swine health protection program, contact Dr. Nicki Humphrey, Swine Health Staff, Strategy & Policy, Veterinary Services, APHIS, 2150 Centre Avenue, Building B, Mailstop 3E13, Fort Collins, CO 80526; (615) 290–6146; *nicki.l.humphrey@usda.gov.* For information on the information collection reporting process, contact Mr. Joseph Moxey, APHIS' Paperwork Reduction Act Coordinator, at (301) 851–2483; *joseph.moxey@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Swine Health Protection.

OMB Control Number: 0579–0065.

Type of Request: Revision to and extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (AHPA) of 2002 (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture is authorized, among other things, to prohibit or restrict the interstate movement of animals and animal products to prevent the dissemination within the United States of animal diseases and pests of livestock and to conduct programs to detect, control, and eradicate pests and diseases of livestock.

The Swine Health Protection Act (the Act) prohibits the feeding of garbage to swine intended for interstate movement or foreign commerce or that substantially affect such commerce unless the garbage has been treated to kill disease organisms. Untreated garbage is one of the primary media through which numerous infectious and communicable diseases can be transmitted to swine. The regulations promulgated under the Act in 9 CFR part 166 require that garbage intended to be fed to swine must be treated at a facility that holds a valid permit to treat the garbage and must be treated in accordance with the regulations.

As part of its swine health protection program, APHIS conducts a pseudorabies (PRV) eradication program in cooperation with State governments, swine producers, swine shippers, herd owners, and accredited veterinarians. The program identifies PRV-affected swine, provides herd management techniques, and has eliminated PRV in commercial production herds. However, APHIS periodically finds infected swine when swine are exposed to feral swine or other swine that have had exposure to feral swine.

The regulations in 9 CFR parts 71 and 85 facilitate the PRV eradication program and general swine health by providing requirements for moving swine interstate within a swine production system. (A production system consists of separate farms that each specialize in a different phase of swine production such as sow herds, nursery herds, and finishing herds. These separate farms, all members of the same production system, may be located in more than one State.)

The regulations for the feeding of garbage to swine and for the PRV eradication program require the use of a number of information collection activities, including the completion of applications to operate garbage treatment facilities; an acknowledgement of the Swine Health Protection Act and implementing regulations; garbage treatment facility inspection; cancellation of license by State animal health officials; request for a hearing; cancellation of license by licensee; notification by licensee of sick or dead animals; notification by licensee of changes to name, address, or management; cooperative agreements, for States (currently four) that issue garbage feeding licenses under VS supervision but do not have primary enforcement responsibility; swine health protection program inspection summary; permit to move restricted animals; owner-shipper statement; certificate of veterinary inspection; accredited veterinarian's statement regarding embryo and semen shipments; identification for swine moving interstate; swine production system health plan; interstate movement report and notification; cancellation or withdrawal of a swine production system health plan; appeal of cancellation of a swine production system health plan; shipment to slaughter seal; appraisal and indemnity claim form; report of net salvage proceeds; herd management plans; and recordkeeping.

The previous approval of this information collection incorporated collection activities associated with the APHIS Trichinae Certification Program, which appeared in 9 CFR part 149. However, APHIS eliminated the program in a final rule [1] published on September 24, 2021 (86 FR 52954–52955); therefore, those activities have been removed from Office of Management and Budget (OMB) control number 0579–0065.

We are asking OMB to approve our use of the above listed information collection activities, as described, for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate 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) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

[1] Go to *www.regulations.gov.* Enter APHIS–2020–0065 in the Search field.

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public burden for this collection of information is estimated to average 1.804 hours per response.

Respondents: Owners/operators (licensees) of garbage treatment facilities, herd owners, food establishments, accredited veterinarians, and State animal health authorities.

Estimated annual number of respondents: 23,500.

Estimated annual number of responses per respondent: 41.

Estimated annual number of responses: 965,913.

Estimated total annual burden on respondents: 1,742,651 hours. (Due to averaging, the total annual burden hours may-not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 22nd day of February 2023.

Anthony Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2023–03967 Filed 2–24–23; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

[Docket ID NRCS–2022–0018]

Proposed Revisions to the National Handbook of Conservation Practices for the Natural Resources Conservation Service

AGENCY: Natural Resources Conservation Service, U.S. Department of Agriculture. (USDA).

ACTION: Notice of availability; request for comments; reopening of comment period.

SUMMARY: The Natural Resources Conservation Service (NRCS) is reopening the comment period for 45 days to allow the public to provide comments on the specified conservation practice standards to be revised in the National Handbook of Conservation Practices (NHCP) published on December 19, 2022.

DATES: The comment period for the Notice of availability, request for comments published on December 19, 2022, (87 FR 77547–77549) is reopened. We will consider comments that we receive by April 13, 2023.

ADDRESSES: We invite you to submit comments in response to this notice. You may submit your comments through one of the methods below:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and search for Docket ID NRCS–2022–0018. Follow the online instructions for submitting comments; or
- *Mail or Hand Delivery:* Mr. Clarence Prestwich, National Agricultural Engineer, Conservation Engineering Division, NRCS, USDA, 1400 Independence Avenue, South Building, Room 4636, Washington, DC 20250. In your comment, please specify the Docket ID NRCS–2022–0018.

All comments received will be made publicly available on *http://www.regulations.gov.*

The copies of the proposed revised standards are available through *http://www.regulations.gov* by accessing Docket No. NRCS–2022–0018.

FOR FURTHER INFORMATION CONTACT: Mr. Clarence Prestwich at (202) 720–2972 or email *clarence.prestwich@usda.gov.* Persons with disabilities who require alternative means for communication should contact the U.S. Department of Agriculture (USDA) Target Center at (202) 720–2600 (voice).

SUPPLEMENTARY INFORMATION: NRCS is reopening the comment period on the notice of availability, request for comments published on December 19, 2022, (87 FR 77547–77549). The comment period for the original notice closed on January 18, 2023. Based on requests received during the initial comment period, NRCS is providing an additional 45 days to allow the public to comment on the specified conservation practice standards to be revised in the NHCP. This will allow more time for the public to adequately review and provide constructive feedback on the proposed revisions to the conservation practice standards.

Louis Aspey,

Associate Chief, Natural Resources Conservation Service.

[FR Doc. 2023–03897 Filed 2–24–23; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of National Advisory Council on Innovation and Entrepreneurship Meeting

AGENCY: Economic Development Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The National Advisory Council on Innovation and Entrepreneurship (NACIE) will hold a virtual public meeting on Thursday, March 16, 2023. In 2022, U.S. Secretary of Commerce Gina M. Raimondo appointed a cohort of 33 members to NACIE, and this will be this cohort's fourth meeting. During this meeting, NACIE expects to finalize and vote on a recommendation related to the regional technology and innovation hubs program recently enacted and funded by Congress.

DATES: Thursday, March 16, 2023, 3 p.m.–4 p.m. ET.

ADDRESSES: This meeting will be held virtually with no in-person component or option. Teleconference or web conference connection information will be published prior to the meeting along with the agenda on the NACIE website at *https://www.eda.gov/oie/nacie/.*

FOR FURTHER INFORMATION CONTACT: Eric Smith, Office of Innovation and Entrepreneurship, 1401 Constitution Avenue NW, Room 78018, Washington, DC 20230; email: *nacie@doc.gov;* telephone: +1 202 482 8001. Please reference ''NACIE March 2023 Meeting'' in the subject line of your correspondence.

SUPPLEMENTARY INFORMATION: NACIE, established pursuant to Section 25(c) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3720(c)), and managed by EDA's Office of Innovation and Entrepreneurship, is a Federal Advisory Committee Act committee that provides advice directly to the Secretary of Commerce.

NACIE has been charged with developing a national entrepreneurship strategy that strengthens America's ability to compete and win as the world's leading startup nation and as the world's leading innovator in critical emerging technologies. NACIE also has been charged with identifying and recommending solutions to drive the innovation economy, including growing a skilled STEM workforce and removing barriers for entrepreneurs ushering innovative technologies into the market.

The Council facilitates federal dialogue with the innovation, entrepreneurship, and workforce development communities. Throughout its history, NACIE has presented recommendations to the Secretary of Commerce along the research-to-jobs continuum, such as increasing access to capital, growing and connecting entrepreneurial communities, fostering small business-driven research and development, supporting the commercialization of key technologies, and developing the workforce of the future.

The final agenda for the meeting will be posted on the NACIE website at *https://www.eda.gov/strategic-initiatives/national-advisory-council-on-innovation-and-entrepreneurship/meetings* prior to the meeting. Any member of the public may submit pertinent questions and comments concerning NACIE's affairs at any time before or after the meeting. Comments may be submitted to Eric Smith (see contact information above). Those wishing to listen to the proceedings can do so via teleconference or web conference (see above). Copies of the meeting minutes will be available by request within 90 days of the meeting date.

Dated: February 22, 2023.

Eric Smith,

Director, Office of Innovation and Entrepreneurship.

[FR Doc. 2023–03935 Filed 2–24–23; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Javier Campos, Inmate Number 13278–579; FCI Terre Haute, Federal Correctional Institution, P.O. Box 33, Terre Haute, IN 47808; Order Denying Export Privileges

On February 22, 2021, in the U.S. District Court for the Southern District of Texas, Javier Campos (''Campos'') was convicted of violating 18 U.S.C. 554(a). Specifically, Campos was convicted of smuggling and attempting to smuggle from the United States to Mexico, 6000 rounds of 7.62 x 39 mm ammunition. As a result of his conviction, the Court sentenced Campos to 51 months of confinement, three years supervised release and $100 assessment.

Pursuant to Section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 554, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Campos's conviction for violating 18 U.S.C. 554. As provided in Section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''), BIS provided notice and opportunity for Campos to make a written submission to BIS. 15 CFR 766.25.[2] BIS has not received a written submission from Campos.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Campos's export privileges under the Regulations for a period of 10 years from the date of Campos's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Campos had an interest at the time of his conviction.[3]

Accordingly, it is hereby *ordered*:

First, from the date of this Order until February 22, 2031, Javier Campos, with a last known address of Inmate Number: 13278–579, FCI Terre Haute, Federal Correctional Institution, P.O. Box 33, Terre Haute, IN 47808, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to Section 1760(e) of ECRA and Sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Campos by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Campos may file an appeal of this Order with the Under

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2022).

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 *FR* 73411, November 18, 2020).

Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Campos and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until February 22, 2031.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2023–03984 Filed 2–24–23; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Marco Rodriguez, Inmate Number: 14132–508, FCI Safford Federal Correctional Institution, P.O. Box 9000, Safford, AZ 85548; Order Denying Export Privileges

On March 12, 2021, in the U.S. District Court for the District of Arizona, Marco Rodriguez (''Rodriguez'') was convicted of violating 18 U.S.C. 371 and 18 U.S.C. 554(a). Specifically, Rodriguez was convicted of conspiring and unlawfully smuggling from the US to Mexico, 5,000 rounds of .223 caliber ammunition and 5,000 rounds of 7.62 x 39 mm caliber ammunition. As a result of his conviction, the Court sentenced Rodriguez to 40 months of confinement on each count, to run concurrently and with credit for time served, 36 months of supervised release and a $300 special assessment.

Pursuant to Section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 371 and 18 U.S.C. 554, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Rodriguez's conviction for violating 18 U.S.C. 371 and 18 U.S.C. 554. As provided in Section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''), BIS provided notice and opportunity for Rodriguez to make a written submission to BIS. 15 CFR 766.25.[2] BIS has not received a written submission from Rodriguez.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Rodriguez's export privileges under the Regulations for a period of 10 years from the date of Rodriguez's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Rodriguez had an interest at the time of his conviction.[3]

Accordingly, it is hereby *ordered*:

First, from the date of this Order until March 12, 2031, Marco Rodriguez, with a last known address of Inmate Number: 14132–508, FCI Safford, Federal Correctional Institution, P.O. Box 9000, Safford, AZ 85548, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to Section 1760(e) of ECRA and Sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Rodriguez by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Rodriguez may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Rodriguez and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until March 12, 2031.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2023–03983 Filed 2–24–23; 8:45 am]

BILLING CODE 3510–DT–P

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2022).

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 *FR* 73411, November 18, 2020).

DEPARTMENT OF COMMERCE

International Trade Administration

The Association of Universities for Research in Astronomy; Notice of Decision on Application for Duty-Free Entry of Scientific Instruments

This is a decision pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). On January 24, 2023, the Department of Commerce published a notice in the **Federal Register** requesting public comment on whether instruments of equivalent scientific value, for the purposes for which the instruments identified in the docket(s) below are intended to be used, are being manufactured in the United States. *See Application(s) for Duty-Free Entry of Scientific Instruments, 88 FR 4155, January 24, 2023* (*Notice).* We received no public comments.

Docket Number: 23–004. Applicant: The Association of Universities for Research in Astronomy (AURA), 950 N Cherry Avenue, Tucson, AZ 85719. Instrument: (4) Laser Launch Telescopes. Manufacturer: Officina Stellare, S.p.A., Italy. Intended Use: The instrument is intended to be used to study the creation of four artificial stars for the purpose of conducting Adaptive Optics scientific observations. Existing and upcoming next generation optical telescopes require highly reliable 589 nm high power lasers—to generate so-called Guide Star Lasers—for the implementation of adaptive optics facilities. The four Laser Launch Telescopes will be used to project these laser beacons to create a constellation of artificial laser guide stars on top of the telescope. The experiments to be conducted: The four Laser Launch Telescopes used as an accessory to the Adaptive Optics system GMAO (currently in development) will propagate a constellation of artificial guide stars to measure the incoming wavefront. The objectives pursued during the investigations will be used on selected nights for selected astronomical targets in hopes of attaining better scientific data.

Dated: February 21, 2023.

Gregory W. Campbell,

Director, Subsidies Enforcement and Economic Analysis, Enforcement and Compliance.

[FR Doc. 2023–03966 Filed 2–24–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Scope Ruling Applications Filed in Antidumping and Countervailing Duty Proceedings

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) received scope ruling applications, requesting that scope inquiries be conducted to determine whether identified products are covered by the scope of antidumping duty (AD) and/or countervailing duty (CVD) orders and that Commerce issue scope rulings pursuant to those inquiries. In accordance with Commerce's regulations, we are notifying the public of the filing of the scope ruling applications listed below in the month of January 2023.

DATES: Applicable February 27, 2023.

FOR FURTHER INFORMATION CONTACT: Terri Monroe, AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–1384.

Notice of Scope Ruling Applications: In accordance with 19 CFR 351.225(d)(3), we are notifying the public of the following scope ruling applications related to AD and CVD orders and findings filed in or around the month of January 2023. This notification includes, for each scope application: (1) identification of the AD and/or CVD orders at issue (19 CFR 351.225(c)(1)); (2) concise public descriptions of the products at issue, including the physical characteristics (including chemical, dimensional and technical characteristics) of the products (19 CFR 351.225(c)(2)(ii)); (3) the countries where the products are produced and the countries from where the products are exported (19 CFR 351.225(c)(2)(i)(B)); (4) the full names of the applicants; and (5) the dates that the scope applications were filed with Commerce and the name of the ACCESS scope segment where the scope applications can be found.[1] This notice does not include applications which have been rejected and not properly resubmitted. The scope ruling applications listed below are available on Commerce's online e-filing and document management system, Antidumping and Countervailing Duty Electronic Service System (ACCESS), at *https://access.trade.gov.*

Scope Ruling Applications

Wooden Bedroom Furniture from the People's Republic of China (China) (A–570–890); Certain side tables/end tables, certain sideboards/low chests, and certain tall cabinets/chests;[2] produced in and exported from China; submitted by Moe's Home Collection, Inc.; January 25, 2023; ACCESS scope segment ''Moe's Home Collection.''

Alloy and Certain Carbon Steel Threaded Rod from China (A–570–104); Carbon Steel Wedge Anchors (Wedge Anchors);[3] produced in and exported from China; submitted by Chun Yu Works USA Inc. (Chun Yu Works); January 31, 2023; ACCESS scope segment ''Chun Yu Works-Carbon Steel Wedge Anchors.''

Carbon and Alloy Steel Threaded Rod from China (C–570–105); Carbon Steel Wedge Anchors (Wedge Anchors);[4] produced in and exported from China; submitted by Chun Yu Works; January 31, 2023; ACCESS scope segment ''Chun Yu Works-Carbon Steel Wedge Anchors.''

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[1] *See Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws,* 86 FR 52300, 52316 (September 20, 2021) (*Final Rule*) (''It is our expectation that the **Federal Register** list will include, where appropriate, for each scope application the following data: (1) identification of the AD and/or CVD orders at issue; (2) a concise public summary of the product's description, including the physical characteristics (including chemical, dimensional and technical characteristics) of the product; (3) the country(ies) where the product is produced and the country from where the product is exported; (4) the full name of the applicant; and (5) the date that the scope application was filed with Commerce.'')

[2] The products are three types of side tables/end tables: (1) the Naples Side Table, having two drawers and measuring 24 x 19 x 22 inches; (2) the Leroy Side Table, having two drawers and measuring 20.5 x 18 x 19 inches; and (3) the Persela Side Table/End Table, having 1 drawer and measuring 20 x 18 x 20 inches; two types of sideboards/low chests: (1) the Naples Sideboard, having six drawers and measuring 64 x 20 x 32 inches; and (2) the Leroy Sideboard, having six drawers and measuring 65 x 16.5 x 31 inches; and one type of tall cabinets/chests: the Leroy Tall Cabinet, having four drawers and measuring 27.5 x 18 x 47 inches.

[3] The products are wedge anchors consisting of four components of zinc-coated carbon steel: (1) a cone-headed bolt of Q215 steel, threaded for more than 50% of the shaft length, with a lip to keep the expansion clip in place; (2) an expansion clip permanently affixed to the bolt between the head and the lip; (3) a hex nut; and (4) a washer. Wedge anchors have a nominal length of 1¾–12 inches, and a nominal diameter of ¼–1 inches.

[4] The products are wedge anchors consisting of four components of zinc-coated carbon steel: (1) a cone-headed bolt of Q215 steel, threaded for more than 50% of the shaft length, with a lip to keep the expansion clip in place; (2) an expansion clip permanently affixed to the bolt between the head and the lip; (3) a hex nut; and (4) a washer. Wedge anchors have a nominal length of 1¾–12 inches, and a nominal diameter of ¼–1 inches.

Notification to Interested Parties

This list of scope ruling applications is not an identification of scope inquiries that have been initiated. In accordance with 19 CFR 351.225(d)(1), if Commerce has not rejected a scope ruling application nor initiated the scope inquiry within 30 days after the filing of the application, the application will be deemed accepted and a scope inquiry will be deemed initiated the following day—day 31.[5] Commerce's practice generally dictates that where a deadline falls on a weekend, Federal holiday, or other non-business day, the appropriate deadline is the next business day.[6] Accordingly, if the 30th day after the filing of the application falls on a non-business day, the next business day will be considered the ''updated'' 30th day, and if the application is not rejected or a scope inquiry initiated by or on that particular business day, the application will be deemed accepted and a scope inquiry will be deemed initiated on the next business day which follows the ''updated'' 30th day.[7]

In accordance with 19 CFR 351.225(m)(2), if there are companion AD and CVD orders covering the same merchandise from the same country of origin, the scope inquiry will be conducted on the record of the AD proceeding. Further, please note that pursuant to 19 CFR 351.225(m)(1), Commerce may either apply a scope ruling to all products from the same country with the same relevant physical characteristics, (including chemical, dimensional, and technical characteristics) as the product at issue, on a country-wide basis, regardless of the producer, exporter, or importer of those products, or on a company-specific basis.

For further information on procedures for filing information with Commerce through ACCESS and participating in scope inquiries, please refer to the Filing Instructions section of the Scope Ruling Application Guide, at *https://access.trade.gov/help/Scope_Ruling_Guidance.pdf.* Interested parties, apart from the scope ruling applicant, who wish to participate in a scope inquiry and be added to the public service list for that segment of the proceeding must file an entry of appearance in accordance with 19 CFR 351.103(d)(1) and 19 CFR 351.225(n)(4). Interested parties are advised to refer to the case segment in ACCESS as well as 19 CFR 351.225(f) for further information on the scope inquiry procedures, including the timelines for the submission of comments.

Please note that this notice of scope ruling applications filed in AD and CVD proceedings may be published before any potential initiation, or after the initiation, of a given scope inquiry based on a scope ruling application identified in this notice. Therefore, please refer to the case segment on ACCESS to determine whether a scope ruling application has been accepted or rejected and whether a scope inquiry has been initiated.

Interested parties who wish to be served scope ruling applications for a particular AD or CVD order may file a request to be included on the annual inquiry service list during the anniversary month of the publication of the AD or CVD order in accordance with 19 CFR 351.225(n) and Commerce's procedures.[8]

Interested parties are invited to comment on the completeness of this monthly list of scope ruling applications received by Commerce. Any comments should be submitted to James Maeder, Deputy Assistant Secretary for AD/CVD Operations, Enforcement and Compliance, International Trade Administration, via email to *CommerceCLU@trade.gov.*

This notice of scope ruling applications filed in AD and CVD proceedings is published in accordance with 19 CFR 351.225(d)(3).

Dated: February 21, 2023.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2023–03933 Filed 2–24–23; 8:45 am]

BILLING CODE 3510–DS–P

[5] In accordance with 19 CFR 351.225(d)(2), within 30 days after the filing of a scope ruling application, if Commerce determines that it intends to address the scope issue raised in the application in another segment of the proceeding (such as a circumvention inquiry under 19 CFR 351.226 or a covered merchandise inquiry under 19 CFR 351.227), it will notify the applicant that it will not initiate a scope inquiry, but will instead determine if the product is covered by the scope at issue in that alternative segment.

[6] *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

[7] This structure maintains the intent of the applicable regulation, 19 CFR 351.225(d)(1), to allow day 30 and day 31 to be separate business days.

[8] *See Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions,* 86 FR 53205 (September 27, 2021).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–906, C–533–907]

Sodium Nitrite From India: Antidumping Duty and Countervailing Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC), Commerce is issuing antidumping duty (AD) and countervailing duty (CVD) orders on sodium nitrite from India.

DATES: Applicable February 27, 2023.

FOR FURTHER INFORMATION CONTACT: Thomas Martin or Joy Zhang, AD/CVD Operations, Offices III and IV, Enforcement and Compliance, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3936 and (202) 482–1168, respectively.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 705(d) and 735(d) of the Tariff Act of 1930, as amended (the Act), on January 6, 2023, Commerce published its affirmative final determination of sales at less than fair value (LTFV) and its affirmative final determination that countervailable subsidies are being provided to producers and exporters of sodium nitrite from India.[1]

On February 21, 2023, pursuant to sections 705(d) and 735(d) of the Act, the ITC notified Commerce of its final affirmative determinations that an industry in the United States is materially injured by reason of LTFV imports and subsidized imports of sodium nitrite from India, within the meaning of sections 705(b)(1)(A)(i) and 735(b)(1)(A)(i) of the Act.[2]

Scope of the Orders

The products covered by these orders are sodium nitrite from India. For a full description of the scope of the orders, *see* the appendix to this notice.

AD Order

Based on the above-referenced affirmative final determinations by the

[1] *See Sodium Nitrite from India: Final Affirmative Determination of Sales at Less Than Fair Value,* 88 FR 1052 (January 6, 2023); *see also Sodium Nitrite from India: Final Affirmative Countervailing Duty Determination,* 88 FR 1042 (January 6, 2023).

[2] *See* ITC's Letter, ''Notification of ITC Final Determinations,'' dated February 21, 2023 (ITC Notification Letter).

ITC that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act by reason of LTFV imports of sodium nitrite from India [3] in accordance with sections 735(c)(2) and 736 of the Act, Commerce is issuing this antidumping duty order. Moreover, because the ITC determined that imports of sodium nitrite from India are materially injuring a U.S. industry, unliquidated entries of such merchandise from India, entered or withdrawn from warehouse for consumption, are subject to the assessment of antidumping duties.

Therefore, in accordance with section 736(a)(1) of the Act, Commerce intends to direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by Commerce, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise for all relevant entries of sodium nitrite from India. Antidumping duties will be assessed on unliquidated entries of sodium nitrite from India entered, or withdrawn from warehouse, for consumption on or after August 17, 2022, the date of publication of the *AD Preliminary Determination,*[4] but will not include entries occurring after the expiration of the provisional measures period and before publication of the ITC's final injury determination, as further described below.

Continuation of Suspension of Liquidation—AD

Except as noted in the ''Provisional Measures—AD'' section of this notice, in accordance with section 736 of the Act, Commerce intends to instruct CBP to continue to suspend liquidation on all relevant entries of sodium nitrite from India. These instructions suspending liquidation will remain in effect until further notice.

Commerce also intends to instruct CBP to require cash deposits equal to the estimated weighted-average dumping margins indicated in the table below, adjusted by the relevant subsidy offsets. Accordingly, effective on the date of publication in the **Federal Register** of the notice of the ITC's final affirmative injury determination, CBP must require, at the same time as importers would normally deposit estimated customs duties on subject merchandise, a cash deposit equal to the rates listed in the table below.

Estimated Weighted-Average Dumping Margins

The estimated weighted-average dumping margins are as follows:

Exporter/producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offset(s)) (percent)
Deepak Nitrite Limited	44.82	42.76
All Others	44.82	42.76

Provisional Measures—AD

Section 733(d) of the Act states that suspension of liquidation pursuant to an affirmative preliminary determination may not remain in effect for more than four months, except where exporters representing a significant proportion of exports of the subject merchandise request that Commerce extend the four-month period to no more than six months. At the request of exporters that account for a significant proportion of sodium nitrite from India, Commerce extended the four-month period to six months in this AD investigation. Commerce published the *AD Preliminary Determination* on August 17, 2022.[5] Therefore, the extended provisional measures period, beginning on the date of publication of the *AD Preliminary Determination,* ended on February 12, 2023. Pursuant to section 737(b) of the Act, the collection of cash deposits at the rates listed above will begin on the date of publication of the ITC's final injury determination. Therefore, in accordance with section 736(a)(1) of the Act and our practice, we will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of sodium nitrite from India, entered, or withdrawn from warehouse, for consumption on or after February 13, 2023, the first day provisional measures were no longer in effect, until and through the day preceding the date of publication of the ITC's final injury determination in the **Federal Register**.

CVD Order

As stated above, based on the above-referenced affirmative final determinations by the ITC that an industry in the United States is materially injured within the meaning of section 705(b)(1)(A)(i) of the Act by reason of subsidized imports of sodium nitrite from India,[6] in accordance with section 705(c)(2) of the Act, Commerce is issuing this CVD order. Moreover, because the ITC determined that imports of sodium nitrite from India are materially injuring a U.S. industry, unliquidated entries of subject merchandise from India entered, or withdrawn from warehouse, for consumption, are subject to the assessment of countervailing duties.

Therefore, in accordance with section 706(a) of the Act, Commerce intends to direct CBP to assess, upon further instruction by Commerce, countervailing duties for all relevant entries of sodium nitrite from India, which are entered, or withdrawn from warehouse, for consumption on or after June 21, 2022, the date of publication of the *CVD Preliminary Determination,* but will not include entries occurring after the expiration of the provisional measures period and before the publication of the ITC's final injury determination under section 705(b) of the Act, as further described in the ''Provisional Measures—CVD'' section of this notice.[7]

Suspension of Liquidation and Cash Deposits—CVD

Therefore, in accordance with section 706 of the Act, Commerce intends to instruct CBP to reinstitute the suspension of liquidation of sodium nitrite from India, effective on the date of publication of the ITC's final affirmative injury determination in the

[3] *Id.*

[4] *See Sodium Nitrite from India: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures,* 87 FR 50604 (August 17, 2022) (*AD Preliminary Determination*).

[5] *Id.*

[6] *See* ITC Notification Letter.

[7] *See Sodium Nitrite from India: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With the Final Antidumping Duty Determination,* 87 FR 36824 (June 21, 2022) (*CVD Preliminary Determination*).

Federal Register, and to assess, upon further instruction by Commerce, pursuant to section 706(a)(1) of the Act, countervailing duties for each entry of subject merchandise in an amount based on the net countervailable subsidy rates below. On or after the date of publication of the ITC's final injury determination in the **Federal Register**, CBP must require, at the same time as importers would normally deposit estimated customs duties on this merchandise, a cash deposit equal to the rates listed in the table below. These instructions suspending liquidation will remain in effect until further notice. The all-others rate applies to all producers or exporters not specifically listed below, as appropriate:

Company	Subsidy rate (percent *ad valorem*)
Deepak Nitrite Limited	2.40
All Others	2.40

Provisional Measures—CVD

Section 703(d) of the Act states that the suspension of liquidation pursuant to an affirmative preliminary determination may not remain in effect for more than four months. Commerce published the *CVD Preliminary Determination* on June 21, 2022.[8] As such, the four-month period beginning on the date of the publication of the *CVD Preliminary Determination* ended on October 18, 2022.

Therefore, in accordance with section 703(d) of the Act, we instructed CBP to terminate the suspension of liquidation and to liquidate, without regard to countervailing duties, unliquidated entries of sodium nitrite from India entered, or withdrawn from warehouse, for consumption, on or after October 19, 2022, the date on which the provisional measures expired, until and through the day preceding the date of publication of the ITC's final injury determination in the **Federal Register**. Suspension of liquidation will resume on the date of publication of the ITC's final determination in the **Federal Register**.

Establishment of the Annual Inquiry Service Lists

On September 20, 2021, Commerce published the final rule titled ''*Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*'' in the **Federal Register**.[9] On September 27, 2021, Commerce also published the notice titled ''*Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions*'' in the **Federal Register**.[10] The *Final Rule* and *Procedural Guidance* provide that Commerce will maintain an annual inquiry service list for each order or suspended investigation, and any interested party submitting a scope ruling application or request for circumvention inquiry shall serve a copy of the application or request on the persons on the annual inquiry service list for that order, as well as any companion order covering the same merchandise from the same country of origin.[11]

In accordance with the *Procedural Guidance,* for orders published in the **Federal Register** after November 4, 2021, Commerce will create an annual inquiry service list segment in Commerce's online e-filing and document management system, Antidumping and Countervailing Duty Electronic Service System (ACCESS), available at *https://access.trade.gov,* within five business days of publication of the notice of the order. Each annual inquiry service list will be saved in ACCESS, under each case number, and under a specific segment type called ''AISL-Annual Inquiry Service List.'' [12]

Interested parties who wish to be added to the annual inquiry service list for an order must submit an entry of appearance to the annual inquiry service list segment for the order in ACCESS within 30 days after the date of publication of the order. For ease of administration, Commerce requests that law firms with more than one attorney representing interested parties in an order designate a lead attorney to be included on the annual inquiry service list. Commerce will finalize the annual inquiry service list within five business days thereafter. As mentioned in the *Procedural Guidance,*[13] the new annual inquiry service list will be in place until the following year, when the *Opportunity Notice* for the anniversary month of the order is published.

Commerce may update an annual inquiry service list at any time as needed based on interested parties' amendments to their entries of appearance to remove or otherwise modify their list of members and representatives, or to update contact information. Any changes or announcements pertaining to these procedures will be posted to the ACCESS website at *https://access.trade.gov.*

Special Instructions for Petitioners and Foreign Governments

In the *Final Rule,* Commerce stated that, ''after an initial request and placement on the annual inquiry service list, both petitioners and foreign governments will automatically be placed on the annual inquiry service list in the years that follow.'' [14] Accordingly, as stated above, the petitioner and Government of India should submit their initial entries of appearance after publication of this notice in order to appear in the first annual inquiry service lists for these orders. Pursuant to 19 CFR 351.225(n)(3), the petitioner and the Government of India will not need to resubmit their entries of appearance each year to continue to be included on the annual inquiry service list. However, the petitioner and the Government of India are responsible for making amendments to their entries of appearance during the annual update to the annual inquiry service list in accordance with the procedures described above.

Notification to Interested Parties

This notice constitutes the AD and CVD orders with respect to sodium nitrite from India pursuant to sections 706(a) and 736(a) of the Act. Interested parties can find a list of orders currently in effect at *https://enforcement.trade.gov/stats/iastats1.html.*

These orders are published in accordance with sections 706(a) and 736(a) of the Act and 19 CFR 351.211(b).

Dated: February 21, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Orders

The product covered by these orders is sodium nitrite in any form, at any purity level. In addition, the sodium nitrite covered by these orders may or may not contain an

[8] *Id.*

[9] *See Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws,* 86 FR 52300 (September 20, 2021) (*Final Rule*).

[10] *See Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions,* 86 FR 53205 (September 27, 2021) (*Procedural Guidance*).

[11] *Id.*

[12] This segment will be combined with the ACCESS Segment Specific Information (SSI) field which will display the month in which the notice of the order or suspended investigation was published in the **Federal Register**, also known as the anniversary month. For example, for an order under case number A–000–000 that was published in the **Federal Register** in January, the relevant segment and SSI combination will appear in ACCESS as ''AISL-January Anniversary.'' Note that there will be only one annual inquiry service list segment per case number, and the anniversary month will be pre-populated in ACCESS.

[13] *See Procedural Guidance.*

[14] *See Final Rule,* 86 FR at 52335.

anticaking agent. Examples of names commonly used to reference sodium nitrite are nitrous acid, sodium salt, anti-rust, diazotizing salts, erinitrit, and filmerine. Sodium nitrite's chemical composition is $NaNO_2$, and it is generally classified under subheading 2834.10.1000 of the Harmonized Tariff Schedule of the United States (HTSUS). The American Chemical Society Chemical Abstract Service (CAS) has assigned the name ''sodium nitrite'' to sodium nitrite. The CAS registry number is 7632–00–0. For purposes of the scope of these orders, the narrative description is dispositive, not the tariff heading, CAS registry number or CAS name, which are provided for convenience and customs purposes.

[FR Doc. 2023–03934 Filed 2–24–23; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC607]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Construction Activities Associated With the Murray St. Bridge Seismic Retrofit Project in Santa Cruz, California

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from the City of Santa Cruz for authorization to take marine mammals incidental to 2 years of construction activities associated with the Murray St. Bridge Seismic Retrofit Project in Santa Cruz, California. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue two consecutive 1-year incidental harassment authorizations (IHAs) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-time, 1-year renewal that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than March 29, 2023.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service and should be submitted via email to *ITP.taylor@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at *www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Jessica Taylor, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed IHA is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On April 19, 2022, NMFS received a request from the City of Santa Cruz (the City) for two consecutive 1-year IHAs to take marine mammals incidental to construction activities associated with the Murray St. Bridge seismic retrofit project in Santa Cruz, CA. Following NMFS' review of the application, the City submitted revised versions on August 25, 2022, October 25, 2022, and December 13, 2022, and a final revised version on January 12, 2023. The application was deemed adequate and complete on January 24, 2023. The City's request is for take of small numbers of California sea lions (*Zalophus californianus*) and harbor seals (*Phoca vitulina richardii*) by Level

B harassment and take of small numbers of harbor seals by Level A harassment. Neither the City nor NMFS expect serious injury or mortality to result from this activity and, therefore, IHAs are appropriate.

Description of Proposed Activity

Overview

The City plans to conduct a seismic retrofit on the Murray St. Bridge which spans the Santa Cruz Small Craft Harbor. As part of the proposed project, the City would use vibratory pile extraction to temporarily remove docks and associated piles to accommodate construction access to the bridge. Impact pile driving would be used to install additional bridge support piles. In order to facilitate installation of bridge piles, vibratory extraction may be used to construct a temporary trestle. As an alternative to the trestle, a temporary barge may be constructed instead. The purpose of the project is to provide the bridge with additional vertical support and resistance to lateral seismic forces by installing additional pilings and structural support elements.

The City's proposed activity includes impact and vibratory pile driving and vibratory pile removal, which may result in the incidental take of marine mammals by Level A and Level B harassment. The Murray St. Bridge proposed project area includes waters within the Santa Cruz Small Craft Harbor and adjacent lands managed by the Santa Cruz Port District. Construction activities would span the course of 2 years, with the first year beginning on July 1, 2023 and lasting through July 31, 2023. The second year of construction activities would begin on July 1, 2024 and last through September 15, 2024.

The City has requested an IHA for each of the 2 project years. However, given the City has applied for authorization for both project years concurrently and projects use similar activities, NMFS is issuing this single **Federal Register** notice to solicit public comments on the issuance of the two similar, but separate, IHAs.

Dates and Duration

The City anticipates that the bridge seismic retrofit will occur over 2 years. The in-work window during Year 1 would occur from July 1 to July 31, 2023 with approximately 14 in-water construction days consisting of vibratory pile removal of the FF dock (Table 1). The in-water work window during Year 2 would include approximately 98 in-water construction days spanning from July 1 to September 15, 2024 (Table 1), including approximately 97 days of in-water impact (37 days) and vibratory (60 days) pile installation and 1 day of in-water vibratory pile removal. All in-water construction activities would be limited to July 1 through mid-November each year due to timing restrictions to protect federally listed salmonids. An in-water work day assumes up to approximately 8 hours of pile driving or removal activities with only one pile being driven or extracted at a time.

TABLE 1—PROPOSED IN-WATER CONSTRUCTION ACTIVITY SCHEDULE

Activity	Pile type	Method	Number of piles	Piles/day	Estimated blow count/pile	Estimated duration/pile (min)	Total estimated days
Year 1							
Remove dock FF South	14″ p/c concrete pile	Vibratory Extraction	30	10	n/a	48	14
Total days Year 1							14
Year 2							
Remove Dock FF temporary relocation.	14″ p/c concrete pile	Impact Install Vibratory Extraction	30	[1] 4	200 n/a	n/a 240	14
Relocate Dock BY	14″ p/c concrete pile	Vibratory Extraction	5	5	n/a	96	1
Install new permanent bridge piles (bents 4–8) [2].	30″ steel in CISS (bents 5–8) 30″ steel in CIDH (bent 4).	Impact Install Vibratory Install	18	[3] 0.67	2,500 n/a	n/a 720	23
Install temporary trestles	20″ steel pipe pile [4]	Vibratory Install	72	3	n/a	160	60
Total days Year 2							98
Total project days							112

[1] Assumes two vibratory drivers.
[2] Bent 4 is underwater at high tide.
[3] 1.5 days to install each pile.
[4] 20-inch piles represent the maximum size piles that may be used for the trestle.

Specific Geographic Region

The Murray St. Bridge retrofit project area includes waters within the Santa Cruz Small Craft Harbor (the Harbor) at the northern tip of Monterey Bay and adjacent lands managed by the Santa Cruz Port District (Figure 1). The project area includes open waters, docks, and other potential haul-out features of the Harbor from the Harbor Launch Ramp area, including the fuel dock and Vessel Assist dock, to 500 feet (152.4 meters (m)) upstream of the boundary of the Area of Impact (Figure 1). The Harbor intertidal environment is defined by shore bottom substrates, rocky shores, and substrate provided by floating docks. Bottom substrate is impacted by seasonal deposition of silt from streams that flow into the Harbor. Project work will begin on the eastern side of Harbor and progress to the western side.

Ambient underwater noise levels in the proposed project area are likely similar to those measured in Monterey Harbor (Illingworth and Rodkin, 2012), which ranged from 110 to 120 dB. Illingworth and Rodkin (2012) found frequent acoustic events, such as boat traffic, to cause noise levels to exceed 120 dB during monitoring in Monterey Harbor, and the same is likely to occur in the proposed project area.

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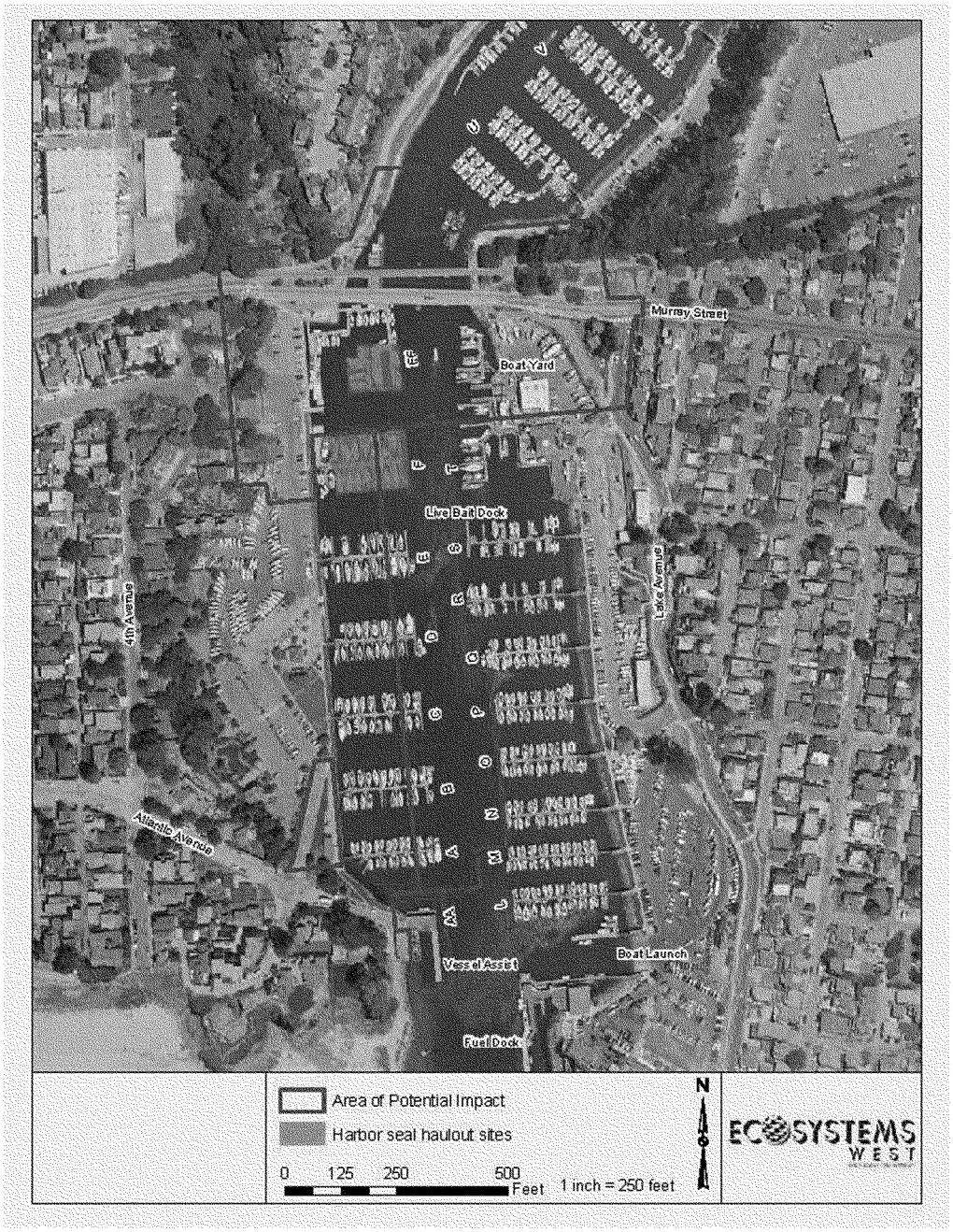

Figure 1—Proposed Project Area

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Detailed Description of the Specified Activity

The Murray St. Bridge seismic retrofit project is proposed for construction in nine phases over an approximate 2 year and 4 month period, commencing in summer 2023. The City has applied for two IHAs for Year 1 and Year 2 of in-water construction activities. The City plans to apply for an additional IHA to cover any remaining construction work remaining at the end of Year 2. In-water construction activities include the removal and temporary relocation of docks to accommodate construction access, pile driving, potential installation of piles for a construction trestle from the bridge or barge construction, transport of materials, and replacement of harbor docks upon completion of the project.

Removal and replacement of boat berths—To accommodate construction staging and in-water construction activities, the City plans to temporarily relocate berths at Dock FF and Dock BY (Boat Yard on east side) to existing visitor berths. These docks will be reconstructed upon the completion of the bridge retrofit project. Removal of these docks would involve vibratory extraction of 30 14″ precast concrete piles and take place over 14 days in July 2023 during Year 1 as well as over 15 days in July 2024 during Year 2. During Year 1, a maximum of 10 piles would be removed per day from Dock FF. During Year 2, a maximum of four piles per day would be removed from Dock FF over the course of 14 days and five piles would be removed from Dock BY over the course of a day. Reinstallation of piles for Dock FF and Dock BY would occur in October to November 2025 and be covered under a separate IHA. The reinstalled berths would be plastic, wood, or concrete over polyethylene float, and be anchored with pilings.

Pile installation—The most intensive in-water activity would be the installation of new bridge support piles at Bents 4 through 8 from August through September during Year 2. Installation at Bents 5 through 8 would involve impact and vibratory pile driving of 16 (4 per Bent) 30-inch Cast-in-steel-shell (CISS) piles. At Bents 5 through 8, 30-inch diameter steel casings will be driven to either refusal at rock or into a shaft drilled within rock, depending upon the location. Two additional 30-inch steel piles will be driven using impact and vibratory pile driving at Ben 4, although these piles are only submerged in water during high tide. Bridge piles will be partially or entirely vibrated into the Harbor substrate, depending upon bottom type, instead of driving them entirely by impact pile driving. A vibratory hammer would be used to start driving all piles, but an impact hammer may be required to complete pile driving, depending upon the density of the subsurface materials. Overall, pile installation is expected to last approximately 23 days, with 1.5 days required to drive each 30-inch diameter steel pile.

Construction barge and/or temporary trestle—Installation of an in-water barge or temporary bridge trestle is planned to accommodate equipment for pile installation. Work within the waterway will require either the use of a barge or the construction of a temporary trestle to provide a work platform. If a barge is utilized, prefabricated modular units may be brought to the site and locked together. This platform can be installed, reconfigured, and removed relatively quickly, but the system is not suitable for areas that are too narrow to accommodate the modules. If areas are too narrow, a trestle would likely be constructed.

Construction of a trestle would vary depending upon materials available to contractors, however, a potential trestle would be 60-foot (18.3 meters (m)) long and comprised of steel girders over the Harbor navigation channel. The spans would be supported on false work bents, constructed of steel piles. Up to 72 20-inch steel beams (potentially, the contractor may decide to use 120 12-inch steel beams instead) would be required for a trestle spanning the channel. Vibratory drivers would be used to install the trestle during Year 2 and would require an estimated 60 days to install. The trestle would be removed after construction is complete in 2025. This removal would be covered under a separate IHA. Barge construction is likely to be less impactful that trestle construction, therefore, trestle construction is included in the below analysis and barge construction is not discussed further.

The proposed project also includes construction activities that are located on land. These activities include the demolition, pile and anchor installation outside of the waterway, bridge construction on the northern and southern ends of the bridge as well as the construction of barrier railings and project features below the bridge road surface, contractor staging for construction activities in the boat yard near the eastern edge of the bridge, temporary bypass of the sewer line, and temporary harbor facility relocation. These land-based construction activities are not expected to result in take, and are therefore not discussed further.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions, incorporated here by reference, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*), and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species*).

Table 2 lists all species or stocks for which take is expected and proposed to be authorized for this activity, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is expected to occur, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species or stocks and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All stocks managed under the MMPA in this region are assessed in NMFS' U.S. Pacific 2022 draft SARs. All values presented in Table 2 are the most recent available at the time of publication and are available online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.*

TABLE 2—MARINE MAMMAL SPECIES[4] LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N)[1]	Stock abundance (CV, N_{min}, most recent abundance survey)[2]	PBR	Annual M/SI[3]
Order Carnivora—Pinnipedia						
Family Otariidae (eared seals and sea lions):						
California sea lion	*Zalophus californianus*	U.S.	-, -, N	257,606 (N/A, 233,515, 2014).	14,011	>320
Family Phocidae (earless seals):						

TABLE 2—MARINE MAMMAL SPECIES[4] LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES—Continued

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N)[1]	Stock abundance (CV, N_{min}, most recent abundance survey)[2]	PBR	Annual M/SI[3]
Harbor seal	*Phoca vitulina*	California	-, -, N	30,968 (N/A, 27,348, 2012).	1,641	43

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *https://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. In some cases, CV is not applicable [explain if this is the case].

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

[4] Information on the classification of marine mammal species can be found on the web page for The Society for Marine Mammalogy's Committee on Taxonomy (*https://marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies/*; Committee on Taxonomy (2022)).

As indicated above, the two species (with two managed stocks) in Table 2 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur. While bottlenose dolphins (*Tursiops truncatus*) and harbor porpoises (*Phocoena phocoena*) have been reported in the area, the temporal and/or spatial occurrence of these species is such that take is not expected to occur, and they are not discussed further beyond the explanation provided here. Bottlenose dolphins and harbor porpoises may transit nearshore areas just outside the mouth of the Harbor (Carretta *et al.,* 2022). However, these species were not detected during any surveys of the Harbor area and are expected to remain outside the Harbor and beyond the proposed project area.

In addition, the southern sea otter (*Enhydra lutris nereis*) may be found in the Harbor. However, sea otters are managed by the U.S. Fish and Wildlife Service and are not considered further in this document.

California Sea Lions

California sea lions are known to breed mainly on offshore islands, spanning from Southern California's Channel Islands to Mexico during the spring (Heath and Perrin, 2008), although pups have also been born on Año Nuevo and the Farallon Islands (TMMC, 2020). During the non-breeding season, adult and sub-adult males as well as juveniles migrate northward along the coast, to central and northern California, Oregon, Washington, and Vancouver Island (Jefferson *et al.,* 1993). They return south the following spring (Lowry and Forney, 2005; Heath and Perrin, 2008) while females tend to remain closer to rookeries (Antonelis *et al.,* 1990; Melin *et al.,* 2008). Based upon statistical analysis of annual pup count, annual survivorship, and human-induced impacts, the California stock appears to have experienced an annual increase from 1975–2014 (Laake *et al.,* 2018). The Harbor does not provide mating, breeding, or pupping habitat for California sea lions.

California sea lions are incidental visitors to the Harbor, appearing in the greatest numbers when fish are abundant in the area. Based upon surveys conducted in the Harbor by EcoSystems West Consulting Group during December 2006, October 2009, and February to March 2022, California sea lions may use the Harbor occasionally for hauling out, and specific haul-out locations in the Harbor may vary. In 2009, the closest regular sea lion haul-out location to the project area was the Municipal Wharf, although in 2006 and 2009, sea lions were also observed to haul out near the launch ramp, fuel dock, and Vessel Assist Dock (see Figure 4 in the Application). However, in 2022, no hauled out sea lions were observed in the Harbor.

California sea lions may also use the Harbor for foraging. They feed seasonally on schooling fish and cephalopods, including salmon, herring, sardines, anchovy, mackerel, whiting, rockfish, and squid (Lowry *et al.,* 1990, 1991; Lowry and Carretta, 1999; Weise 2000; Carretta *et al.,* 2022). Seasonal and annual dietary shifts vary with environmental fluctuations that affect prey populations. In central California sea lion populations, short term seasonal variations in diet are related to prey movement and life history patterns while long-term annual changes correlate to large-scale ocean climate shifts and foraging competition with commercial fisheries (Weise and Harvey, 2008; McClatchie *et al.,* 2016). Climate change, specifically increasing sea surface temperatures in the California current, negatively impact prey species availability and reduce California sea lion survival rates (DeLong *et al.,* 2017; Laake *et al.,* 2018). Other conservation concerns for California sea lions include vessel strikes, non-commercial fishery human caused mortality, hookworms, and competition for forage with commercial fisheries (Carretta *et al.,* 2018; Carretta *et al.,* 2022).

California sea lions experienced a UME, not correlated to an El Niño event, from 2013–2017 (Carretta *et al.,* 2022). Pup and juvenile age classes experienced high mortality during this time, likely attributed to sea lion prey availability, specifically sardines. California sea lions are also susceptible to the algal neurotoxin, domoic acid (Brodie *et al.,* 2006; Carretta *et al.,* 2022). This neurotoxin is expected to cause future mortalities among California sea lions due to the prevalence of harmful algal blooms within their habitat.

Harbor Seals

Pacific harbor seals are distributed from Baja California north to the Aleutian Islands of Alaska. Harbor seals do not make extensive pelagic migrations, but may travel hundreds of kilometers to find food or suitable breeding areas (Herder, 1986; Harvey and Goley, 2011; Carretta *et al.,* 2022). Seals primarily haul out on remote mainland and island beaches, reefs, and estuary areas. At haul-outs, they congregate to rest, socialize, breed, and molt.

Harbor seals may use the Harbor seasonally for foraging or hauling out. Documented haul-out locations may vary across years, and harbor seals have been observed foraging around haul-out locations. During December 2006, six harbor seals were observed hauled out on dock FF at night. Docks F, FF, and S were primary haul-out areas in October 2009, however, no harbor seals were observed hauled out during February and March 2022. Based upon the Ecosystems West surveys, harbor seals were more likely to be hauled out

in Harbor in the early morning hours. Grigg *et al.* (2009) reported seasonal shifts in harbor seal movements based on prey availability. The highest numbers of harbor seals were observed in the Harbor during late summer, fall, and winter, outside of the breeding season (March–May), and outside of the molting season (June–July). The Harbor does not provide breeding, molting, or pupping habitat for harbor seals.

Harbor seals were observed foraging in the Harbor during December 2006 and October 2009, in close proximity to primary haul-out sites, such as Docks F and FF. In 2009, foraging harbor seals were documented both in the Upper Harbor upstream of the Murray St. Bridge and within the lower Harbor downstream of the Murray St. Bridge and near Dock FF. Harbor seals may forage on a variety of fish, crustaceans, and cephalopods in shallow intertidal waters. Fish prey species may include yellowfin goby, northern anchovy, Pacific herring, staghorn sculpin, plainfish midshipman, and white croaker (Harvey and Torok, 1994).

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, *etc.*). Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 3.

TABLE 3—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, Cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.,* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section provides a discussion of the ways in which components of the specified activity may impact marine mammals and their habitat. The Estimated Take section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and whether those impacts are reasonably expected to, or reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Acoustic effects on marine mammals during the specified activities can occur from impact pile driving and vibratory driving and removal. The effects of underwater noise from the City's proposed activities have the potential to result in Level A or Level B harassment of marine mammals in the project area.

Description of Sound Sources

The marine soundscape is comprised of both ambient and anthropogenic sounds. Ambient sound is defined as the all-encompassing sound in a given place and is usually a composite of sound from many sources both near and far (ANSI, 1995). The sound level of an area is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* waves, wind, precipitation, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.,* vessels, dredging, aircraft, construction).

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise ''ambient'' or ''background'' sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 decibels (dB) from day to day (Richardson *et al.,* 1995). The result is that, depending on the source type and

its intensity, sound from the specified activities may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

In-water construction activities associated with the project would include impact and vibratory pile driving and removal. The sounds produced by these activities fall into one of two general sound types: impulsive and non-impulsive. Impulsive sounds (*e.g.,* explosions, sonic booms, impact pile driving) are typically transient, brief (less than 1 second), broadband, and consist of high peak sound pressure with rapid rise time and rapid decay (ANSI, 1986; NIOSH, 1998; NMFS, 2018). Non-impulsive sounds (*e.g.,* machinery operations such as drilling or dredging, vibratory pile driving, underwater chainsaws, and active sonar systems) can be broadband, narrowband or tonal, brief or prolonged (continuous or intermittent), and typically do not have the high peak sound pressure with raid rise/decay time that impulsive sounds do (ANSI, 1995; NIOSH, 1998; NMFS, 2018). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward, 1997).

Two types of hammers would be used on this project, impact and vibratory. Impact hammers operate by repeatedly dropping and/or pushing a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is considered impulsive. Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. Vibratory hammers produce non-impulsive, continuous sounds. Vibratory hammering generally produces sound pressure levels (SPLs) 10 to 20 dB lower than impact pile driving of the same-sized pile (Oestman *et al.,* 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards, 2002; Carlson *et al.,* 2005).

The likely or possible impacts of the City's proposed activities on marine mammals could be generated from both non-acoustic and acoustic stressors. Potential non-acoustic stressors include the physical presence of the equipment, vessels, and personnel; however, we expect that any animals that approach the project site(s) close enough to be harassed due to the presence of equipment or personnel would be within the harassment zone from pile driving and would already be subject to harassment from the in-water activities. Therefore, any impacts to marine mammals are expected to primarily be acoustic in nature. Acoustic stressors are generated by heavy equipment operation during pile installation and removal (*i.e.,* impact and vibratory pile driving and removal).

Acoustic Impacts

The introduction of anthropogenic noise into the aquatic environment from pile driving equipment is the primary means by which marine mammals may be harassed from the City's specified activities. In general, animals exposed to natural or anthropogenic sound may experience physical and psychological effects, ranging in magnitude from none to severe (Southall *et al.,* 2007). Generally, exposure to pile driving and removal and other construction noise has the potential to result in auditory threshold shifts and behavioral reactions (*e.g.,* avoidance, temporary cessation of foraging and vocalizing, changes in dive behavior). Exposure to anthropogenic noise can also lead to non-observable physiological responses, such as an increase in stress hormones. Additional noise in a marine mammal's habitat can mask acoustic cues used by marine mammals to carry out daily functions, such as communication and predator and prey detection. The effects of pile driving and demolition noise on marine mammals are dependent on several factors, including, but not limited to, sound type (*e.g.,* impulsive vs. non-impulsive), the species, age and sex class (*e.g.,* adult male vs. mother with calf), duration of exposure, the distance between the pile and the animal, received levels, behavior at time of exposure, and previous history with exposure (Wartzok *et al.,* 2004; Southall *et al.,* 2007). Here we discuss physical auditory effects (threshold shifts) followed by behavioral effects and potential impacts on habitat. No physiological effects other than permanent threshold shift (PTS) and temporary threshold shift (TTS) are anticipated or proposed to be authorized, and therefore are not discussed further.

NMFS defines a noise-induced threshold shift (TS) as a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). The amount of threshold shift is customarily expressed in dB. A TS can be permanent or temporary. As described in NMFS (2018), there are numerous factors to consider when examining the consequence of TS, including, but not limited to, the signal temporal pattern (*e.g.,* impulsive or non-impulsive), likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of the TS, time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (*i.e.,* spectral content), the hearing and vocalization frequency range of the exposed species relative to the signal's frequency spectrum (*i.e.,* how animal uses sound within the frequency band of the signal; *e.g.,* Kastelein *et al.,* 2014), and the overlap between the animal and the source (*e.g.,* spatial, temporal, and spectral).

Permanent Threshold Shift (PTS)—NMFS defines PTS as a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). Available data from humans and other terrestrial mammals indicate that a 40 dB threshold shift approximates PTS onset (see Ward *et al.,* 1958, 1959; Ward, 1960; Kryter *et al.,* 1966; Miller, 1974; Ahroon *et al.,* 1996; Henderson *et al.,* 2008). PTS levels for marine mammals are estimates, because there are limited empirical data measuring PTS in marine mammals (*e.g.,* Kastak *et al.,* 2008), largely due to the fact that, for various ethical reasons, experiments involving anthropogenic noise exposure at levels inducing PTS are not typically pursued or authorized (NMFS, 2018).

Temporary Threshold Shift (TTS)—TTS is a temporary, reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). Based on data from cetacean TTS measurements (see Southall *et al.,* 2007), a TTS of 6 dB is considered the minimum threshold shift clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Schlundt *et al.,* 2000; Finneran *et al.,* 2000, 2002). As described in Finneran (2015), marine mammal studies have shown the amount of TTS increases with cumulative sound exposure level (SEL_{cum}) in an accelerating fashion: At low exposures with lower SEL_{cum}, the amount of TTS is typically small and the growth curves have shallow slopes. At exposures with higher SEL_{cum}, the growth curves become steeper and approach linear relationships with the noise SEL.

Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced,

TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin, beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaeorientalis*), and five species of pinnipeds exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise) in laboratory settings (Finneran, 2015). TTS was not observed in trained spotted (*Phoca largha*) and ringed (*Pusa hispida*) seals exposed to impulsive noise at levels matching previous predictions of TTS onset (Reichmuth *et al.,* 2016). In general, harbor seals and harbor porpoises have a lower TTS onset than other measured pinniped or cetacean species (Finneran, 2015). At low frequencies, onset-TTS exposure levels are higher compared to those in the region of best sensitivity (*i.e.,* a low frequency noise would need to be louder to cause TTS onset when TTS exposure level is higher), as shown for harbor porpoises and harbor seals (Kastelein *et al.,* 2019a, 2019b, 2020a, 2020b). In addition, TTS can accumulate across multiple exposures, but the resulting TTS will be less than the TTS from a single, continuous exposure with the same SEL (Finneran *et al.,* 2010; Kastelein *et al.,* 2014; Kastelein *et al.,* 2015a; Mooney *et al.,* 2009). This means that TTS predictions based on the total, cumulative SEL will overestimate the amount of TTS from intermittent exposures, such as sonars and impulsive sources.

The potential for TTS from impact pile driving exists. After exposure to playbacks of impact pile driving sounds (rate 2,760 strikes/hour) in captivity, mean TTS increased from 0 dB after 15 minute exposure to 5 dB after 360 minute exposure; recovery occurred within 60 minutes (Kastelein *et al.,* 2016). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. No data are available on noise-induced hearing loss for mysticetes. Nonetheless, what we considered is the best available science. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.* (2007, 2019), Finneran and Jenkins (2012), Finneran (2015), and Table 5 in NMFS (2018).

Installing piles for this project requires impact pile driving. There would likely be pauses in activities producing the sound during each day. Given these pauses and the fact that many marine mammals are likely moving through the project areas and not remaining for extended periods of time, the potential for TS declines.

Behavioral Harassment—Exposure to noise from pile driving and removal also has the potential to behaviorally disturb marine mammals. Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007; NRC, 2005).

Disturbance may result in changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); or avoidance of areas where sound sources are located. Pinnipeds may increase their haul out time, possibly to avoid in-water disturbance (Thorson and Reyff, 2006). Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.,* 1995; Wartzok *et al.,* 2004; Southall *et al.,* 2007; Weilgart, 2007; Archer *et al.,* 2010; Southall *et al.,* 2021). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.,* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). In general, pinnipeds seem more tolerant of, or at least habituate more quickly to, potentially disturbing underwater sound than do cetaceans, and generally seem to be less responsive to exposure to industrial sound than most cetaceans. Please see Appendices B and C of Southall *et al.* (2007) as well as Nowacek *et al.* (2007); Ellison *et al.* (2012), and Gomez *et al.* (2016) for a review of studies involving marine mammal behavioral responses to sound.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.,* 2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007; Melcón *et al.,* 2012). In addition, behavioral state of the animal plays a role in the type and severity of a behavioral response, such as disruption to foraging (*e.g.,* Sivle *et al.,* 2016; Wensveen *et al.,* 2017). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal (Goldbogen *et al.,* 2013).

Stress responses—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.,* Selye, 1950; Moberg, 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically

involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.,* Moberg, 1987; Blecha, 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.,* 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and ''distress'' is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well-studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker, 2000; Romano *et al.,* 2002b) and, more rarely, studied in wild populations (*e.g.,* Romano *et al.,* 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003), however distress is an unlikely result of these projects based on observations of marine mammals during previous, similar projects in the area.

Masking—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.,* 1995). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* pile driving, shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions. Masking of natural sounds can result when human activities produce high levels of background sound at frequencies important to marine mammals. Conversely, if the background level of underwater sound is high (*e.g.,* on a day with strong wind and high waves), an anthropogenic sound source would not be detectable as far away as would be possible under quieter conditions and would itself be masked. The masking of communication signals by anthropogenic noise may be considered as a reduction in the communication space of animals (*e.g.,* Clark *et al.,* 2009) and may result in energetic or other costs as animals change their vocalization behavior (*e.g.,* Miller *et al.,* 2000; Foote *et al.,* 2004; Parks *et al.,* 2007; Di Iorio and Clark, 2010; Holt *et al.,* 2009). The Harbor is heavily used by commercial and recreational vessels, and background sound levels in the area are already elevated. Normal ambient noise levels in the Harbor include vessel motors, heavy vehicular traffic on the bridge, and construction noise from the dry dock repair facility, commercial charters, and significant water traffic. Due to the transient nature of marine mammals to move and avoid disturbance, masking is not likely to have long-term impacts on marine mammal species within the proposed project area.

Airborne Acoustic Effects—Pinnipeds that occur near the project site could be exposed to airborne sounds associated with pile driving and removal that have the potential to cause behavioral harassment, depending on their distance from pile driving activities. Airborne noise would primarily be an issue for pinnipeds that are swimming or hauled out near the project site within the range of noise levels elevated above the acoustic criteria. We recognize that pinnipeds in the water could be exposed to airborne sound that may result in behavioral harassment when looking with their heads above water. Most likely, airborne sound would cause behavioral responses similar to those discussed above in relation to underwater sound. For instance, anthropogenic sound could cause hauled out pinnipeds to exhibit changes in their normal behavior, such as reduction in vocalizations, or cause them to temporarily abandon the area and move further from the source. However, these animals would likely previously have been ''taken'' because of exposure to underwater sound above the behavioral harassment thresholds, which are generally larger than those associated with airborne sound. Thus, the behavioral harassment of these animals is already accounted for in these estimates of potential take. Therefore, we do not believe that authorization of incidental take resulting from airborne sound for pinnipeds is warranted, and airborne sound is not discussed further here.

Marine Mammal Habitat Effects

The City's proposed construction activities could have localized, temporary impacts on marine mammal habitat, including prey, by increasing in-water sound pressure levels and slightly decreasing water quality. Increased noise levels may affect acoustic habitat (see masking discussion above) and adversely affect marine mammal prey in the vicinity of the project areas (see discussion below). During impact and vibratory pile driving or removal, elevated levels of underwater noise would ensonify the project area where both fishes and mammals occur, and could affect foraging success. Additionally, marine mammals may avoid the area during construction, however, displacement due to noise is expected to be temporary and is not expected to result in long-term effects to the individuals or populations. Construction activities are expected to be of short duration and would likely have temporary impacts on

marine mammal habitat through increases in underwater and airborne sound.

A temporary and localized increase in turbidity near the seafloor would occur in the immediate area surrounding the area where piles are installed or removed. In general, turbidity associated with pile installation is localized to about a 25-ft (7.6-m) radius around the pile (Everitt *et al.,* 1980). Any pinnipeds could avoid localized areas of turbidity. Local currents are anticipated to disburse any additional suspended sediments produced by project activities at moderate to rapid rates depending on tidal stage. Therefore, we expect the impact from increased turbidity levels to be discountable to marine mammals and do not discuss it further.

In-Water Construction Effects on Potential Foraging Habitat—The area likely impacted by the Murray St. Bridge retrofit project is relatively small compared to the total available habitat in the Harbor. The proposed project area is highly influenced by anthropogenic activities, and provides limited foraging habitat for marine mammals. Furthermore, pile driving and removal at the proposed project site would not obstruct long-term movements or migration of marine mammals.

Avoidance by potential prey (*i.e.,* fish) of the immediate area due to the temporary loss of this foraging habitat is also possible. The duration of fish and marine mammal avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution, and behavior is anticipated. Any behavioral avoidance by prey of the disturbed area would still leave significantly large areas of potential foraging habitat in the nearby vicinity.

In-Water Construction Effects on Potential Prey—Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.,* crustaceans, cephalopods, fish, zooplankton, other marine mammals). Marine mammal prey varies by species, season, and location. Here, we describe studies regarding the effects of noise on known marine mammal prey.

Fish utilize the soundscape and components of sound in their environment to perform important functions such as foraging, predator avoidance, mating, and spawning (*e.g.,* Zelick and Mann, 1999; Fay, 2009). Depending on their hearing anatomy and peripheral sensory structures, which vary among species, fishes hear sounds using pressure and particle motion sensitivity capabilities and detect the motion of surrounding water (Fay *et al.,* 2008). The potential effects of noise on fishes depends on the overlapping frequency range, distance from the sound source, water depth of exposure, and species-specific hearing sensitivity, anatomy, and physiology. Key impacts to fishes may include behavioral responses, hearing damage, barotrauma (pressure-related injuries), and mortality.

Fish react to sounds which are especially strong and/or intermittent low-frequency sounds, and behavioral responses such as flight or avoidance are the most likely effects. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. The reaction of fish to noise depends on the physiological state of the fish, past exposures, motivation (*e.g.,* feeding, spawning, migration), and other environmental factors. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish; several are based on studies in support of large, multiyear bridge construction projects (*e.g.,* Scholik and Yan, 2001; Popper and Hastings, 2009). Many studies have demonstrated that impulse sounds might affect the distribution and behavior of some fishes, potentially impacting foraging opportunities or increasing energetic costs (*e.g.,* Fewtrell and McCauley, 2012; Pearson *et al.,* 1992; Skalski *et al.,* 1992; Santulli *et al.,* 1999; Paxton *et al.,* 2017). In response to pile driving, Pacific sardines and northern anchovies may exhibit an immediate startle response to individual strikes, but return to ''normal'' pre-strike behavior following the conclusion of pile driving with no evidence of injury as a result (Appendix C in NAVFAC SW, 2014). However, some studies have shown no or slight reaction to impulse sounds (*e.g.,* Pena *et al.,* 2013; Wardle *et al.,* 2001; Jorgenson and Gyselman, 2009; Popper *et al.,* 2005).

SPLs of sufficient strength have been known to cause injury to fish and fish mortality. However, in most fish species, hair cells in the ear continuously regenerate and loss of auditory function likely is restored when damaged cells are replaced with new cells. Halvorsen *et al.* (2012a) showed that a TTS of 4–6 dB was recoverable within 24 hours for one species. Impacts would be most severe when the individual fish is close to the source and when the duration of exposure is long. Injury caused by barotrauma can range from slight to severe and can cause death, and is most likely for fish with swim bladders. Barotrauma injuries have been documented during controlled exposure to impact pile driving (Halvorsen *et al.,* 2012b; Casper *et al.,* 2013).

The most likely impact to fishes from pile driving and removal and construction activities at the project area would be temporary behavioral avoidance of the area. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution, and behavior is anticipated. In general, impacts to marine mammal prey species are expected to be minor and temporary. Further, it is anticipated that preparation activities for pile driving or removal (*i.e.,* positioning of the hammer) and upon initial startup of devices would cause fish to move away from the affected area outside areas where injuries may occur. Therefore, relatively small portions of the proposed project area would be affected for short periods of time, and the potential for effects on fish to occur would be temporary and limited to the duration of sound-generating activities.

In summary, given the short daily duration of sound associated with individual pile driving events and the relatively small areas being affected, pile driving activities associated with the proposed actions are not likely to have a permanent, adverse effect on any fish habitat, or populations of fish species. Any behavioral avoidance by fish of the disturbed area would still leave significantly large potential areas fish and marine mammal foraging habitat in the nearby vicinity. Thus, we conclude that impacts of 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 marine mammal habitat are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on their populations.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of ''small numbers,'' and the negligible impact determinations.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment);

or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would primarily be by Level B harassment, as use of the acoustic source (*i.e.,* impact pile driving) has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result, primarily for phocids because predicted auditory injury zones are larger than for otariids. Auditory injury is unlikely to occur for otariids. The proposed mitigation and monitoring measures are expected to minimize the severity of the taking to the extent practicable.

As described previously, no serious injury or mortality is anticipated or proposed to be authorized for this activity. Below we describe how the proposed take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimates.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.,* frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.,* bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.,* Southall *et al.,* 2007, 2021, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 120 dB (referenced to 1 micropascal (re 1 µPa)) for continuous (*e.g.,* vibratory pile-driving, drilling) and above RMS SPL 160 dB re 1 µPa for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources. Generally speaking, Level B harassment take estimates based on these behavioral harassment thresholds are expected to include any likely takes by TTS as, in most cases, the likelihood of TTS occurs at distances from the source less than those at which behavioral harassment is likely. TTS of a sufficient degree can manifest as behavioral harassment, as reduced hearing sensitivity and the potential reduced opportunities to detect important signals (conspecific communication, predators, prey) may result in changes in behavior patterns that would not otherwise occur.

The City of Santa Cruz's proposed construction activity includes the use of continuous (vibratory pile driving and removal) and impulsive (impact pile driving) sources, and therefore the RMS SPL thresholds of 120 and 160 dB re 1 µPa are applicable.

Level A Harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). The City's proposed activity includes the use of impulsive (impact hammer) and non-impulsive (vibratory hammer) sources.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2018 Technical Guidance, which may be accessed at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 4—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{p,0\text{-pk,flat}}$: 219 dB; $L_{E,p,LF,24h}$: 183 dB	*Cell 2:* $L_{E,p,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{p,0\text{-pk,flat}}$: 230 dB; $L_{E,p,MF,24h}$: 185 dB	*Cell 4:* $L_{E,p,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{p,0\text{-pk,flat}}$: 202 dB; $L_{E,p,HF,24h}$: 155 dB	*Cell 6:* $L_{E,p,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{p,0\text{-pk,flat}}$: 218 dB; $L_{E,p,PW,24h}$: 185 dB	*Cell 8:* $L_{E,p,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{p,0\text{-pk,flat}}$: 232 dB; $L_{E,p,OW,24h}$: 203 dB	*Cell 10:* $L_{E,p,OW,24h}$: 219 dB.

* Dual metric thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds are recommended for consideration.

Note: Peak sound pressure level ($L_{p,0\text{-}pk}$) has a reference value of 1 μPa, and weighted cumulative sound exposure level ($L_{E,p}$) has a reference value of 1μPa²s. In this Table, thresholds are abbreviated to be more reflective of International Organization for Standardization standards (ISO, 2017). The subscript ''flat'' is being included to indicate peak sound pressure are flat weighted or unweighted within the generalized hearing range of marine mammals (*i.e.,* 7 Hz to 160 kHz). The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The weighted cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that are used in estimating the area ensonified above the acoustic thresholds, including source levels and transmission loss coefficient.

The sound field in the project area is the existing background noise plus additional construction noise from the proposed project. Marine mammals are expected to be affected by sound generated by the primary components of the project (*i.e.,* impact and vibratory pile driving).

In order to calculate distances to the Level A harassment and Level B harassment thresholds for the methods and piles being used in this project, the City used acoustic monitoring data from various similar locations to develop source levels for the different pile types, sizes, and methods proposed for use (Table 5).

TABLE 5—SOURCE LEVELS FOR PROPOSED REMOVAL AND INSTALLATION ACTIVITIES

Activity	Location	Pile size/type	Method	Peak sound pressure (dB re 1 μPa)	Mean maximum RMS SPL (dB re 1 μPa)	SEL (dB re 1 μPa2 sec)	Source
Removal of existing bridge piles. Removal of dock FF&T piles.	Bridge Bent 6. Dock FF & BY.	14″ P/C concrete	Vibratory ...	171	163	155	NAVFAC SW, 2022.
Install new permanent bridge piles.	Bridge Bents 4 through 8	30″ steel in CISS	Impact	210	190	177	Caltrans, 2015.
Install new permanent bridge piles.	Bridge Bents 4 through 8	30″ steel in CISS	Vibratory ...	196	159	175	Caltrans, 2020.
Install new permanent bridge piles.	Dock FF&T piles	14″ P/C concrete	Impact	185	170	160	Caltrans, 2020.
Install new permanent bridge piles.	Dock FF&T piles	14″ P/C concrete	Vibratory ...	171	163	155	NAVFAC SW, 2022.
Install temporary trestle piles ...	Adjacent to bridge	20″ steel [1]	Vibratory ...	194	154	NA	Caltrans, 2015.

[1] 24″ steel pipe used as a proxy for 20″ steel pile for vibratory pile driving.

Level B Harassment Zones

Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$$TL = B * \mathrm{Log}_{10}(R_1/R_2),$$

where

TL = transmission loss in dB
B = transmission loss coefficient; for practical spreading equals 15
R_1 = the distance of the modeled SPL from the driven pile, and
R_2 = the distance from the driven pile of the initial measurement

The recommended TL coefficient for most nearshore environments is the practical spreading value of 15. This value results in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions, which is the most appropriate assumption for the City's proposed activities. The City assumed an open water attenuation rate of 4.5 dB per doubling of distance. The Level B harassment zones and ensonified area for the City's proposed activities are shown in Table 6.

TABLE 6—DISTANCES TO LEVEL B HARASSMENT THRESHOLDS

Pile type/size	Method	Projected radial distance to Level B harassment threshold (m)
Year 1		
14″ P/C concrete	Vibratory	7,356
Year 2		
30″ steel pipe pile in CISS	Impact	1,000
	Vibratory	3,981
14″ p/c concrete	Impact	46
	Vibratory	7,356

TABLE 6—DISTANCES TO LEVEL B HARASSMENT THRESHOLDS—Continued

Pile type/size	Method	Projected radial distance to Level B harassment threshold (m)
20″ steel pipe piles	Vibratory	1,848

Level A Harassment Zones

The ensonified area associated with Level A harassment is more technically challenging to predict due to the need to account for a duration component. Therefore, NMFS developed an optional User Spreadsheet tool to accompany the Technical Guidance that can be used to relatively simply predict an isopleth distance for use in conjunction with marine mammal density or occurrence to help predict potential takes. We note that because of some of the assumptions included in the methods underlying this optional tool, we anticipate that the resulting isopleth estimates are typically going to be overestimates of some degree, which may result in an overestimate of potential take by Level A harassment. However, this optional tool offers the best way to estimate isopleth distances when more sophisticated modeling methods are not available or practical. For stationary sources such as pile installation or removal, the optional User Spreadsheet tool predicts the distance at which, if a marine mammal remained at that distance for the duration of the activity, it would be expected to incur PTS. The isopleths generated by the User Spreadsheet used the same TL coefficient as the Level B harassment zone calculations (*i.e.,* the practical spreading value of 15). Inputs in the User Spreadsheet tool (*i.e.,* number of piles per day, duration, and/or strikes per pile) are presented in Table 1. The maximum RMS SPL/SEL SPL for each pile type are presented in Table 5. Resulting Level A harassment isopleths are reported below in Table 7.

TABLE 7—DISTANCES TO LEVEL A HARASSMENT THRESHOLDS

Pile type/size	Method	Projected distances to Level A harassment threshold (m)	
		Phocids	Otariids
Year 1			
14″ P/C concrete	Vibratory	22.6	1.6
Year 2			
30″ steel pipe pile in CISS	Impact	300	22
	Vibratory	12.3	1
14″ p/c concrete	Impact	13	1
	Vibratory	22.6	1.6
20″ steel pipe piles	Vibratory	5.7	0.4

Marine Mammal Occurrence

In this section we provide information about the occurrence of marine mammals, including density or other relevant information that will inform the take calculations. Unless otherwise specified, the term ''pile driving'' in this section, and all following sections, may refer to either pile installation or removal. NMFS has carefully reviewed the City's analysis and concludes that it represents an appropriate and accurate method for estimating incidental take that may be caused by the City's activities.

Daily occurrence estimates of marine mammals in the proposed project area are based upon marine mammal surveys conducted in the vicinity of the Murray St. Bridge by EcoSystems West Consulting Group. Survey sessions were conducted in December 2006, September 2009 through October 2009. Of these monitoring years, the maximum counts of California sea lions and harbor seals were observed in 2009 (Table 8). As the 2009 surveys occurred during the fall season and the proposed project would occur during the summer and fall seasons, the 2009 data are likely representative of maximum occurrences that could be expected in the proposed project area.

TABLE 8—MAXIMUM COUNTS OF SPECIES LIKELY IMPACTED BY PROPOSED ACTIVITIES

Species	2006 Monitoring	2009 Monitoring
California sea lion	1	15
Harbor seal	6	11

Take Estimation

Here we describe how the information provided above is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur and proposed for authorization.

Maximum occurrence estimates (reported in Table 8) were multiplied by the number of days of pile removal and installation (14 days in Year 1; 98 days in Year 2) to calculate estimated take by Level B harassment of California sea lions and harbor seals (Table 9). The City assumed a maximum of two harbor seals would be present in the proposed project area that may be impacted during the 37 days of impact pile driving. The expected occurrence of two harbor seals was multiplied by the number of impact pile driving days (37) to estimate take by Level A harassment of harbor seals. Given the very small Level A harassment isopleths for California sea lions and proposed mitigation measures, Level A harassment of California sea lions is not requested or expected. By using the sighting-based approach, take values are not affected by the estimated harassment distances from Tables 6 and 7. NMFS has carefully reviewed these methods and agrees with this approach.

TABLE 9—ESTIMATED PROPOSED TAKE BY LEVEL A AND LEVEL B HARASSMENT AND PERCENT OF STOCK PROPOSED TO BE AUTHORIZED FOR TAKE

Species	Maximum number of animals expected to occur/day	Maximum total days of in-water work [1]	Proposed take by Level A harassment	Proposed take by Level B harassment	Total proposed take	Percent of stock proposed for take
Year 1						
Harbor Seal	11	14	0	154	154	0.49
California Sea Lion	15	14	0	210	210	0.082
Year 2						
Harbor Seal	11	98	[2] 74	1,078	1,152	3.72
California Sea Lion	15	98	0	1,470	1,470	0.57

[1] Includes potential temporary trestle installation/removal.
[2] Assumes a maximum of 2 harbor seals sighted per day that may be impacted and 37 days of impact pile driving.

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned); and

(2) The practicability of the measures for applicant implementation, which may consider such things as cost and impact on operations.

Shutdown Zones

Prior to commencement of in-water construction activities, the City would establish shutdown zones for all activities. The purpose of a shutdown zone is to define an area within which shutdown of the activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). During all in-water construction activities, the City will implement a standard minimum 10 m (32.8 ft) shutdown zone. If a marine mammal enters the shutdown zone, in-water activities would be stopped until visual confirmation that the animal has left the zone of the animal is not sighted for 15 minutes.

All marine mammals will be monitored in the Level B harassment zones and throughout the area as far as visual monitoring can take place. If a marine mammal enters the Level B harassment zone, in-water activities will continue and the animal's presence within the estimated harassment zone will be documented. Pile driving activity must be halted upon observation of either a species for which incidental take is not authorized or a species for which incidental take has been authorized but the authorized number of takes has been met, entering or within the harassment zone.

TABLE 10—SHUTDOWN ZONES AND LEVEL B HARASSMENT ZONES

Pile size, type, and method	Minimum shutdown zone (m)		Level B harassment zone (m)
	Phocid	Otariid	
Year 1			
14″ p/c concrete vibratory removal	10	10	7,356
Year 2			
14″ p/c concrete vibratory install/removal	10	10	7,356
14″ p/c concrete impact install			46
30″ steel pile in CISS impact install			1,000
30″ steel pile in CISS vibratory install			3,981
20″ steel pile vibratory install			1,848

Protected Species Observers

The placement of protected species observers (PSOs) during all pile driving activities (described in the Proposed Monitoring and Reporting section) would ensure that the entire shutdown zone is visible. Should environmental conditions deteriorate such that the entire shutdown zone would not be visible (*i.e.,* fog, heavy rain), pile driving would be delayed until the PSO is confident marine mammals within the shutdown zone could be detected.

Pre-Activity Monitoring

Prior to the start of daily in-water construction activity, or whenever a break in pile driving of 30 minutes or longer occurs, PSOs would observe the shutdown zone and monitoring zones for a period of 30 minutes. The shutdown zone would be considered cleared when a marine mammal has not been observed within the zone for that 30-minute period. If a marine mammal is observed within the shutdown zones listed in Table 10, pile driving activity would be delayed or halted. If work ceases for more than 30 minutes, the pre-activity monitoring of the shutdown zones would commence. A determination that the shutdown zone is clear must be made during a period of good visibility (*i.e.,* the entire shutdown zone and surrounding waters must be visible to the naked eye).

Pre-construction monitoring will also take place over the course of at least 5 days before commencing in-water construction activities. The purpose of this monitoring effort would be to update occurrence information on marine mammals in the project area. Specifically, this monitoring would cover a period of at least 1 week for 4 hours each day.

Soft-Start Procedures

Soft-start procedures provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact pile driving, contractors would be required to provide an initial set of three strikes from the hammer at reduced energy, followed by a 30-second waiting period, then two subsequent reduced-energy strike sets. Soft-start would be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer.

Based on our evaluation of the City's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

Visual Monitoring

Marine mammal monitoring during pile driving activities would be conducted by PSOs meeting the following NMFS requirements:

- Independent PSOs (*i.e.,* not construction personnel) who have no other assigned tasks during monitoring periods would be used;
- At least one PSO would have prior experience performing the duties of a PSO during construction activity

pursuant to a NMFS-issued incidental take authorization;

- Other PSOs may substitute education (degree in biological science or related field) or training for experience; and
- Where a team of three or more PSOs is required, a lead observer or monitoring coordinator would be designated. The lead observer would be required to have prior experience working as a marine mammal observer during construction.

PSOs would have the following additional qualifications:

- Ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

The City would have at least one PSO stationed at the best possible vantage points in the project area to monitor during all pile driving activities. If a PSO sights a marine mammal in the shutdown zone, the PSO should notify the equipment operator to shut down. The PSO will let the contractor know when activities can re-commence. Additional PSOs may be employed during periods of low or obstructed visibility to ensure the entirety of the shutdown zones are monitored. A marine mammal monitoring plan will be developed and submitted to NMFS for approval prior to commencing in-water construction activities.

Reporting

A draft marine mammal monitoring report would be submitted to NMFS within 90 days after the completion of pile driving activities for each IHA, or 60 days prior to a requested date of issuance of any future IHAs for the project, or other projects at the same location, whichever comes first. The marine mammal report would include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO datasheets. Specifically, the report would include:

- Dates and times (begin and end) of all marine mammal monitoring;
- Construction activities occurring during each daily observation period, including: (a) How many and what type of piles were driven or removed and the method (*i.e.,* impact or vibratory); and (b) the total duration of time for each pile (vibratory driving) or number of strikes for each pile (impact driving);
- PSO locations during marine mammal monitoring; and
- Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance.

PSOs would record all incidents of marine mammal occurrence, regardless of distance from activity, and would document any behavioral reactions in concert with distance from piles being driven or removed. Specifically, PSOs will record the following:

- Name of PSO who sighted the animal(s) and PSO location and activity at time of sighting;
- Time of sighting;
- Identification of the animal(s) (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species;
- Distance and location of each observed marine mammal relative to the pile being driven or hole being drilled for each sighting;
- Estimated number of animals (min/max/best estimate);
- Estimated number of animals by cohort (adults, juveniles, neonates, group composition, *etc.*);
- Description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.,* no response or changes in behavioral state such as ceasing feeding, changing direction, or flushing);
- Number of marine mammals detected within the harassment zones, by species; and
- Detailed information about implementation of any mitigation (*e.g.,* shutdowns and delays), a description of specified actions that ensued, and resulting changes in behavior of the animal(s), if any.

If no comments are received from NMFS within 30 days, the draft report would constitute the final reports. If comments are received, a final report addressing NMFS' comments would be required to be submitted within 30 days after receipt of comments. All PSO datasheets and/or raw sighting data would be submitted with the draft marine mammal report.

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the City of Santa Cruz would report the incident to the Office of Protected Resources (OPR), NMFS (*PR.ITP.MonitoringReports@noaa.gov*) and to the West Coast regional stranding network (866–767–6114) as soon as feasible. If the death or injury was clearly caused by the specified activity, the City of Santa Cruz must immediately cease the activities until NMFS OPR is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the IHAs. The City of Santa Cruz would not resume their activities until notified by NMFS.

The report would include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken''

through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.,* intensity, duration), the context of any impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the discussion of our analysis applies to California sea lions and harbor seals, given that the anticipated effects of this activity on these different marine mammal stocks are expected to be similar. Where there are meaningful differences between these species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, they are described independently in the analysis below.

Pile installation and removal activities have the potential to disturb or displace marine mammals. Specifically, the project activities may result in take, in the form of Level B harassment and, for harbor seals, Level A harassment, from underwater sounds generated from impact pile installation and vibratory pile installation and removal activities. Potential takes could occur if individuals move into the ensonified zones when these activities are underway.

No serious injury or mortality would be expected, even in the absence of required mitigation measures, given the nature of the activities. Further, no take by Level A harassment is anticipated for California sea lions due to the application of planned mitigation measures, such as shutdown zones that encompass the Level A harassment zones for this species. The potential for harassment would be minimized through the construction method and the implementation of the planned mitigation measures (see Proposed Mitigation section).

Take by Level A harassment is proposed for harbor seals during Year 2 as the Level A harassment zone for impact pile driving exceeds the size of the shutdown zone for this activity. Therefore, there is the possibility that an animal could enter a Level A harassment zone without being detected, and remain within that zone for a duration long enough to incur PTS. Any take by Level A harassment is expected to arise from, at most, a small degree of PTS (*i.e.,* minor degradation of hearing capabilities within regions of hearing that align most completely with the energy produced by impact pile driving such as the low-frequency region below 2 kHz), not severe hearing impairment or impairment within the ranges of greatest hearing sensitivity. Animals would need to be exposed to higher levels and/or longer duration than are expected to occur here in order to incur any more than a small degree of PTS.

Further, the amount of take proposed for authorization by Level A harassment for species is very low. For California sea lions, NMFS anticipates and proposes to authorize no Level A harassment take over the duration of the City's planned activities; for harbor seals, NMFS proposes to authorize no take by Level A harassment in Year 1 and no more than 74 takes by Level A harassment in Year 2. If hearing impairment occurs, it is most likely that the affected animal would lose only a few decibels in its hearing sensitivity. Due to the small degree anticipated, any PTS potential incurred would not be expected to affect the reproductive success or survival of any individuals, much less result in adverse impacts on the species or stock.

The takes from Level B harassment would be due to potential behavioral disturbance. On the basis of reports in the literature as well as monitoring from other similar activities, effects would likely be limited to reactions such as avoidance, increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.,* Thorson and Reyff 2006; NAVFAC SW, 2018). Most likely, individuals would simply move away from the sound source and temporarily avoid the area where pile driving is occurring. If sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the area while the activities are occurring. Marine mammals could also experience TTS if they move into the Level B monitoring zone. TTS is a temporary loss of hearing sensitivity when exposed to loud sound, and the hearing threshold is expected to recover completely within minutes to hours. Thus, it is not considered an injury. While TTS could occur, it is not considered a likely outcome of this activity. We expect that any avoidance of the project areas by marine mammals would be temporary in nature and that any marine mammals that avoid the project areas during construction would not be permanently displaced. Short-term avoidance of the project areas and energetic impacts of interrupted foraging or other important behaviors is unlikely to affect the reproduction or survival of individual marine mammals, and the effects of behavioral disturbance on individuals is not likely to accrue in a manner that would affect the rates of recruitment or survival of any affected stock. The potential for harassment is minimized through construction methods and the implementation of planned mitigation strategies (see Proposed Mitigation section).

Anticipated and authorized takes are expected to be limited to short-term Level A (potential PTS) and Level B harassment (behavioral disturbance) as construction activities will occur over the course of 14 days in Year 1 and 98 days in Year 2.

Take would also occur within a limited, confined area of each stock's range. Level A and Level B harassment would be reduced to the level of least practicable adverse impact through use of mitigation measures described herein. Further, the amount of take authorized is extremely small when compared to stock abundance.

No marine mammal stocks for which incidental take authorization is proposed are listed as threatened or endangered under the ESA or determined to be strategic or depleted under the MMPA. The relatively low marine mammal occurrences in the area, small shutdown zones, and proposed monitoring make injury takes of marine mammals unlikely. The shutdown zones would be thoroughly monitored before the proposed pile installation or removal begins, and construction activities would be postponed if a marine mammal is sighted within the shutdown zone. There is a high likelihood that marine mammals would be detected by trained observers under environmental conditions described for the proposed project. Therefore, the proposed mitigation and monitoring measures are expected to reduce the amount and intensity for Level A and Level B behavioral harassment. Furthermore, the pile installation and removal activities analyzed here are similar to, or less impactful than, numerous construction activities conducted in other similar locations which have occurred with no reported injuries or mortality to marine mammals, and no known long-term adverse consequences from behavioral harassment.

The proposed project is not expected to have significant adverse effects on marine mammal habitat. There are no Biologically Important Areas or ESA-designated critical habitat within the project area, and the proposed activities would not permanently modify existing marine mammal habitat. The activities may cause fish to leave the area temporarily. This could impact marine mammals' foraging opportunities in a limited portion of the foraging range, however, due to the short duration of activities and the relatively small area of affected habitat, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activities would have only minor, short-term effects on individuals. The specified activities are not expected to impact reproduction or survival of any individual marine mammals, much less affect rates of recruitment or survival and would therefore not result in population-level impacts.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect any of the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or authorized;
- No Level A harassment of California sea lions is proposed;
- The small Level A harassment takes of harbor seals proposed for authorization are expected to be of a small degree;
- The intensity of anticipated takes by Level B harassment is relatively low for all stocks. Level B harassment would primarily be in the form of behavioral disturbance, resulting in avoidance of the project areas around where pile driving or removal activities are occurring;
- Biologically important areas or critical habitat have not been identified within the project area;
- The lack of anticipated significant or long-term effects to marine mammal habitat;
- Effects on marine mammal prey species are expected to be short-term and, therefore, any associated impacts on marine mammal feeding are not expected to result in significant or long-term consequences for individuals, or to accrue to adverse impacts on their populations; and
- The efficacy of the mitigation measures in reducing the effects of the specified activities on all species and stocks.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The instances of take NMFS proposes to authorize is below one-third of the estimated stock abundance for all impacted stocks (Table 9). (In fact, take of individuals is less than 4 percent of the abundance for all affected stocks.) The number of animals that we expect to authorize to be taken would be considered small relative to the relevant stocks or populations, even if each estimated take occurred to a new individual. Furthermore, these takes are likely to only occur within a small portion of the each stock's range and the likelihood that each take would occur to a new individual is low.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to the City for conducting pile driving activities in the Harbor in July 2023 and July through September 2024, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.*

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this notice of proposed IHA for the proposed construction. We also request comment on the potential renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent renewal IHA.

On a case-by-case basis, NMFS may issue a one-time, 1-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical activities as described in the Description of Proposed Activities section of this notice is planned or (2) the activities as described in the Description of Proposed Activities section of this notice would not be completed by the time the IHA expires and a renewal

would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond 1 year from expiration of the initial IHA).
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: February 21, 2023.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–03910 Filed 2–24–23; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC681]

Takes of Marine Mammals Incidental To Specified Activities; Taking Marine Mammals Incidental to the Pillar Point Harbor Johnson Pier Expansion and Dock Replacement Project in Princeton, California

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from the San Mateo County Harbor District for authorization to take marine mammals incidental to the Pillar Point Harbor Johnson Pier Expansion and Dock Replacement Project in Princeton, California. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-time, 1-year renewal that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments section at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than March 29, 2023.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service and should be submitted via email to *ITP.Hotchkin@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Cara Hotchkin, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed IHA is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has

preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On August 10, 2022, NMFS received a request from the San Mateo County Harbor District (SMCHD) for an IHA to take marine mammals incidental to the Pillar Point Harbor Johnson Pier Expansion and Dock Replacement Project in Princeton, California. Following NMFS' review of the application and in response to our comments, SMCHD submitted revised versions on October 4, 2022, and December 6, 2022. The application was deemed adequate and complete on December 13, 2022. SMCHD's request is for take of harbor seals (*Phoca vitulina*) and California sea lions (*Zalophus californianus*) by Level A and Level B harassment. Neither SMCHD nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

This proposed IHA would cover 1 year of a larger project for which SMCHD intends to request take authorization for subsequent facets of the project. The larger 2-year project involves the expansion of the Johnson Pier commercial docks and fuel pier.

Description of Proposed Activity

Overview

The SMCHD is proposing the demolition and replacement/expansion of the Johnson Pier at Pillar Point Harbor in San Mateo County, California (Figure 1). Demolition of the North Timber Pier and the commercial floating docks and fuel dock would be followed by expansion of the pier and replacement of the commercial and fuel docks. The proposed project includes impact and vibratory pile driving and vibratory pile removal. Sounds resulting from pile driving and removal may result in the incidental take of marine mammals by Level A and Level B harassment in the form of auditory injury or behavioral harassment. Underwater sound would be constrained to the inner harbor area by solid rubble-mound breakwaters.

The purpose of this project is to replace existing deteriorated commercial floating docks (Dock D, E, F, G, H, and fuel dock), expand Johnson Pier to improve the safety of commercial fish handling operations, and complete minor concrete and utility repairs (see Figures 2 and 3). Approximately 7,200 square feet (sf) (669 square meters (m^2)) of deck area would be added to improve fish handling, forklift maneuvering, and truck turnarounds on the North Pier. Approximately 8,500 sf (790 m^2) would be added to the south end of the pier to allow for commercial vehicle operations. The commercial and fuel dock replacement segment would add approximately 20,000 sf (1,858 m^2) to improve capacity for fish handling and commercial fishery operations.

Dates and Duration

The proposed IHA would be effective from January 1, 2024 to December 31, 2025. The in-water construction period for the proposed action will occur over up to 130 days of pile driving and extraction over 12 months. The total project duration will last approximately 36 months, and may be performed in phases over a 5-year period. SMCHD anticipates the need for subsequent IHAs, including a potential renewal of this proposed IHA. SMCHD plans to conduct all work during daylight hours.

Specific Geographic Region

The project is located at the Pillar Point Harbor in the Community of Princeton, north of Half Moon Bay, San Mateo County, California. The project occurs within the Pillar Point inner harbor, which is contained by three solid rubble-mound breakwaters. Project activities will occur at floating docks Dock D, E, F, G, H, and fuel dock, north timber pier, north floats, east timber pier, and Johnson Pier.

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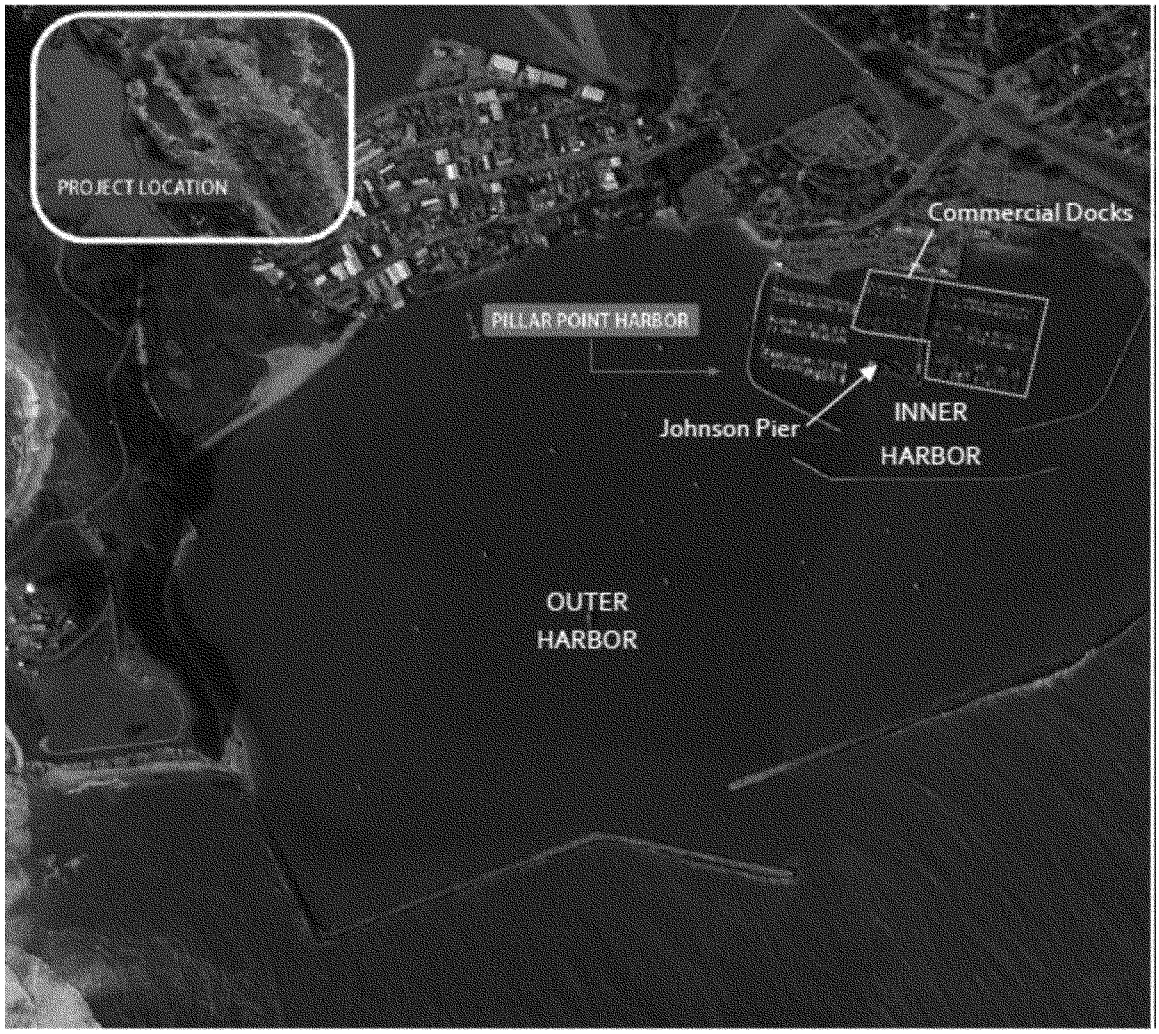

Figure 1—Map of Proposed Project Area in San Mateo County, California

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Detailed Description of Specific Activity

The purpose of this project is to replace existing deteriorated commercial floating docks (Dock D, E, F, G, H, and fuel dock), expand Johnson Pier to improve the safety of commercial fish handling operations, and complete minor concrete and utility repairs (see Figures 2 and 3 in the IHA application). Approximately 7,200 square feet (sf) (669 square meters (m^2)) of deck area would be added to improve fish handling, forklift maneuvering, and truck turnarounds on the North Pier. Approximately 8,500 sf (790 m^2) would be added to the south end of the pier to allow for commercial vehicle operations. The commercial and fuel dock replacement segment would add approximately 20,000 sf (1,858 m^2) to improve capacity for fish handling and commercial fishery operations.

Activity details for the work under this proposed IHA are provided in Table 1. In-water construction activities and specific project phases that would occur under this IHA are described in more detail below:

Pile Removal—Piles are anticipated to be removed with a vibratory hammer, or direct pull depending on site conditions. Since vibratory removal is the loudest activity, to be precautionary, we assume all piles would be removed with a vibratory hammer. If piles break during extraction, they would be cut below the mudline. Pile removal methods are described as follows:

- Vibratory Extraction—This method uses a barge-mounted crane with a vibratory driver to remove all pile types. The vibratory driver is suspended from a crane by a cable and positioned on top of the pile to loosen the pile from the sediment. Once the pile is released from the sediments, the crane continues to raise the driver and pull the pile from the sediment and place it on a barge; and
- Direct Pull—Piles may be removed by wrapping piles with a cable or chain and pulling them directly from the sediment with a crane. This method may be used depending on site conditions.

Pile Installation—The proposed pile installation would occur using barge-mounted cranes and vary in method based on pile type. Concrete piles would be installed using an impact hammer. Fiberglass would be installed using an impact hammer or vibratory hammer. Hydraulic Jetting, which works by directing pressurized water flow down the pile to liquefy the soils at the pile tip and reduce friction, allowing the pile to descend under its own weight, may also be used to install piles.

Johnson Pier Partial Demolition—The existing North Timber Pier will be completely demolished, and approximately 2,500 sf (232 m^2) of existing fixed timber pier and up to 55, 14-inch (in.) (0.36 m) diameter treated timber piles will be removed. On the North floats, approximately 1,900 sf (177 m^2) of existing floating docks and

up to seven, 14-in diameter square concrete piles will be removed. On the east timber pier, approximately 600 sf (56 m^2) of existing fixed treated timber pier and up to 20, 14-in treated timber piles will be removed.

Johnson Pier Expansion—The northern portion of the pier would be expanded by approximately 7,200 sf (669 m^2) and up to 65, 24-in (0.61 m) diameter precast concrete piles would be installed to replace the North Timber Pier. The southern portion of the pier would be expanded by approximately 8,500 sf (790 m^2) and up to 65, 24-in precast concrete piles would be installed.

Commercial Floating Dock and Fuel Dock Replacement—The existing commercial treated-timber floating docks and fuel dock would be demolished and removed, replacing and expanding the existing docks for an additional 20,000 sf (1,858 m^2), including removal of up to 190, 14-in diameter square concrete piles, and installation of up to 215, 16-in (0.41 m) diameter concrete or fiberglass piles and 15, 24-in concrete piles.

Minor Utility Improvements—This includes replacement of all power, potable water, and fire water utilities on the commercial docks, and relocation of the existing fuel lines, sewage pumpout and force main within the footprint of the commercial docks and Johnson Pier.

Concurrent Activities—In order to maintain project schedules, it is possible that multiple pieces of equipment would operate at the same time within the project area. Piles may be extracted and installed on the same day, with a maximum of one impact and one vibratory hammer operating simultaneously. The method of installation, and whether concurrent pile driving scenarios will be implemented, will be determined by the construction crew once the project has begun. Therefore, the total take estimate reflects the worst-case scenario for the proposed project.

Table 1 provides a summary of the pile driving activities. Vibratory pile driving could occur for up to 10 hours per day over 50 days, removing approximately five piles per day. Impact pile driving would occur over 80 days at an average rate of five piles installed per day.

TABLE 1—PILE INFORMATION FOR PROJECT SEGMENTS

Activity	Location	Number of piles	Type and size	Method	Total production days	Piles per day
Demolition	North Timber Pier	55	14-in Timber	Vibratory extract OR direct pull	50	5
	North Floats	7	14-in square concrete	Vibratory extract OR direct pull.		
	East Timber Pier	20	14-in Timber	Vibratory extract OR direct pull.		
	Commercial Dock Replacement	190	14-in square concrete	Vibratory extract OR direct pull.		
Installation	North Expansion	65	24-in Octagonal Concrete	Impact	80	5
	South Expansion	65	24-in Octagonal Concrete	Impact.		
	Commercial Dock Replacement	215	16-in concrete OR fiberglass	Impact OR vibratory*.		
		15	24-in Concrete	Impact.		
Total piles installed and extracted		632				
Total days pile driving/extraction/drilling					130	

*Installation of fiberglass piles would be via vibratory hammer with impact proofing.

In summary, the project period includes up to 130 days of pile installation and extraction activities for which incidental take authorization is requested.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions, incorporated here by reference, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species*).

Table 2 lists all species or stocks for which take is expected and proposed to be authorized for this activity, and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is anticipated or proposed to be authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species or stocks and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All stocks managed under the MMPA in this region are assessed in NMFS' U.S. Pacific SARs (*e.g.,* Caretta *et al.,* 2022), including the Draft 2022 SARs. All values presented in Table 2 are the most recent available at the time of publication and are available online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*).

TABLE 2—SPECIES LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [1]	Stock abundance (CV, Nmin, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
California Sea Lion	*Zalophus californianus*	United States	-/-, N	257,606 (N/A, 233,515, 2014)	14,011	>320
Family Phocidae (earless seals):						
Harbor Seal	*Phoca vitulina*	California	-/-, N	30,968 (N/A, 27,348, 2012)	1,641	43

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *www.nmfs.noaa.gov/pr/sars/.* CV is coefficient of variation; Nmin is the minimum estimate of stock abundance. In some cases, CV is not applicable [explain if this is the case].

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

As indicated above, both species in Table 2 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur. All species that could potentially occur in the proposed survey areas are included in Table 1 of the IHA application. While gray whale (*Eschrichtius robustus*), harbor porpoise (*Phocoena phocoena*), bottlenose dolphin (*Tursiops truncatus*), and northern elephant seals (*Mirounga angustirostris*) have been reported in the area, the temporal and/or spatial occurrence of these species is such that take is not expected to occur, and they are not discussed further beyond the explanation provided here. Pillar Point Harbor consists of inner and outer harbor sections enclosed by rubble mound breakwaters. The inner harbor is isolated from Half Moon Bay by both sets of breakwaters, and sound from the project is not expected to propagate outside of the inner harbor. Gray whale, harbor porpoise, bottlenose dolphin, and Northern elephant seals are not expected to occur within the inner harbor, and have never been sighted inside the inner harbor breakwaters. In the rare instance that one of these species does enter the inner harbor during construction activities, a shutdown would be implemented to avoid take of unauthorized species.

California Sea Lion

California sea lions occur from Vancouver Island, British Columbia, to the southern tip of Baja California. Sea lions breed on the offshore islands of southern and central California from May through July (Heath and Perrin, 2008). During the non-breeding season, adult and subadult males and juveniles migrate northward along the coast to central and northern California, Oregon, Washington, and Vancouver Island (Jefferson *et al.,* 1993). They return south the following spring (Heath and Perrin, 2008; Lowry and Forney, 2005). Females and some juveniles tend to remain closer to rookeries (Antonelis *et al.,* 1990; Melin *et al.,* 2008).

Pupping occurs primarily on the California Channel Islands from late May until the end of June (Peterson and Bartholomew, 1967). Weaning and mating occur in late spring and summer during the peak upwelling period (Bograd *et al.,* 2009). After the mating season, adult males migrate northward to feeding areas as far away as the Gulf of Alaska (Lowry *et al.,* 1992), and they remain away until spring (March–May), when they migrate back to the breeding colonies. Adult females generally remain south of Monterey Bay, California throughout the year, feeding in coastal waters in the summer and offshore waters in the winter, alternating between foraging and nursing their pups on shore until the next pupping/breeding season (Melin and DeLong, 2000; Melin *et al.,* 2008).

California sea lions regularly occur on rocks, buoys, and other structures. California sea lions were observed within the Project area during the field survey (Rincon, 2021). Breeding and pupping are not known to occur in the Project area. Based on anecdotal statements from Pillar Point Harbor operations staff, California sea lions could occur within the inner harbor area on a daily basis. Past observations indicate that sea lions rarely haul out within the Project area (Meyers, 2022).

Harbor Seal

Harbor seals are widely distributed in the North Atlantic and Pacific Oceans. In the North Pacific Ocean two subspecies occur: *Phoca vitulina stejnegeri* in the western North Pacific near Japan and *Phoca vitulina richardii* in the eastern North Pacific, including areas around the project site (Caretta *et al.,* 2022). Three stocks are currently recognized along the west coast of the continental U.S.: (1) California, (2) Oregon and Washington outer coast waters, and (3) inland waters of Washington (Caretta *et al.,* 2022). The California stock of Pacific harbor seals is found in the project action area and inhabits coastal and estuarine areas including sand bars, rocky shores, and beaches along the entire coast of California, including the offshore islands, forming small, relatively stable populations. Pacific harbor seals do not make extensive pelagic migrations like other pinnipeds, but do travel distances of 300–500 km to forage or find appropriate breeding habitat (Herder, 1986; Harvey and Goley, 2011). Harbor seals are rarely found more than 10.8 nautical miles from shore (Baird, 2001) and are generally are non-migratory (Burns, 2002; Jefferson *et al.,* 2008) and solitary at sea. Harbor seals spend more than 80 percent of their time in the upper 164 ft (50 m) of the water column (Womble *et al.,* 2014) and forage most commonly on fish, shellfish, and crustaceans.

The California stock of harbor seals breeds along the California coast from March to May and pupping occurs between April and May (Alden *et al.,* 2002; Reeves *et al.,* 2002). Molting occurs from late May through July or August and lasts approximately 6 weeks. In fall and winter, harbor seals spend less time on land, but they usually remain relatively close to shore while at sea. The peak haulout period for harbor seals in California is May through July (Caretta *et al.,* 2022).

Threats to the California stock include interactions with fisheries,

entanglement in marine debris, ship strikes, research-related deaths, entrainment in power plants, and human interactions/harassment (shootings, stabbing/gaff wounds, human-induced abandonment of pups) (Caretta *et al.,* 2022).

Harbor seals were observed within the Project area during the field survey and have been frequently documented within Pillar Point Harbor (Rincon, 2021). Breeding and pupping are not known to occur in the Project area. Based on anecdotal statements from Pillar Point Harbor operations staff, harbor seals could occur within the inner harbor area on a daily basis. Past observations indicate that harbor seals rarely haul out within the Project area (Meyers, 2022).

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, *etc.*). Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 3.

TABLE 3—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, Cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.,* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section provides a discussion of the ways in which components of the specified activity may impact marine mammals and their habitat. The Estimated Take section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and whether those impacts are reasonably expected to, or reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Description of Sound Sources

The marine soundscape is comprised of both ambient and anthropogenic sounds. Ambient sound is defined as the all-encompassing sound in a given place and is usually a composite of sound from many sources both near and far. The sound level of an area is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* waves, wind, precipitation, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.,* vessels, dredging, aircraft, construction).

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise ''ambient'' or ''background'' sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.,* 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

In-water construction activities associated with the project would include vibratory pile removal, and impact and vibratory pile driving. The sounds produced by these activities fall into one of two general sound types: impulsive and non-impulsive. Impulsive sounds (*e.g.,* explosions, gunshots, sonic booms, impact pile driving) are typically transient, brief (less than 1 second), broadband, and

consist of high peak sound pressure with rapid rise time and rapid decay (ANSI, 1986; NIOSH, 1998; ANSI, 2005; NMFS, 2018a). Non-impulsive sounds (*e.g.,* aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems) can be broadband, narrowband or tonal, brief or prolonged (continuous or intermittent), and typically do not have the high peak sound pressure with raid rise/decay time that impulsive sounds do (ANSI, 1995; NIOSH, 1998; NMFS, 2018a). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward, 1997 in Southall *et al.,* 2007).

Impact hammers operate by repeatedly dropping a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is characterized by rapid rise times and high peak levels, a potentially injurious combination (Hastings and Popper, 2005). Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. The vibrations produced also cause liquefaction of the substrate surrounding the pile, enabling the pile to be extracted or driven into the ground more easily. Vibratory hammers produce significantly less sound than impact hammers. Peak sound pressure levels (SPLs) may be 180 dB or greater, but are generally 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Oestman *et al.,* 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards 2002; Carlson *et al.,* 2005).

The likely or possible impacts of the SMCHD's proposed activity on marine mammals could involve both non-acoustic and acoustic stressors. Potential non-acoustic stressors could result from the physical presence of the equipment and personnel; however, any impacts to marine mammals are expected to be primarily acoustic in nature. Acoustic stressors include effects of heavy equipment operation during pile driving and removal.

Acoustic Impacts

The introduction of anthropogenic noise into the aquatic environment from pile driving is the primary means by which marine mammals may be harassed from the proposed activity. In general, animals exposed to natural or anthropogenic sound may experience physical and psychological effects, ranging in magnitude from none to severe (Southall *et al.,* 2007). In general, exposure to pile driving noise has the potential to result in auditory threshold shifts and behavioral reactions (*e.g.,* avoidance, temporary cessation of foraging and vocalizing, changes in dive behavior). Exposure to anthropogenic noise can also lead to non-observable physiological responses, such as an increase in stress hormones. Additional noise in a marine mammal's habitat can mask acoustic cues used by marine mammals to carry out daily functions such as communication and predator and prey detection. The effects of pile driving noise on marine mammals are dependent on several factors, including, but not limited to, sound type (*e.g.,* impulsive vs. non-impulsive), the species, age and sex class (*e.g.,* adult male vs. mom with calf), duration of exposure, the distance between the pile and the animal, received levels, behavior at time of exposure, and previous history with exposure (Wartzok *et al.,* 2004; Southall *et al.,* 2007). Here we discuss physical auditory effects (threshold shifts) followed by behavioral effects and potential impacts on habitat.

NMFS defines a noise-induced threshold shift (TS) as a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). The amount of threshold shift is customarily expressed in decibels (dB). A TS can be permanent or temporary. As described in NMFS (2018), there are numerous factors to consider when examining the consequence of TS, including, but not limited to, the signal temporal pattern (*e.g.,* impulsive or non-impulsive), likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of the TS, time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (*i.e.,* spectral content), the hearing and vocalization frequency range of the exposed species relative to the signal's frequency spectrum (*i.e.,* how an animal uses sound within the frequency band of the signal; *e.g.,* Kastelein *et al.,* 2014), and the overlap between the animal and the source (*e.g.,* spatial, temporal, and spectral).

Permanent Threshold Shift (PTS)—NMFS defines PTS as a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). Available data from humans and other terrestrial mammals indicate that a 40 dB threshold shift approximates PTS onset (see Ward *et al.,* 1958, 1959; Ward, 1960; Kryter *et al.,* 1966; Miller, 1974; Ahroon *et al.,* 1996; Henderson *et al.,* 2008). PTS levels for marine mammals are estimates, as with the exception of a single study unintentionally inducing PTS in a harbor seal (Kastak *et al.,* 2008), there are no empirical data measuring PTS in marine mammals largely due to the fact that, for various ethical reasons, experiments involving anthropogenic noise exposure at levels inducing PTS are not typically pursued or authorized (NMFS, 2018).

Temporary Threshold Shift (TTS)—TTS is a temporary, reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). Based on data from cetacean TTS measurements (see Southall *et al.,* 2007), a TTS of 6 dB is considered the minimum threshold shift clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Schlundt *et al.,* 2000; Finneran *et al.,* 2000, 2002). As described in Finneran (2015), marine mammal studies have shown the amount of TTS increases with cumulative sound exposure level (SELcum) in an accelerating fashion: At low exposures with lower SELcum, the amount of TTS is typically small and the growth curves have shallow slopes. At exposures with higher SELcum, the growth curves become steeper and approach linear relationships with the noise SEL.

Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during a time when communication is critical for successful mother/calf interactions could have more serious impacts. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin, beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaeorientalis*)) and five species of pinnipeds exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise) in laboratory settings (Finneran, 2015). TTS was not observed in trained spotted (*Phoca largha*) and ringed (*Pusa hispida*) seals exposed to impulsive noise at levels matching previous predictions of TTS onset (Reichmuth *et al.,* 2016). In general, harbor seals and harbor porpoises have a lower TTS onset than other measured pinniped or cetacean species (Finneran, 2015). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. No data are available on noise-induced hearing loss for mysticetes. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.* (2007), Finneran and Jenkins (2012), Finneran (2015), and Table 5 in NMFS (2018). Installing piles for this project requires either impact pile driving or vibratory pile driving. For this project, these activities could occur at the same time, and there would be pauses in activities producing the sound during each day. Given these pauses, and that many marine mammals are likely moving through the ensonified area and not remaining for extended periods of time, the potential for TS declines.

Behavioral Harassment—Exposure to noise from pile driving and removal also has the potential to behaviorally disturb marine mammals. Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007; NRC, 2005).

Disturbance may result in changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); or avoidance of areas where sound sources are located. Pinnipeds may increase their haul out time, possibly to avoid in-water disturbance (Thorson and Reyff, 2006). Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.,* 1995; Wartzok *et al.,* 2003; Southall *et al.,* 2007; Weilgart, 2007; Archer *et al.,* 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.,* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). In general, pinnipeds seem more tolerant of, or at least habituate more quickly to, potentially disturbing underwater sound than do cetaceans, and generally seem to be less responsive to exposure to industrial sound than most cetaceans. Please see appendixes B–C of Southall *et al.,* (2007) for a review of studies involving marine mammal behavioral responses to sound.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.,* 2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Stress Responses—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.,* Seyle 1950; Moberg, 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.,* Moberg, 1987; Blecha, 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.,* 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and ''distress'' is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker, 2000; Romano *et al.,* 2002b) and, more rarely, studied in wild populations (*e.g.,* Romano *et al.,* 2002a). For example, Rolland *et al.,* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and

other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003), however distress is an unlikely result of this project based on observations of marine mammals during previous, similar projects in the area.

Masking—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.,* 1995). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* pile driving, shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions. Masking of natural sounds can result when human activities produce high levels of background sound at frequencies important to marine mammals. Conversely, if the background level of underwater sound is high (*e.g.,* on a day with strong wind and high waves), an anthropogenic sound source would not be detectable as far away as would be possible under quieter conditions and would itself be masked.

Airborne Acoustic Effects—Although pinnipeds are known to haul out regularly on manmade objects, such as some floating docks and breakwaters like those surrounding the inner harbor, we believe that incidents of take resulting solely from airborne sound are unlikely because there are no known haulouts in or around Pillar Point Harbor. Local observations report that sightings of pinnipeds hauling out on the breakwaters or docks of the inner harbor are very rare (Meyer, 2022). There is a possibility that an animal could surface in-water, but with head out, within the area in which airborne sound exceeds relevant thresholds and thereby be exposed to levels of airborne sound that we associate with harassment, but any such occurrence would likely be accounted for in our estimation of incidental take from underwater sound. Therefore, authorization of incidental take resulting from airborne sound for pinnipeds is not warranted, and airborne sound is not discussed further here.

Marine Mammal Habitat Effects

The SMCHD's construction activities could have localized, temporary impacts on marine mammal habitat by increasing in-water sound pressure levels and slightly decreasing water quality. However, since the focus of the proposed action is pile driving, a minimal amount of net habitat loss is expected, as the new Johnson Pier would be constructed on the existing pier footprint, with some expansion areas. Construction activities are of short duration and would likely have temporary impacts on marine mammal habitat through increases in underwater sounds. Increased noise levels may affect acoustic habitat (see masking discussion above) and adversely affect marine mammal prey in the vicinity of the project area (see discussion below). During pile driving activities, elevated levels of underwater noise would ensonify the project area where both fishes and marine mammals may occur and could affect foraging success. Additionally, marine mammals may avoid the area during construction; however, displacement due to noise is expected to be temporary and is not expected to result in long-term effects to the individuals or populations.

Temporary and localized reduction in water quality would occur because of in-water construction activities as well. Most of this effect will occur during the installation and removal of piles when bottom sediments are disturbed. The installation of piles will disturb bottom sediments and may cause a temporary increase in suspended sediment in the project area. In general, turbidity associated with pile installation is localized to about 25-ft (7.6 meter) radius around the pile (Everitt *et al.,* 1980). Pinnipeds are not expected to be close enough to the pile driving areas to experience effects of turbidity, and could avoid localized areas of turbidity. Therefore, we expect the impact from increased turbidity levels to be discountable to marine mammals and do not discuss it further.

In-Water Construction Effects on Potential Foraging Habitat

The proposed activities would not result in permanent impacts to habitats used directly by marine mammals except for the actual footprint of the new Johnson Pier. The total seafloor area affected by pile installation and removal is a very small area compared to the vast foraging area available to marine mammals in the larger Pillar Point Harbor, including the Outer Harbor, and the adjacent Half Moon Bay. Pile extraction and installation may have impacts on benthic invertebrate species primarily associated with disturbance of sediments that may cover or displace some invertebrates. The impacts would be temporary and highly localized, and no habitat would be permanently displaced by construction. Therefore, it is expected that impacts on foraging opportunities for marine mammals due to the demolition and expansion of Johnson Pier would be minimal.

It is possible that avoidance by potential prey (*i.e.,* fish) in the immediate area may occur due to temporary loss of this foraging habitat. The duration of fish avoidance of this area after pile driving stops is unknown, but we anticipate a rapid return to normal recruitment, distribution and behavior. Any behavioral avoidance by fish of the disturbed area would still leave large areas of fish and marine mammal foraging habitat in the nearby vicinity in the project area and Half Moon Bay.

Effects on Potential Prey

Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.,* fish). Marine mammal prey varies by species, season, and location. Here, we describe studies regarding the effects of noise on known marine mammal prey.

Fish utilize the soundscape and components of sound in their environment to perform important functions such as foraging, predator avoidance, mating, and spawning (*e.g.,* Zelick *et al.,* 1999; Fay, 2009). Depending on their hearing anatomy and peripheral sensory structures, which vary among species, fishes hear sounds using pressure and particle motion sensitivity capabilities and detect the motion of surrounding water (Fay *et al.,* 2008). The potential effects of noise on fishes depends on the overlapping frequency range, distance from the sound source, water depth of exposure, and species-specific hearing sensitivity, anatomy, and physiology.

Key impacts to fishes may include behavioral responses, hearing damage, barotrauma (pressure-related injuries), and mortality.

Fish react to sounds which are especially strong and/or intermittent low-frequency sounds, and behavioral responses, such as flight or avoidance are the most likely effects. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. The reaction of fish to noise depends on the physiological state of the fish, past exposures, motivation (*e.g.,* feeding, spawning, migration), and other environmental factors. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish, although several are based on studies in support of large, multiyear bridge construction projects (*e.g.,* Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Several studies have demonstrated that impulse sounds might affect the distribution and behavior of some fishes, potentially impacting foraging opportunities or increasing energetic costs (*e.g.,* Fewtrell and McCauley, 2012; Pearson *et al.,* 1992; Skalski *et al.,* 1992; Santulli *et al.,* 1999; Paxton *et al.,* 2017). However, some studies have shown no or slight reaction to impulse sounds (*e.g.,* Pena *et al.,* 2013; Wardle *et al.,* 2001; Jorgenson and Gyselman, 2009; Cott *et al.,* 2012).

SPLs of sufficient strength have been known to cause injury to fish and fish mortality. However, in most fish species, hair cells in the ear continuously regenerate and loss of auditory function likely is restored when damaged cells are replaced with new cells. Halvorsen *et al.,* (2012a) showed that a TTS of 4–6 dB was recoverable within 24 hours for one species. Impacts would be most severe when the individual fish is close to the source and when the duration of exposure is long. Injury caused by barotrauma can range from slight to severe and can cause death, and is most likely for fish with swim bladders. Barotrauma injuries have been documented during controlled exposure to impact pile driving (Halvorsen *et al.,* 2012b; Casper *et al.,* 2013).

The most likely impact to fish from pile driving activities at the project areas would be temporary behavioral avoidance of the area. The duration of fish avoidance of an area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated.

The area impacted by the project is relatively small compared to the available habitat in the remainder of the Pillar Point Harbor and Half Moon Bay, and there are no areas of particular importance that would be impacted by this project. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity. As described in the preceding, the potential for the SMCHD's construction to affect the availability of prey to marine mammals or to meaningfully impact the quality of physical or acoustic habitat is considered to be insignificant.

Estimated Take of Marine Mammals

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of ''small numbers,'' and the negligible impact determinations.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would primarily be by Level B harassment, as noise generated during construction activities (*i.e.,* impact and vibratory pile driving) has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result. The proposed mitigation and monitoring measures are expected to minimize the severity of the taking to the extent practicable.

As described previously, no serious injury or mortality is anticipated or proposed to be authorized for this activity. Below we describe how the proposed take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals would be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that would be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimates.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.,* frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.,* bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.,* Southall *et al.,* 2007, 2021; Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 120 dB (referenced to 1 micropascal (re 1 μPa)) for continuous non-impulsive (*e.g.,* vibratory pile driving, drilling) and above RMS SPL 160 dB re 1 μPa for non-explosive impulsive (*e.g.,* impact pile driving) or intermittent (*e.g.,* scientific sonar) sources. Generally speaking, Level B harassment take estimates based on these behavioral harassment thresholds are expected to include any likely takes by TTS as, in most cases, the likelihood of TTS occurs at distances from the source less than those at which behavioral harassment is likely. TTS of a sufficient degree can manifest as behavioral harassment, as reduced hearing sensitivity and the potential

reduced opportunities to detect important signals (conspecific communication, predators, prey) may result in changes in behavior patterns that would not otherwise occur.

SMCHD's proposed activity includes the use of continuous non-impulsive (vibratory pile installation and extraction) and impulsive (impact pile driving) sources, and therefore the RMS SPL thresholds of 120 and 160 dB re 1 µPa are applicable.

Level A Harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). SMCHD's proposed activity includes the use of non-impulsive (vibratory pile installation and extraction) and impulsive (impact pile driving) sources.

These thresholds are provided in Table 4. The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2018 Technical Guidance, which may be accessed at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 4—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW); (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW); (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 µPa, and cumulative sound exposure level (L_E) has a reference value of 1µPa^{2}s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI, 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that are used in estimating the area ensonified above the acoustic thresholds, including source levels and transmission loss coefficient.

The sound field in the project area is the existing background noise plus additional construction noise from the proposed project. Pile driving generates underwater noise that can potentially result in disturbance to marine mammals in the project area. The maximum (underwater) area ensonified is determined by the topography of the Pillar Point inner harbor, including hard structure breakwaters that bound the inner harbor and preclude sound from transmitting into the outer harbor. Additionally, vessel traffic and other commercial and industrial activities in the project area may contribute to elevated background noise levels, which may mask sounds produced by the project.

Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$$TL = B * Log_{10} (R_1/R_2)$$

Where

TL = transmission loss in dB

B = transmission loss coefficient; for practical spreading equals 15

R_1 = the distance of the modeled SPL from the driven pile, and

R_2 = the distance from the driven pile of the initial measurement

This formula neglects loss due to scattering and absorption, which is assumed to be zero here. The degree to which underwater sound propagates away from a sound source is dependent on a variety of factors, most notably the water bathymetry and presence or absence of reflective or absorptive conditions including in-water structures and sediments. Spherical spreading occurs in a perfectly unobstructed (free-field) environment not limited by depth or water surface, resulting in a 6 dB reduction in sound level for each doubling of distance from the source (20*log[range]). Cylindrical spreading occurs in an environment in which sound propagation is bounded by the water surface and sea bottom, resulting in a reduction of 3 dB in sound level for each doubling of distance from the source (10*log[range]). A practical spreading value of 15 is often used under conditions, such as the project site, where water increases with depth as the receiver moves away from the shoreline, resulting in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions. Practical spreading loss is assumed here.

The intensity of pile driving sounds is greatly influenced by factors such as the type of piles, hammers, and the physical environment in which the activity takes place. In order to calculate the distances to the Level A harassment and the Level B harassment sound thresholds for the methods and piles being used in this project, NMFS used acoustic monitoring data from other locations to develop proxy source levels for the various pile types, sizes and methods (Table 5). Generally, we choose source levels from similar pile types from locations (*e.g.,* geology, bathymetry) similar to the project. At this time, NMFS is not aware of reliable source levels available for fiberglass piles using vibratory pile installation; therefore, source levels for timber pile driving were used as a proxy. While vibratory extraction of

concrete piles has been measured only for 20-in piles, NMFS has conservatively applied this source level to vibratory extraction of 14-in concrete piles.

For this project, one impact and one vibratory hammer may operate simultaneously. Because an impact hammer is not a continuous source, there is no adjustment needed in the source levels needed to calculate the Level A harassment or Level B harassment zones. In the event of concurrent activities, the Level A harassment zones would be equivalent to those produced by the impact hammer alone, and the Level B harassment zone would be the largest zone. Due to the confined nature of the Project Area, these zones are sometimes identical. Therefore, no separate analysis of concurrent activities was conducted for this project.

TABLE 5—PROJECT SOUND SOURCE LEVELS NORMALIZED TO 10 METERS

Pile type	Pile size (inch)	Method	Peak SPL (re 1 µPa (rms))	RMS SPL (re 1 µPa (rms))	SEL (re 1 µPa (rms))	Source
Concrete	16	Impact	193	168	160	Caltrans 2020.
Concrete	24	Impact	188	176	166	Caltrans 2020.
Fiberglass	16	Vibratory	NA	162	NA	Caltrans 2020.
Concrete or Timber	14	Vibratory extraction	NA	162	NA	NAVFAC SW 2022.

The ensonified area associated with Level A harassment is more technically challenging to predict due to the need to account for a duration component. Therefore, NMFS developed an optional User Spreadsheet tool to accompany the Technical Guidance that can be used to relatively simply predict an isopleth distance for use in conjunction with marine mammal density or occurrence to help predict potential takes. We note that because of some of the assumptions included in the methods underlying this optional tool, we anticipate that the resulting isopleth estimates are typically going to be overestimates of some degree, which may result in an overestimate of potential take by Level A harassment. However, this optional tool offers the best way to estimate isopleth distances when more sophisticated modeling methods are not available or practical. For stationary sources like pile driving, the optional User Spreadsheet tool predicts the distance at which, if a marine mammal remained at that distance for the duration of the activity, it would be expected to incur PTS. Inputs used in the User Spreadsheet are reported in Table 1 and source levels used in the User Spreadsheet are reported in Table 5, and the resulting isopleths are reported in Table 6, below.

TABLE 6—CALCULATED LEVEL A HARASSMENT AND LEVEL B HARASSMENT ISOPLETHS FOR IMPACT PILE DRIVING

Method	Source	Level A harassment—radius to isopleth (m)		Level B harassment—radius to isopleth (m)
		Phocids	Otariids	
Impact	16-in Concrete	96	7	35
	24-in Concrete	290	22	117
Vibratory	16-in Fiberglass	23	2	*6,265
	14-in Concrete or Timber	23	2	*6,265

*The calculated distance to the Level B harassment threshold of 120 dB is 6,265 m. However, sound propagation will be limited by the solid breakwaters surrounding the inner harbor and therefore the harassment zone will be limited to the area within the inner harbor breakwaters.

The maximum Level A harassment zones would occur during impact driving of 24-in concrete piles, extending out to 290 m from the source pile for harbor seals, and out to 22 m from the source pile for sea lions. The 290 m zone fills the inner harbor area surrounded by the breakwaters, as shown in Figure 7 of the IHA application. The largest Level B harassment zone would occur during vibratory pile driving and extraction, and would encompass the entire inner harbor basin.

Marine Mammal Occurrence and Take Calculation and Estimation

In this section, we provide information about the occurrence of marine mammals, including density or other relevant information that will inform the take calculations, and describe how the information provided is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur and proposed for authorization.

California Sea Lion

California sea lions regularly occur on rocks, buoys, and other structures. California sea lions were observed within the Project area during the field survey (Rincon, 2021). Breeding and pupping are not known to occur in the Project area. Based on anecdotal statements from Pillar Point Harbor operations staff, California sea lions could occur within the inner harbor area on a daily basis. Past observations indicate that sea lions rarely haul out within the Project area (Meyers, 2022). Because no density estimates are available for the species in this area, the SMCHD estimated that two California sea lions could be present within the Pillar Point Inner Harbor each day. Based on this information, NMFS has similarly estimated that two California sea lions may be taken by Level B harassment each day of pile driving. This equates to 260 Level B harassment takes over 130 project days (Table 1). Therefore, the SMCHD is requesting, and NMFS is proposing to authorize 260 takes by Level B harassment of California sea lion (Table 7).

The largest Level A harassment zone for otariids extends approximately 23 m from the source during impact driving of a 24-in concrete pile (Table 6). SMCHD has conservatively assumed that 1 sea lion may occur within the 23

m zone for a duration long enough to be taken by Level A harassment every 2 days of impact pile driving, equating to 40 takes over 80 project days (Table 1). Therefore, the SMCHD is requesting, and NMFS is proposing to authorize 40 takes by Level A harassment of California sea lion (Table 7).

Harbor Seal

Harbor seals were observed within the Project area during the field survey and have been frequently documented within Pillar Point Harbor (Rincon, 2021). Breeding and pupping are not known to occur in the Project area. Based on anecdotal statements from Pillar Point Harbor operations staff, harbor seals could occur within the inner harbor area on a daily basis. Past observations indicate that harbor seals rarely haul out within the Project area (Meyers, 2022). Because no density estimates are available for the species in this area, the SMCHD estimated that two harbor seals could be present within the Pillar Point Inner Harbor each day. Based on this information, NMFS has similarly estimated that two harbor seals may be taken by Level B harassment each day of vibratory pile driving, and up to 10 percent of those individuals may be taken by Level A harassment each day. On days with impact driving, up to two harbor seals may be taken by Level A harassment, with no Level B exposures due to the Level A harassment zone extending to the boundaries of the inner harbor. This equates to 90 Level B harassment takes and 170 Level A harassment takes over 130 project days (Table 1). Therefore, the SMCHD is requesting, and NMFS is proposing, to authorize 90 takes by Level B harassment, and 170 takes by Level A harassment of harbor seals (Table 7).

TABLE 7—PROPOSED AUTHORIZED AMOUNT OF TAKING, BY LEVEL A HARASSMENT AND LEVEL B HARASSMENT, BY SPECIES AND STOCK AND AS A PERCENTAGE OF STOCK ABUNDANCE

Common name	Stock	Level A harassment	Level B harassment	Total	Percent of stock
California sea lion	United States	40	260	300	0.12
Harbor seal	California	170	90	260	0.84

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost and impact on operations.

In addition to the measures described later in this section, SMCHD will employ the following mitigation measures:

- The Holder must ensure that construction supervisors and crews, the monitoring team, and relevant SMCHD staff are trained prior to the start of activities subject to this IHA, so that responsibilities, communication procedures, monitoring protocols, and operational procedures are clearly understood. New personnel joining during the project must be trained prior to commencing work.
- For those marine mammals for which Level B harassment take has not been requested, in-water pile installation/removal will shut down immediately if such species are observed within or entering the Level B harassment zone; and
- If take reaches the authorized limit for an authorized species, pile installation/removal will shut down immediately if these species approach the Level B harassment zone to avoid additional take.

The following mitigation measures apply to SMCHD's in-water construction activities:

- *Establishment of Shutdown Zones*—SMCHD will establish of 15.25 meter (50-foot) shutdown zone for all pinnipeds during in-water construction activities to avoid interaction between pile driving equipment and pinnipeds. For all marine mammal species other than harbor seals and California sea lions, the shutdown zone will encompass the entire inner harbor. Pile driving must be halted or delayed if a marine mammal is observed entering or within the shutdown zone. The activity may not commence or resume until either the animal has voluntarily exited and been visually confirmed beyond the shutdown zone or 15 minutes have passed without re-detection of the animal.

○ *Monitoring for Level A Harassment and Level B Harassment*—SMCHD will monitor the Level A harassment and Level B harassment zones. Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project area outside the shutdown zone and thus prepare for a potential halt of activity should the animal enter the shutdown zone. Placement of Protected Species Observers (PSOs) will allow PSOs to observe marine mammals within the Level B harassment zones. During pile driving activities, PSOs will monitor the entire inner harbor area and the outer harbor to the extent practicable. A qualified observer will monitor the zone of influence, and document all marine mammals that enter the monitoring zone.

- *Pre/post-activity Monitoring*—Prior to the start of daily in-water

construction activity, or whenever a break in pile driving/removal of 30 minutes or longer occurs, PSOs will observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone will be considered cleared when a marine mammal has not been observed within the zone for that 30-minute period. If a marine mammal is observed within the shutdown zone, a soft-start cannot proceed until the animal has left the zone or has not been observed for 15 minutes. When a marine mammal for which Level B harassment take is authorized is present in the Level B harassment zone, activities may begin and Level B harassment take will be recorded. If work ceases for more than 30 minutes, the pre-activity monitoring of the shutdown zones will commence. Monitoring must also occur through 30 minutes post-completion of pile driving activity.

• *Protected Species Observers*—The placement of PSOs during all pile driving and removal activities (described in detail in the Proposed Monitoring and Reporting section) will ensure that the entire inner harbor is visible during pile installation. Should environmental conditions deteriorate such that marine mammals within the entire monitoring zone would not be visible (*e.g.,* fog, heavy rain), pile driving and removal must be delayed until the PSO is confident marine mammals within the monitoring zone could be detected.

• *Soft Start*—Soft-start procedures are believed to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the impact hammer operating at full capacity. For impact driving, an initial set of three strikes will be made by the hammer at reduced energy, followed by a 30-second waiting period, then two subsequent three-strike sets before initiating continuous driving. Soft start will be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

• Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);

• Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);

• Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;

• How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;

• Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and,

• Mitigation and monitoring effectiveness.

Visual Monitoring

Marine mammal monitoring must be conducted in accordance with the Monitoring Plan and Section 5 of the IHA. Marine mammal monitoring during pile driving and removal must be conducted by NMFS-approved PSOs in a manner consistent with the following:

• Independent PSOs (*i.e.,* not construction personnel) who have no other assigned tasks during monitoring periods must be used;

• At least one PSO must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization.

• Other PSOs may substitute education (degree in biological science or related field) or training for experience; and

• The SMCHD must submit PSO Curriculum Vitae for approval by NMFS prior to the onset of pile driving.

PSOs must have the following additional qualifications:

• Ability to conduct field observations and collect data according to assigned protocols;

• Experience or training in the field identification of marine mammals, including the identification of behaviors;

• Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;

• Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and

• Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary. SMCHD will employ up to two PSOs. PSO locations will provide an unobstructed view of all water within the shutdown zone(s), and as much of the Level A harassment and Level B harassment zones as possible. PSO locations may include Johnson Pier, adjacent floating docks, and/or the shoreline area. If necessary, observations may occur from two locations simultaneously.

• Monitoring will be conducted 30 minutes before, during, and 30 minutes after pile driving/removal activities. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven or removed. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving

or drilling equipment is no more than 30 minutes.

Reporting

A draft marine mammal monitoring report will be submitted to NMFS within 90 days after the completion of pile driving and removal activities, or 60 days prior to a requested date of issuance of any future IHAs for projects at the same location, whichever comes first. The report will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report must include:

- Dates and times (begin and end) of all marine mammal monitoring.
- Construction activities occurring during each daily observation period, including how many and what type of piles were driven or removed and by what method (*i.e.,* impact or vibratory and if other removal methods were used) and the total duration of driving time for each pile (vibratory driving/removal) and number of strikes for each pile (impact driving).
- PSO locations during marine mammal monitoring.
- Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance;
- Upon observation of a marine mammal, the following information:
- Name of PSO who sighted the animal(s) and PSO location and activity at time of sighting;
- Time of sighting;
- Identification of the animal(s) (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species;
- Distance and location of each observed marine mammal relative to the pile being driven for each sighting;
- Estimated number of animals (min/max/best estimate);
- Estimated number of animals by cohort (adults, juveniles, neonates, group composition, etc.);
- Animal's closest point of approach and estimated time spent within the harassment zone;
- Description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.,* no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching);
- Number of marine mammals detected within the harassment zones, by species; and
- Detailed information about implementation of any mitigation (*e.g.,* shutdowns and delays), a description of specific actions that ensued, and resulting changes in behavior of the animal(s), if any.

If no comments are received from NMFS within 30 days, the draft final report will constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

Reporting Injured or Dead Marine Mammals

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the SMCHD shall report the incident to the Office of Protected Resources (OPR), NMFS and to the regional stranding coordinator as soon as feasible. If the death or injury was clearly caused by the specified activity, the SMCHD must immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the IHA. The IHA-holder must not resume their activities until notified by NMFS. The report must include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.,* intensity, duration), the context of any impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the discussion of our analysis applies to both California sea lions and harbor seals, given that the anticipated effects of this activity on these different marine mammal stocks are expected to be similar. There is little information about the nature or severity of the impacts, or the size, status, or structure of any of these species or stocks that would lead to a different analysis for this activity.

Pile driving activities have the potential to disturb or displace marine mammals. Specifically, the project activities may result in take, in the form of Level A harassment and Level B harassment from underwater sounds generated from pile driving and removal. Potential takes could occur if individuals are present in the ensonified zone when these activities are underway.

The takes from Level B harassment would be due to potential behavioral disturbance, and TTS. Level A harassment takes would be due to PTS. No mortality or serious injury is anticipated given the nature of the activity, even in the absence of the required mitigation. The potential for harassment is minimized through the construction method and the implementation of the proposed mitigation measures (see Proposed Mitigation section).

Take would occur within a limited, confined area (Pillar Point Inner Harbor) of the stock's range. Level A harassment

and Level B harassment would be reduced to the level of least practicable adverse impact through use of mitigation measures described herein. Further, the amount of take proposed to be authorized is extremely small when compared to stock abundance, and the project is not anticipated to impact any known important habitat areas for any marine mammal species.

Take by Level A harassment is authorized to account for the potential that an animal could enter and remain within the area between a Level A harassment zone and the shutdown zone for a duration long enough to be taken by Level A harassment. Any take by Level A harassment is expected to arise from, at most, a small degree of PTS because animals would need to be exposed to higher levels and/or longer duration than are expected to occur here in order to incur any more than a small degree of PTS. Additionally, and as noted previously, some subset of the individuals that are behaviorally harassed could also simultaneously incur some small degree of TTS for a short duration of time. Because of the small degree anticipated, though, any PTS or TTS potentially incurred here would not be expected to adversely impact individual fitness, let alone annual rates of recruitment or survival.

Behavioral responses of marine mammals to pile driving at the project site, if any, are expected to be mild and temporary. Marine mammals within the Level B harassment zone may not show any visual cues they are disturbed by activities (as noted during modification to the Kodiak Ferry Dock (ABR, 2016)) or could become alert, avoid the area, leave the area, or display other mild responses that are not observable such as changes in vocalization patterns. Given the limited number of piles to be installed or extracted per day and that pile driving and removal would occur across a maximum of 130 days within the 12-month authorization period, any harassment would be temporary.

Any impacts on marine mammal prey that would occur during SMCHD's proposed activity would have, at most, short-term effects on foraging of individual marine mammals, and likely no effect on the populations of marine mammals as a whole. Indirect effects on marine mammal prey during the construction are expected to be minor, and these effects are unlikely to cause substantial effects on marine mammals at the individual level, with no expected effect on annual rates of recruitment or survival.

In addition, it is unlikely that minor noise effects in a small, localized area of habitat would have any effect on the stocks' annual rates of recruitment or survival. In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activities will have only minor, short-term effects on individuals. The specified activities are not expected to impact rates of recruitment or survival and will therefore not result in population-level impacts.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality or serious injury is anticipated or proposed for authorization.
- The intensity of anticipated takes by Level B harassment is relatively low for all stocks and would not be of a duration or intensity expected to result in impacts on reproduction or survival;
- No important habitat areas have been identified within the project area.
- For all species, Pillar Point Harbor is a very small and peripheral part of their range and anticipated habitat impacts are minor.
- The SMCHD would implement mitigation measures, such as soft-starts for impact pile driving and shut downs to minimize the numbers of marine mammals exposed to injurious levels of sound, and to ensure that take by Level A harassment, is at most, a small degree of PTS.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only small numbers of incidental take may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The amount of take NMFS proposes to authorize for both California sea lions and harbor seals is below one-third of the estimated stock abundance (0.12 percent and 0.84 percent, respectively; Table 7). This is likely a conservative estimate because it assumes all takes are of different individual animals, which is likely not the case. Some individuals may return multiple times in a day, but PSOs would count them as separate takes if they cannot be individually identified.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to SMCHD for conducting the

Pillar Point Harbor Johnson Pier Expansion and Dock Replacement Project in Princeton, California, between January 1, 2024 and December 31, 2024, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.*

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this notice of proposed IHA for the proposed Pillar Point Harbor Johnson Pier Expansion and Dock Replacement Project. We also request comment on the potential renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent renewal IHA.

On a case-by-case basis, NMFS may issue a one-time, one-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical activities as described in the Description of Proposed Activity section of this notice is planned or (2) the activities as described in the Description of Proposed Activity section of this notice would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: February 22, 2023.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–03975 Filed 2–24–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Deposit of Biological Materials

The United States Patent and Trademark Office (USPTO) will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The USPTO invites comment on this information collection renewal, which helps the USPTO assess the impact of its information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on November 22, 2022 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: United States Patent and Trademark Office, Department of Commerce.

Title: Deposit of Biological Materials.

OMB Control Number: 0651–0022.

Needs and Uses: This collection covers information from patent applicants who seek to deposit biological materials as part of a patent application according to 37 CFR 1.801–1.809. The information collected from such patent applicants consists of information and documentation demonstrating the applicant's compliance with regulatory requirements, as well as information regarding the biological sample after it is deposited. This collection also covers applications from institutions that wish to be recognized by the USPTO as a suitable depository to receive deposits for patent application purposes. The information collection requirements for these actions are separate, as further discussed below.

A. Deposits of Biological Materials

The deposit of biological materials as part of a patent application is authorized by 35 U.S.C. 2(b)(2). The term ''biological material'' is defined in 37 CFR 1.801 as including material that is capable of self-replication, either directly or indirectly. When an invention involves a biological material, words and figures may not sufficiently describe how to make and use the invention in a reproducible manner as required by 35 U.S.C. 112. In such cases, the inventive biological material must be known and readily available to the public or can be made or isolated without undue experimentation (see 37 CFR 1.802). In order to satisfy the ''known and readily available'' requirement, the biological material may be deposited in a suitable depository that has been recognized as an International Depositary Authority (IDA) established under the Budapest Treaty per 37 CFR 1.803(a)(1), or any other depository recognized to be suitable by the USPTO per 37 CFR 1.803(a)(2). Under the authority of 35 U.S.C. 2(b)(2), the deposit rules (37 CFR 1.801–1.809) set forth examining procedures and conditions of deposit which must be satisfied in the event a deposit is required.

In cases where a deposit of biological material that is capable of self-replication either directly or indirectly is made, and the deposit is not made under the Budapest Treaty, the USPTO collects information to determine whether the deposit meets the viability requirements of 37 CFR 1.807. This information includes a viability statement under 37 CFR 1.807, such statement identifying:

(1) The name and address of the depository where the deposit was made;

(2) The name and address of the depositor;

(3) The date of the deposit;

(4) The identity of the deposit and the accession number given by the depository;

(5) The date of the viability test;

(6) The procedures used to obtain a sample if the test was not done by the depository; and

(7) A statement that the deposit is capable of reproduction.

A viability statement is not required when a deposit is made and accepted under the Budapest Treaty.

This collection also covers additional information that may be gathered by the USPTO after a biological material is deposited into the recognized depository. For example, depositors may be required to submit verification statements for biological materials deposited after the effective filing date of a patent application or written notification that an acceptable deposit will be made. Occasionally a deposit may be lost, contaminated, or is not able to self-replicate, and a replacement or supplemental deposit needs to be made. This information collection includes a required written notification that the depositor must submit to the USPTO disclosing the particulars of such situation and request a certificate of correction by the USPTO authorizing a replacement or supplemental deposit.

There are no forms associated with the information collected by the USPTO in connection with the deposit of biological materials, however there are forms available under the Budapest Treaty for use with international depositories.

B. Depositories

Institutions that wish to be recognized by the USPTO as a suitable depository to receive deposits for patent purposes, are required by 37 CFR 1.803(b) to make a request demonstrating that they are qualified to store and test the biological materials submitted to them under patent applications (see also MPEP 2405). This collection covers the information that a depository must submit to the USPTO when seeking recognition by the Office as a suitable depository under 37 CFR 1.803(a)(2). This information enables the USPTO to evaluate whether such a depository has internal practices (both technical and administrative) and the technical ability sufficient to protect the integrity of the biological materials being stored by U.S. patent applicants. This information includes:

(1) The name and address of the depository seeking recognition under 37 CFR 1.803(a)(2),

(2) Detailed information as to the capacity of the depository to comply with the requirements of 37 CFR 1.803(a)(2), including information on its legal status, scientific standing, staff, and facilities;

(3) An indication that the depository intends to be available, for the purposes of deposit, to any depositor under these same conditions;

(4) Where the depository intends to accept for deposit only certain kinds of biological material, specify such kinds; and

(5) An indication of the amount of any fees that the depository will, upon acquiring the status of suitable depository under paragraph (a) (2) of this section, charge for storage, viability statements and furnishings of samples of the deposit.

This collection also includes additional information gathered by the USPTO that may be needed after a depository has been recognized by the USPTO under 37 CFR 1.803(a)(2), such as requests to handle additional types of biological materials other than the material originally recognized, and viability statements that depositories may submit on behalf of depositors for deposits tested at the depository and/or documentation proving the public has been notified about where to obtain samples. There is no application form associated with requests under 37 CFR 1.803(b) to become a recognized depository.

Form Number(s): No form associated for domestic depositories; Forms BP/1, BP/2, BP/3, BP/9 for use of international depositories under the Budapest Treaty.

- BP/1 (Statement in the Case of an Original Deposit (Rule 6.1)).
- BP/2 (Statement in the Case of a New Deposit with the Same International Depositary Authority (Rule 6.2)).
- BP/3 (Statement in the Case of a New Deposit with Another International Depositary Authority (Rule 6.2)).
- BP/9 (Viability Statement (Rule 10.2) (International Form)).

Type of Review: Extension and revision of a currently approved information collection.

Affected Public: Private sector.

Respondent's Obligation: Required to obtain or retain benefits.

Frequency: On occasion.

Estimated Number of Annual Respondents: 3,301 respondents.

Estimated Number of Annual Responses: 3,301 responses.

Estimated Time per Response: The USPTO estimates that the responses in this information collection will take the public approximately between 1 hour and 5 hours to complete. This includes the time to gather the necessary information, create the document, and submit the completed request to the USPTO.

Estimated Total Annual Respondent Burden Hours: 3,305 hours.

Estimated Total Annual Respondent Non-Hourly Cost Burden: $9,259,809.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Commerce, USPTO information collections currently under review by OMB.

Written comments and recommendations for this information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the information collection or the OMB Control Number 0651–0022.

Further information can be obtained by:

- *Email: InformationCollection@uspto.gov.* Include ''0651–0022 information request'' in the subject line of the message.
- *Mail:* Justin Isaac, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Justin Isaac,

Information Collections Officer, Office of the Chief Administrative Officer, United States Patent and Trademark Office.

[FR Doc. 2023–03970 Filed 2–24–23; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2022–0033; OMB Control Number 0750–0001]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement Performance-Based Payments—Representation

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice.

SUMMARY: The Defense Acquisition Regulations System has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by March 29, 2023.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Performance-Based Payments—Representation; OMB Control Number 0750–0001.

Type of Request: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Number of Respondents: 710.

Annual Responses: 710.

Annual Burden Hours: 71.

Reporting Frequency: On Occasion.

Needs and Uses: This information collection concerns the Defense Federal Acquisition Regulation Supplement (DFARS) solicitation provision at 252.232–7015, Performance-Based Payments—Representation. This provision is prescribed at DFARS 232.1005–70(b) for use in solicitations where the resulting contract may include performance-based payments. This representation is included in the annual representations and certifications in the System for Award Management. Paragraph (b) of the provision requires the offeror to check a box indicating whether the offeror's financial statements are in compliance with Generally Accepted Accounting Principles. DoD will use this information to decide whether the offeror is eligible for performance-based payments. The burden has increased due to the use of current labor rates and current data from the Federal Procurement Data System.

Comments and recommendations on the proposed information collection should be sent to Ms. Susan Minson, DoD Desk Officer, at *Oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments, identified by docket number and title, by the following method: Federal eRulemaking Portal: *https://www.regulations.gov.* Follow the instructions for submitting comments.

DoD Clearance Officer: Ms. Angela Duncan. Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

[FR Doc. 2023–03905 Filed 2–24–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Installation of a Terminal Groin Structure Along the Inlet Shoulder of the New River Inlet and the Placement of the Dredge Material for the Fillet Along Approximately 2,000 Linear Feet of Ocean Shoreline of North Topsail Beach in Onslow County, NC

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (USACE), Wilmington District, Wilmington Regulatory Field Office has received a request for Department of the Army (DA) authorization, pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbor Act, from the Town of North Topsail Beach to construct a terminal groin and its associated oceanfront fillet placement along approximately 2,000 linear feet of oceanfront shoreline. Additionally, the installation of the terminal groin will be conjunction with the existing May 27, 2011, DA authorization that permitted the Town to relocate the New River Inlet ebb tide channel, conduct maintenance events within the channel, and perform a phased beach nourishment along approximately 11 miles of oceanfront shoreline. The DA authorization for the maintenance operation expires on December 31, 2041. The main purpose of adding the terminal groin is to provide additional shoreline protection of the Town's infrastructure, specifically along the northeastern end of island.

DATES: No comments are requested, so there are no dates applicable to this Notice of Intent.

ADDRESSES: Questions regarding this notice may be submitted to: U.S. Army Corps of Engineers, Wilmington District, Regulatory Division. ATTN: File Number: SAW–2016–02091, 69 Darlington Avenue, Wilmington, NC 28403 or *mickey.t.sugg@usace.army.mil.*

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and Draft EIS can be directed to Mr. Mickey Sugg, Chief, Wilmington Regulatory Field Office, at telephone (910) 251–4811; email *mickey.t.sugg@usace.army.mil*; or regular mail at (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

1. *Proposed Action.* On May 27, 2011, the USACE granted DA authorization to the Town of North Topsail Beach to implement a shoreline protection project, which encompassed the relocation of the New River Inlet ebb tide channel and nourishment of approximately 11 miles of the Town's oceanfront shoreline. This authorization also allowed the Town to conduct channel maintenance dredging to maintain the ebb tide channel within a pre-determined location to improve shoreline protection along the eastern end of the island. The initial construction of the channel relocation was completed in January 2013, but no subsequent maintenance dredging has taken place. Upon the completion of the channel relocation, the Town re-evaluated the post-construction conditions and the project's performance and is currently seeking to supplement the existing inlet management project with the installation of a terminal groin to enhance the oceanfront protection along the most western end of the island.

The proposed plans for a terminal groin consist of constructing the structure along the eastern shoulder of the New River Inlet and building the groin's fillet (or oceanfront shoreline) with material dredged during an inlet channel maintenance event. The terminal groin would consist of a 2,021-ft-long sheet pile and rubble-mound structure with several distinct components, including a 345-ft-long sheet pile anchor section extending landward of the primary dune, an 894-ft-long sheet pile upland section extending seaward from the primary dune across the inlet/oceanfront dry beach, and a 782-ft-long rubble mound in-water section extending seaward of the MHW line. The anchor and upland sheet pile groin sections would have maximum crest elevations of +5 feet NAVD that are slightly lower than the natural beach berm elevation of +6 ft NAVD. The in-water rubble-mound section, consisting of 4- to 6-ft-diameter granite armor stone, would have a crest elevation of +5 feet NAVD, a crest width of 5 feet, and a base width of ~40 feet. Conventional land-based heavy equipment would be used to construct both the onshore and in-water groin sections. Construction of the onshore (anchor and upland) sections would involve excavating the groin footprint, installing sheet pile and armor stone scour aprons to design specifications, covering the completed structure with the original excavated material, and grading the work area to reestablish pre-construction beach profiles. Depending on the position of the shoreline, construction of the in-water groin

section may require work from a temporary trestle, or an embankment, built out from the shoreline using existing beach material. It is anticipated that all of the stone for groin construction would be hauled in by trucks from the quarry site. Once the structure is in place, beach fill material would be placed southward of the terminal groin to construct the north end beach fill and groin fillet. The groin fillet would consist of a tapered fill section extending 2,000 feet southwest from the groin along the seaward margin of the +6-ft berm. Initial construction of the fillet and a projected four-year maintenance nourishment event would require ~310,000 cy of beach fill. Based on a four-year nourishment cycle, an estimated volume of ~2.35 million cubic yards of beach fill would be required over a total 30-year period.

2. *Scoping Process.* A local Public Notice was issued on March 15, 2021, announcing an initial scoping meeting (a Facebook Live event) and included a 30-day commenting period that ended on April 14, 2021. The scoping meeting was held on March 25, 2021, and all received comments were evaluated and considered in the preparation of the Draft EIS.

Additionally, the USACE will reinitiate consultation with the U.S. Fish and Wildlife Service under the Endangered Species Act and the Fish and Wildlife Coordination Act; with the National Marine Fisheries Service under the Magnuson-Stevens Fishery Conservation and Management Act and the Endangered Species Act; and with the North Carolina State Historic Preservation Office under the National Historic Preservation Act. Additionally, the USACE will coordinate the proposed project with the North Carolina Division of Water Quality (NCDWQ) to assess the potential water quality impacts pursuant to Section 401 of the Clean Water Act, and with the North Carolina Division of Coastal Management (NCDCM) to determine the projects consistency with the Coastal Zone Management Act. The USACE will closely work with NCDCM and NCDWQ in the development of the EIS to ensure the process complies with all State Environmental Policy Act (SEPA) requirements. It is the intention of both the USACE and the State of North Carolina to consolidate the NEPA and any required SEPA processes thereby eliminating duplication.

3. *Alternatives.* Several alternatives, including various borrow areas, are being considered for the proposed project. The following alternatives have determined to be reasonable options for the Town's proposal and each will be evaluated in the EIS: (1) No Action (Continuation of existing USACE-authorized Beach and Inlet Management), (2) Abandon and Retreat (No use of existing USACE-authorized Beach and Inlet Management and/or other USACE permitting actions), (3) Beach Nourishment Only, (4) Beach Nourishment and Terminal Groin (No use of existing USACE-authorized Beach and Inlet Management), and (5) Beach Nourishment, Terminal Groin, and Use of existing USACE-authorized Inlet Management.

4. *Availability of the Draft EIS.* The Draft EIS is expected to be published and circulated the summer of 2023; and a public hearing will be held after the publication of the Draft EIS.

Daniel H. Hibner,

Brigadier General, U.S. Army, Commanding.

[FR Doc. 2023–03914 Filed 2–24–23; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2023–SCC–0037]

Agency Information Collection Activities; Comment Request; Prison Education Program Application

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a new information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before April 28, 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–2023–SCC–0037. 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 Beth Grebeldinger, (202) 377–4018.

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: Prison Education Program Application.

OMB Control Number: 1845–NEW.

Type of Review: New ICR.

Respondents/Affected Public: Private Sector; State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 600.

Total Estimated Number of Annual Burden Hours: 6,000.

Abstract: The U.S. Department of Education in 2021, proposed rules for the Prison Education Program (PEP) to allow eligible institution to work together with correctional facilities to offer postsecondary educational programs to confined or incarcerated individuals who may be eligible to receive Pell Grant funds. On October 28, 2022, the Final Rule was published

including the requirements for PEP. PEP is authorized under section 484(t) of the Higher Education Act of 1965, as amended (HEA) with the requirements for participation outlined in 34 CFR 668, Subpart P, effective July 1, 2023. These are new regulatory requirements that are required for a school to offer a PEP to confined or incarcerated individuals. This is a request for a new information collection to collect on the proposed form the information needed for institutions to apply to participate in PEP.

Dated: February 21, 2023.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2023–03922 Filed 2–24–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board Chairs

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an in-person/virtual hybrid meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB) Chairs. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Tuesday, March 21, 2023; 9 a.m.–5 p.m. EDT

Wednesday, March 22, 2023; 1:30 p.m.–5 p.m. EDT

ADDRESSES: This hybrid meeting will be open to the public virtually (observation only). To obtain a copy of the virtual link, please contact Kelly Snyder by email, *kelly.snyder@em.doe.gov,* no later than 4:00 p.m. EDT on Tuesday, March 14, 2023.

For EM SSAB Chairs, Vice-Chairs and staff, the meeting will be held, strictly following COVID–19 precautionary measures, at: U.S. Department of Energy, 1000 Independence Avenue SW, Room 6E–069, Washington, DC 20585.

Attendees should check the EM SSAB website (*https://www.energy.gov/em/em-site-specific-advisory-board*) for any meeting format changes due to COVID–19 protocols.

FOR FURTHER INFORMATION CONTACT: Kelly Snyder, EM SSAB Designated Federal Officer, Email: *kelly.snyder@em.doe.gov* or telephone: (702) 918–6715.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda Topics

Tuesday, March 21, 2023

- EM Update
- Chairs Round Robin
- Public Comment
- Budget Update and Simulation Exercise
- Minority Serving Institutions Partnership Program
- Community Capacity Building
- Membership On-Boarding
- Board Business/Open Discussion

Wednesday, March 22, 2023

- EM's International Program Overview
- EM's National Laboratory Network
- Technology Development Overview
- Public Comment
- Board Business/Open Discussion

Public Participation: As a COVID–19 precaution, the meeting will be open to the public virtually only. To obtain a copy of the virtual link, send an email to Kelly Snyder at *kelly.snyder@em.doe.gov* no later than 4:00 p.m. ET on Tuesday, March 14, 2023. The EM SSAB welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please note this when registering. Public comments will be accepted via email for virtual participants prior to and after the meeting. Comments received in writing no later than 4:00 p.m. EDT on Tuesday, March 14, 2023, will be read aloud during the meeting. Comments will also be accepted after the meeting by no later than 4:00 p.m. EDT on Tuesday, March 28, 2023, to be included in the official meeting record. Please send comments to Kelly Snyder at *Kelly.snyder@em.doe.gov.* Please put ''Public Comment'' in the subject line. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to submit public comments should follow as directed above.

Minutes: Minutes will also be available at the following website: *https://energy.gov/em/listings/chairs-meetings.*

Signed in Washington, DC, on February 22, 2023.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2023–03968 Filed 2–24–23; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2022–0918; FRL–10490–02–OCSPP]

Cumulative Risk Assessment; Science Advisory Committee on Chemicals (SACC) Virtual Public Meeting; Notice of Availability and Request for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of and soliciting public comment on two draft documents that are being submitted to the Science Advisory Committee on Chemicals (SACC) for peer review: ''Draft Proposed Principles of Cumulative Risk Assessment under the Toxic Substances Control Act'' and ''Draft Proposed Approach for Cumulative Risk Assessment of High-Priority Phthalates and a Manufacturer-Requested Phthalate under the Toxic Substance Control Act.'' The SACC will consider and review these documents at a 4-day virtual public meeting on May 8 to 11, 2023, that was previously announced in the **Federal Register** of December 21, 2022.

DATES: The following is a chronological listing of the dates for the specific activities that are described in more detail under **SUPPLEMENTARY INFORMATION**.

April 24, 2023—Deadline for submitting a request for special accommodations for participating in the virtual public meeting in order to allow EPA time to process the request before the meeting.

April 28, 2023—Deadline for providing comments for distribution to the SACC before the meeting.

May 1, 2023—Deadline for registering to be listed on the meeting agenda to make oral comments during the virtual meeting. Those not making oral comments may continue to register through May 11, 2023 in order to receive the links to observe the meeting.

ADDRESSES: Submit written comments, identified by docket identification (ID) number EPA–HQ–OPPT–2022–0918, through the Federal eRulemaking Portal

at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not electronically submit any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Copyrighted material will not be posted without explicit permission from the copyright holder. Members of the public should also be aware that personal information included in any written comments may be posted on the internet at *https://www.regulations.gov.* Additional information on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

For information on how to register and access the virtual public meeting, please refer to the SACC website at *https://www.epa.gov/tsca-peer-review.* EPA intends to announce registration instructions on the SACC website by early April 2023. You may also subscribe to the following listserv for alerts regarding this and other SACC-related activities: *https://public.govdelivery.com/accounts/USAEPAOPPT/subscriber/new?topic_id=USAEPAOPPT_101.*

For information on special accommodations, meeting access or services for individuals with disabilities, and to request accommodation for a disability, please contact the Designated Federal Officer (DFO) listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Contact the DFO, Dr. Alaa Kamel, Mission Support Division (7602M), Office of Program Support, Office of Chemical Safety and Pollution Prevention, EPA, telephone number: (202) 564–5336 or call the SACC main office at (202) 564–8450; email address: *kamel.alaa@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general.

B. What action is the Agency taking?

EPA is announcing the availability of and soliciting public comment on the following two draft documents that are being submitted to the Science Advisory Committee on Chemicals (SACC) for peer review: ''Draft Proposed Principles of Cumulative Risk Assessment under the Toxic Substances Control Act'' and ''Draft Proposed Approach for Cumulative Risk Assessment of High-Priority Phthalates and a Manufacturer-Requested Phthalate under the Toxic Substance Control Act.'' The SACC will consider and review these documents at a 4-day virtual public meeting on May 8 to 11, 2023, which was previously announced in the **Federal Register** of December 21, 2022 (87 FR 78103 (FRL–10490–01–OCSPP)).

This document provides instructions for accessing the materials provided to the SACC, submitting comments, and registering to provide oral comments at the meeting.

C. What is the Agency's authority for taking this action?

The SACC was established by EPA in 2016 in accordance with the Toxic Substances Control Act (TSCA), 15 U.S.C. 2625(o), as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, Public Law 114–182, June 22, 2016, to provide independent advice and expert consultation, at the request of the Administrator, with respect to the scientific and technical aspects of issues relating to the implementation of TSCA. The SACC operates in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. 10 *et seq.,* and supports activities under the TSCA, 15 U.S.C. 2601 *et seq.,* the Pollution Prevention Act (PPA), 42 U.S.C. 13101 *et seq.,* and other applicable statutes.

D. What should I consider as I submit my comments to EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email (contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** for instructions). Clearly mark the part or all of the information that you claim to be CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing comments.* When preparing and submitting your comments, see Tips for Effective Comments at *https://www.epa.gov/dockets.*

II. Background

A. What is the purpose of the SACC?

The SACC provides independent scientific advice and recommendations to the EPA on the scientific and technical aspects of risk assessments, methodologies, and pollution prevention measures and approaches for chemicals regulated under TSCA. The SACC is composed of experts in toxicology; environmental risk assessment; exposure assessment; and related sciences (*e.g.,* synthetic biology, pharmacology, biotechnology, nanotechnology, biochemistry, biostatistics, physiologically based pharmacokinetic modeling (PBPK), computational toxicology, epidemiology, environmental fate, and environmental engineering and sustainability). The SACC currently consists of 17 members. When needed, the committee will be assisted by *ad hoc* peer reviewers with specific expertise in the topics under consideration.

B. Why did EPA develop these documents?

Between 2020 and 2022, EPA published final scoping documents for 20 High-Priority and three Manufacturer-Requested chemical substances for risk evaluation under TSCA. During the scoping process, EPA received comments from stakeholders urging the Agency to consider evaluating several chemical substances undergoing risk evaluation for cumulative risk to human health. TSCA does not explicitly require EPA to conduct cumulative risk assessments (CRAs). However, TSCA does require EPA to consider the reasonably available information and to use the best available science and to make decisions based on the weight of scientific evidence [15 U.S.C. 2625(h), (i), (k)]. EPA recognizes that for some chemical substances, the best available science may indicate that the development of a CRA is appropriate to ensure that any risks to human health and the environment are adequately characterized.

EPA's document entitled ''Draft Proposed Principles of Cumulative Risk Assessment under the Toxic Substances Control Act'' describes the fundamental principles of CRA of chemical substances and how they may be applied within the regulatory requirements of TSCA to ensure TSCA risk evaluations are based on the best available science and are protective of human health. This draft document, a copy of which is being submitted to the SACC for review and is available in the docket for public review, is not a framework nor a guidance document on conducting CRAs of chemical substances, and it does not address cumulative impacts.

Recognizing that human exposure to phthalates is widespread and that multiple phthalates can disrupt development of the male reproductive system in laboratory animals at potentially human relevant doses, EPA

asked the National Research Council (NRC) of the National Academies of Science to review the health effects of phthalates and determine whether a cumulative risk assessment of phthalates should be conducted, and if so, what approaches could be used for the assessment. In 2008, NRC published their findings to EPA in a final report entitled ''Phthalates and Cumulative Risk Assessment: The Task Ahead'' (a copy can be accessed at *https://cfpub.epa.gov/si/si_public_record_report.cfm?Lab=NCEA&dirEntryId=202508.* In that report, the NRC recommended that a cumulative risk assessment should be conducted for phthalates. EPA's document entitled ''Draft Proposed Approach for Cumulative Risk Assessment of High-Priority Phthalates and a Manufacturer-Requested Phthalate under the Toxic Substance Control Act'' describes EPA's proposed approach for evaluating a subset of High-Priority and Manufacturer-Requested phthalates for cumulative risk to human health under TSCA based on the principles of CRA described in EPA's draft principles document referenced previously. EPA's draft proposed approach follows many of the recommendations made by the NRC in 2008. This draft document, a copy of which is being submitted to the SACC for review and is available in the docket for public review, is not a CRA, and no risk estimates are presented. Instead, this draft document outlines several options EPA is considering for conducting a phthalate CRA under TSCA.

In submitting these two draft documents to the SACC for peer review, EPA is soliciting comments from the SACC on issues related to chemical grouping for purposes of CRA, health outcomes related to phthalate syndrome, and possible approaches to developing the cumulative hazard and exposure assessment for High-Priority phthalates and a Manufacturer-Requested phthalate.

III. Virtual Public Meeting

A. What is the purpose of this public meeting of the SACC?

The focus of the 4-day virtual public meeting is the SACC peer review of the following two draft documents and related public comments received by the deadlines listed under the **DATES** section:

- Draft Proposed Principles of Cumulative Risk Assessment under the Toxic Substances Control Act; and
- Draft Proposed Approach for Cumulative Risk Assessment of High-Priority Phthalates and a Manufacturer-Requested Phthalate under the Toxic Substance Control Act.

EPA *will* provide a meeting agenda for each day of the meeting, and, as needed, may provide updated times for each day in the meeting agenda that will be posted in docket and on the SACC website.

B. How can I access the documents submitted for review to the SACC?

These documents, including background documents, related supporting materials, and draft charge questions provided to the SACC, are available in the docket. As additional background materials become available and are provided to the SACC, EPA will include those additional background documents in the docket. All of these documents will be available through *https://www.regulations.gov* in Docket ID No. EPA–HQ–OPPT–2022–0918 and links on the SACC website at *https://www.epa.gov/tsca-peer-review.*

After the public meeting, the SACC will prepare a meeting minutes and final report document summarizing its recommendations to the EPA. This document will also be added to the docket and available through the SACC website.

C. How can I provide comments for the SACC's consideration?

To ensure proper receipt of comments by EPA, it is imperative that you identify Docket ID No. EPA–HQ–OPPT–2022–0918 in the subject line on the first page of your comments and follow the instructions in this unit.

1. *Written comments.* Written comments must be submitted by the deadlines set in the **DATES** section and following the instructions in this document.

2. *Oral comments.* Each individual or group wishing to make brief oral comments to the SACC during the peer review virtual public meeting must register to do so by the deadline set in the **DATES** section and following the registration instructions that will be announced on the SACC website by early April 2023. Oral comments will be limited to 5 minutes. In addition, each speaker should submit a copy of their comments to the DFO prior to the meeting for distribution to the SACC by the DFO and inclusion in the docket.

D. How can I participate in the virtual public meeting?

The virtual public meeting will be held via a webcast platform such as ''*Zoom.gov*'' and audio teleconference. You must register online to receive the webcast meeting link and audio teleconference information. Please follow the registration instructions that will be announced on the SACC website in April.

Authority: 15 U.S.C. 2625(o); 5 U.S.C 10 *et. seq.*

Dated: February 22, 2023.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2023–03974 Filed 2–24–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9542–03–OAR]

Allocations of Cross-State Air Pollution Rule Allowances From New Unit Set-Asides for 2022 Control Periods

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability.

SUMMARY: The Environmental Protection Agency (EPA) is providing notice of the availability of data on emission allowance allocations to certain units under the Cross-State Air Pollution Rule (CSAPR) trading programs. EPA has completed preliminary calculations for the allocations of allowances from the CSAPR new unit set-asides (NUSAs) for the 2022 control periods and has posted spreadsheets containing the calculations on EPA's website. EPA will consider timely objections to the preliminary calculations (including objections concerning the identification of units eligible for allocations) before determining the final amounts of the allocations.

DATES: Objections to the information referenced in this notice must be received on or before March 29, 2023.

ADDRESSES: Submit your objections via email to *CSAPR@epa.gov.* Include ''2022 NUSA allocations'' in the email subject line and include your name, title, affiliation, address, phone number, and email address in the body of the email.

FOR FURTHER INFORMATION CONTACT: Questions concerning this action should be addressed to Jason Kuhns at (202) 564–3236 or *kuhns.jason@epa.gov* or Andrew Reighart at (202) 564–0418 or *reighart.andrew@epa.gov.*

SUPPLEMENTARY INFORMATION: Under each CSAPR trading program where EPA is responsible for determining emission allowance allocations, a portion of each state's emissions budget for the program for each control period is reserved in a NUSA (and in an

additional Indian country NUSA in the case of states with Indian country within their borders) for allocation to certain units that would not otherwise receive allowance allocations. The procedures for identifying the eligible units for each control period and for allocating allowances from the NUSAs and Indian country NUSAs to these units are set forth in the CSAPR trading program regulations at 40 CFR 97.411(b) and 97.412 (NO_X Annual), 97.511(b) and 97.512 (NO_X Ozone Season Group 1), 97.611(b) and 97.612 (SO_2 Group 1), 97.711(b) and 97.712 (SO_2 Group 2), 97.811(b) and 97.812 (NO_X Ozone Season Group 2), and 97.1011(b) and 97.1012 (NO_X Ozone Season Group 3). Each NUSA allowance allocation process involves allocations to eligible units, termed ''new'' units, followed by the allocation to ''existing'' units of any allowances not allocated to new units.

This notice concerns preliminary calculations for the NUSA allowance allocations for the 2022 control periods. Generally, the allocation procedures call for each eligible ''new'' unit to receive a 2022 NUSA allocation equal to its 2022 control period emissions as reported under 40 CFR part 75 unless the total of such allocations to all such eligible units would exceed the amount of allowances in the NUSA, in which case the allocations are reduced on a pro-rata basis. (EPA notes that, under 40 CFR 97.406(c)(3), 97.506(c)(3), 97.606(c)(3), 97.706(c)(3), 97.806(c)(3), and 97.1006(c)(3), a unit's emissions occuring before its monitor certification deadline are not considered to have occurred during a control period and consequently are not included in the emission amounts used to determine NUSA allocations.) Any allowances not allocated to eligible ''new'' units are allocated to the state's ''existing'' units in proportion to such existing units' previous allocations from the portion of the respective state's emissions budget for the control period that was not reserved in a NUSA (or Indian country NUSA).

The detailed unit-by-unit data and preliminary allowance allocation calculations for ''new'' units are set forth in Excel spreadsheets titled ''CSAPR_NUSA_2022_NO_X_Annual_Prelim_Data_New_Units'', ''CSAPR_NUSA_2022_NO_X_OS_Prelim_Data_New_Units'', and ''CSAPR_NUSA_2022_SO_2_Prelim_Data_New_Units'', available on EPA's website at *https://www.epa.gov/csapr/csapr-allowance-allocations#nusa.* Each of the spreadsheets contains a separate worksheet for each state covered by that program showing, for each unit identified as eligible for a NUSA allocation, (1) the unit's emissions in the 2022 control period (annual or ozone season as applicable), (2) the maximum 2022 NUSA allowance allocation for which the unit is eligible (typically the unit's emissions in the 2022 control period), (3) various adjustments to the unit's maximum allocation if the NUSA pool is oversubscribed, and (4) the preliminary calculation of the unit's 2022 NUSA allowance allocation.

Each state worksheet for ''new'' units also contains a summary showing (1) the quantity of allowances initially available in that state's 2022 NUSA, (2) the sum of the 2022 NUSA allowance allocations that will be made to new units in that state, assuming there are no corrections to the data, and (3) the quantity of allowances that would remain in the 2022 NUSA for allocation to existing units, again assuming there are no corrections to the data.

The preliminary calculations of allocations of the remaining unallocated allowances to ''existing'' units are set forth in Excel spreadsheets titled ''CSAPR_NUSA_2022_NO_X_Annual_Prelim_Data_Existing_Units'', ''CSAPR_NUSA_2022_NO_X_OS_Prelim_Data_Existing_Units'', and ''CSAPR_NUSA_2022_SO_2_Prelim_Data_Existing_Units'', available at the same location.

Objections should be strictly limited to the data and calculations upon which the NUSA allowance allocations are based and should be emailed to the address identified in **ADDRESSES**. Objections must include: (1) precise identification of the specific data and/or calculations the commenter believes are inaccurate, (2) new proposed data and/or calculations upon which the commenter believes EPA should rely instead to determine allowance allocations, and (3) the reasons why EPA should rely on the commenter's proposed data and/or calculations and not the data referenced in this notice.

EPA notes that an allocation or lack of allocation of allowances to a given unit does not constitute a determination that CSAPR does or does not apply to the unit. EPA also notes that, under 40 CFR 97.411(c), 97.511(c), 97.611(c), 97.711(c), 97.811(c), and 97.1011(c), allocations are subject to potential correction if a unit to which allowances have been allocated for a given control period is not actually an affected unit as of the start of that control period.

(Authority: 40 CFR 97.411(b), 97.511(b), 97.611(b), 97.711(b), 97.811(b), and 97.1011(b).)

Rona Birnbaum,

Director, Clean Air Markets Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 2023–03989 Filed 2–24–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[CERCLA–01–2023–0031; FRL–10685–01–R1]

Proposed CERCLA Administrative Settlement Agreement and Order on Consent: City of Salem, Mansell Field Site, Salem, Massachusetts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement; request for public comments.

SUMMARY: Notice is hereby given that EPA has entered into a proposed settlement, embodied in an Administrative Settlement Agreement and Order on Consent, with the Settling Party, City of Salem, with respect to the Mansell Field Site, located in Salem, Essex County, Massachusetts. The settlement, which involves a mixed work and funding agreement with Salem, includes a proposed compromise of up to $1.841 million in direct and indirect EPA costs associated with EPA's contribution to the implementation of a removal action at the Site, to which this notice applies. The settlement also resolves Salem's liability for work performed and future response costs. Under the settlement, Salem will perform part of the removal action, in coordination with EPA, and as set forth in the September 8, 2022 Action Memorandum for the Site.

DATES: Comments must be submitted by March 29, 2023.

ADDRESSES: Comments should be addressed to Michelle Lauterback, Senior Enforcement Counsel, U.S. Environmental Protection Agency, 5 Post Office Square, Suite 100 (ORC 04–4), Boston, MA 02109–3912, telephone number (617) 918–1774, email address: *Lauterback.michelle@epa.gov* and should reference the Mansell Field Site, U.S. EPA Docket No: CERCLA 01–2023–0031.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed settlement may be obtained from Stacy Greendlinger, Superfund and Emergency Management Division, U.S. Environmental Protection Agency, Region I, 5 Post Office Square,

Suite 100 (02–2), Boston, MA 02109–3912, telephone number: (617) 918–1403, email address: *greendlinger.stacy@epa.gov.*

SUPPLEMENTARY INFORMATION: Notice of this proposed settlement agreement is made in accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9622(i). This administrative settlement agreement is made in accordance with sections 104, 106, 107(a), and 122 of CERCLA, and includes a compromise of EPA response costs, under CERCLA sections 107(a) and the authority of the Attorney General of the United States to compromise and settle claims of the United States with the Settling Party, City of Salem, concerning the Mansell Field Site. The proposed settlement, which involves a mixed work and funding agreement with the Settling Party, includes a compromise of up to $1.841 million in direct and indirect EPA costs associated with EPA's contribution to the implementation of a removal action at the Site. The settlement agreement includes a covenant not to sue pursuant to sections 106 (for the work) and 107(a) (for future response costs and EPA costs to perform the work up to the amount of $1.841 million) of CERCLA, 42 U.S.C. 9606 and 9607(a), relating to the Site, and protection from contribution actions or claims as provided by sections 113(f)(2) and 1229h)(4) of CERCLA. Pursuant to the terms of the proposed settlement, EPA has reserved its right to recover any costs incurred to perform the removal action that are above the amount of $1.841 million, as well as EPA's past costs. The settlement has been approved by the Environmental and Natural Resources Division of the United States Department of Justice.

For 30 days following the date of publication of this notice, the Agency will receive written comments relating solely to the cost compromise component of the settlement under CERCLA section 107(a) (the compromise of up to $1.841 million in direct and indirect EPA costs associated with EPA's contribution to the implementation of a removal action at the Site). Section XIV (Payment of Response Costs) of the settlement agreement will become effective when EPA notifies Salem that the public comment period has closed and that such comments, if any, do not require that EPA modify or withdraw from consent to section XIV (Payment of Response Costs) of this agreement. The United States will consider all comments received and may seek to modify or withdraw consent from the cost compromise contained in the proposed settlement if comments received disclose facts or considerations which indicate that the cost compromise contained in the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the Environmental Protection Agency—Region I, 5 Post Office Square, Suite 100, Boston, MA 02109–3912.

Meghan Cassidy,

Deputy Director, Superfund and Emergency Management Division.

[FR Doc. 2023–03988 Filed 2–24–23; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

Sunshine Act Meetings

Notice of Open Meeting of the Sub-Saharan Africa Advisory Committee of the Export-Import Bank of the United States (EXIM)

TIME AND DATE: Thursday, March 23rd, 2023 from 2:00pm–3:30 p.m. ET.

PLACE: The meeting will be held virtually.

STATUS: Public Participation: The meeting will be open to public participation and time will be allotted for questions or comments submitted online. Members of the public may also file written statements before or after the meeting to *external@exim.gov.* Interested parties may register for the meeting at: *https://events.teams.microsoft.com/event/c2e2631d-2807-40d1-ab1f-7bd067f41d4a@b953013c-c791-4d32-996f-518390854527.*

MATTERS TO BE CONSIDERED: Discussion of EXIM policies and programs designed to support the expansion of financing support for U.S. manufactured goods and services in Sub-Saharan Africa.

CONTACT PERSON FOR MORE INFORMATION: For further information, contact India Walker, External Engagement Specialist at 202–480–0062.

Joyce B. Stone,

Assistant Corporate Secretary.

[FR Doc. 2023–04095 Filed 2–23–23; 4:15 pm]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK

Sunshine Act Meetings

Notice of Open Meeting of the Advisory Committee of the Export-Import Bank of the United States (EXIM)

TIME AND DATE: Tuesday, March 21st, 2023 from 2:00–3:30 p.m. EDT.

PLACE: The meeting will be held virtually.

STATUS:

Public Participation: The meeting will be open to public participation and time will be allotted for questions or comments submitted online. Members of the public may also file written statements before or after the meeting to *external@exim.gov.* Interested parties may register below for the meeting: *https://events.teams.microsoft.com/event/28f38ed0-c047-4b0f-9159-78f185d1fd88@b953013c-c791-4d32-996f-518390854527.*

MATTERS TO BE CONSIDERED: Discussion of EXIM policies and programs to provide competitive financing to expand United States exports and comments for inclusion in EXIM's Report to the U.S. Congress on Global Export Credit Competition.

CONTACT PERSON FOR MORE INFORMATION: For further information, contact India Walker, External Engagement Specialist, at 202–480–0062 or at *india.walker@exim.gov.*

Joyce B. Stone,

Assistant Corporate Secretary.

[FR Doc. 2023–04093 Filed 2–23–23; 4:15 pm]

BILLING CODE 6690–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–23–1310]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''Public Health Laboratory Testing for Emerging Antibiotic Resistance and Fungal Threats'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on October 11, 2022 to obtain comments from the public and affected agencies. CDC received one comment related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget

is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Public Health Laboratory Testing for Emerging Antibiotic Resistance and Fungal Threats (OMB Control No. 0920–1310, Exp. 12/31/2023)—Revision—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

This collection related to state and local laboratory testing capacity is being implemented by the Department of Health and Human Services (HHS), Centers for Disease Control and Prevention (CDC) in response to the Executive Order 13676 of September 18, 2014, the National Strategy of September 2014 and to implement sub-objective 2.1.1 of the National Action Plan of March 2015 for Combating Antibiotic Resistant Bacteria. Data collected throughout this network is also authorized by Section 301 of the Public Health Service Act (42 U.S.C. 241).

The Antibiotic Resistance Laboratory Network (AR Lab Network) is made up of jurisdictional public health laboratories in all 50 states, five large cities, and Puerto Rico. These public health laboratories will be equipped to detect and characterize isolates of carbapenem-resistant Enterobacteriaceae (CRE), carbapenem-resistant *Pseudomonas aeruginosa* (CRPA), and carbapenem-resistant *Acinetobacter baumannii* (CRAB), as well as carbapenemase-positive organisms (CPOs) from colonization screening swabs. These resistant bacteria are becoming more and more prevalent, particularly in healthcare settings, and are typically identified in clinical laboratories, but characterization is often limited. The laboratory testing will allow for additional testing and characterization, including use of gold-standard methods. Isolate characterization includes organism identification, antimicrobial susceptibility testing (AST) to confirm carbapenem resistance and determine susceptibility to new drugs of therapeutic and epidemiological importance, a phenotypic method to detect carbapenemase enzyme production, and molecular testing to identify the resistance mechanism(s). Screening swabs will undergo molecular testing to identify whether carbapenemase-producing organisms are present.

Results from this laboratory testing will be used to: (1) identify targets for infection control; (2) detect new types of resistance; (3) characterize geographical distribution of resistance; (4) determine whether resistance mechanisms are spreading among organisms, people, and facilities; and (5) provide data that informs state and local public health surveillance and prevention activities and priorities. Additionally, some jurisdictions will participate in reference identification of *Candida* spp. to aid in these pursuits using matrix-assisted laser desorption ionization/time-of-flight (MALDI–TOF) mass spectrometry or deoxyribonucleic acid (DNA) based sequencing.

CDC's AR Lab Network supports nationwide lab capacity to rapidly detect antibiotic resistance and inform local public health responses to prevent spread and protect people. It closes the gap between local capabilities and the data needed to combat antibiotic resistance by providing comprehensive lab capacity and infrastructure for detecting antibiotic-resistant pathogens (germs), cutting-edge technology, like DNA sequencing, and rapid sharing of actionable data to drive infection control responses and help treat infections. This infrastructure allows the public health community to rapidly detect emerging antibiotic-resistant threats in healthcare and the community, mount a comprehensive local response, and better understand these deadly threats to quickly contain them. Additionally, a subset of jurisdictions will participate in detection and characterization of AR *Neisseria gonorrhoeae,* including antimicrobial susceptibility testing of *Neisseria gonorrhoeae.*

Funded state and local public health laboratories will provide the following information to the Program Office at CDC—Division of Healthcare Quality Promotion (DHQP):

1. Annually, participating laboratories will submit a summary report describing testing methods and volume. These reports will be submitted by email to *ARLN_DHQP@cdc.gov.* These measures are to be used by the Program Office (DHQP) to determine the ability of each laboratory to confirm and characterize targeted AR organisms and their overall capacity to support state healthcare-associated infection (HAI)/AR prevention programs.

2. Annually, participating laboratories will provide Evaluation and Performance Measurement Report to CDC via email to *HAIAR@cdc.gov.* Data will be used to indicate progress made toward program objectives and challenges encountered.

3. Participating laboratories will report all testing results to CDC, at least monthly, by CSV or Health Level 7 (HL7) using an online web-portal transmission. This information will be used to: (a) provide data for state and local infection prevention programs; (b) identify new types of antibiotic resistant organisms; (c) identify new resistance mechanisms in targeted organisms; (d) describe the spread of targeted resistance mechanisms; and (e) identify geographical distribution of antibiotic resistance or other epidemiological trends.

4. Participating laboratories will utilize secure public health messaging protocols to transfer results data to CDC and submitting facilities and clinical laboratories. For messaging to CDC, these protocols will be based in Association of Public Health Laboratories (APHL) Informatics Messaging Services (AIMS) platform. The AIMS platform is a secure

environment that provides shared services to assist public health laboratories in the transport, validation and routing of electronic data. AIMS is transitioning to the use of HL7 messaging for data to be transmitted in real-time, allowing more frequent reporting or results while simultaneously lessening burden on public health laboratories.

5. Detection of targeted resistant organisms and resistance mechanisms that pose an immediate threat to patient safety and require rapid infection control, facility assessments, and/or additional diagnostics, an immediate communication to the local healthcare-associated infection program in the jurisdictional public health department and CDC is needed. The ''AR Lab Network Alerts'' encompass targeted AR threats that include new and rare plasmid-mediated (''jumping'') carbapenemase genes, isolates resistant to all drugs tested, and detection of human reservoirs for transmission. These alerts must be sent within one working day of detection. Participating laboratories will utilize REDCap to communicate these findings. The elements of these messages will include the unique public health laboratory specimen ID and a summary of its testing results to date.

Sites participating in *Candida* identification testing and C. auris whole genome sequencing (WGS) will also provide the following to the Mycotics Program Office at CDC—Division of Foodborne, Waterborne, and Environmental Diseases (DFWED):

1. Annually, participating laboratories will provide an Evaluation and Performance Measurement Report to CDC via email to *ARLN@cdc.gov.* Data will be used to indicate progress made toward program objectives and challenges encountered.

2. Participating laboratories will report all candida identification testing results to CDC, requested at least monthly, by REDCap or Health Level 7 (HL7) using an online web-portal transmission. This information will be used to (1) identify and track antifungal resistance and emerging fungal pathogens, and (2) aid public health departments and healthcare facilities in rapidly responding to fungal public health threats and outbreaks. Participating laboratories will utilize secure public health messaging protocols to transfer results data to CDC, submitting facilities and clinical laboratories. For messaging to CDC, these messaging protocols will be based in REDCap or the AIMS platform. The REDCap and AIMS platforms are secure environments that provide shared services to assist public health laboratories in the transport, validation and routing of electronic data. AIMS is transitioning to the use of HL7 messaging for data to be transmitted in real-time, allowing more frequent reporting of results while simultaneously lessening burden on public health laboratories.

3. Participating laboratories will report all *C. auris* WGS testing results to CDC by REDCap or Health Level 7 (HL7) using online web-portal transmission. This information will be used to (1) support outbreak investigations (*i.e.,* helping to identify new introductions and ongoing or undetected transmission), (2) monitor circulating clades and strains, and (3) learn more about mechanisms of antifungal resistance. Participating laboratories will utilize secure public health messaging protocols to transfer results data to CDC and coordinating epidemiologists. For messaging to CDC, these messaging protocols will be based in REDCap or the AIMS platform.

4. For those resistant organisms that pose an immediate threat to patient safety and require rapid infection control, facility assessments, and/or additional diagnostics, an immediate communication to the local healthcare-associated infection program in the jurisdictional public health department and CDC is needed. The ''AR Lab Network Alerts'' encompass targeted AR threats that include *C. auris,* which is rapidly emerging in healthcare settings. These alerts must be sent within one working day of detection. Participating laboratories will utilize REDCap and/or email to *ARLN_alert@cdc.gov* to communicate these findings. The elements of these messages will include the unique public health laboratory specimen ID and a summary of specimen testing results to date.

Sites participating in detection and characterization of AR Neisseria gonorrhoeae, including antimicrobial susceptibility testing of *Neisseria gonorrhoeae* will provide the following to the STD Laboratory Reference and Research Branch (SLRRB) at CDC—Division of STD Prevention (DSTDP):

1. Annually, participating laboratories will provide an Evaluation and Performance Measure Report. Data will be used to indicate progress made toward program objectives and challenges encountered.

2. Participating laboratories will notify CDC DTSDP of any isolate(s) identified to demonstrate an ''alert'' MIC as defined by SLRRB within one working day. Laboratories will utilize REDCap to communicate these findings. The elements of these messages will include the unique public health laboratory specimen ID and a summary of specimen testing results to date.

3. Participating laboratories will report all testing results to CDC, requested at least monthly, by email, REDCap, or Health Level 7 (HL7) using an online web-portal transmission. This information will be used to (1) identify and track antibiotic resistant pathogens and emerging patterns of resistance, and (2) aid public health departments and healthcare facilities in timely responding to antibiotic resistant public health threats and outbreaks. Participating laboratories will utilize secure public health messaging protocols to transfer results data to CDC, submitting facilities and clinical laboratories. For messaging to CDC, these messaging protocols will be based in REDCap or the AIMS platform. The REDCap and AIMS platforms are secure environments that provide shared services to assist public health laboratories in the transport, validation, and routing of electronic data. AIMS is transitioning to the use of HL7 messaging for data to be transmitted in real-time, allowing more frequent reporting of results while simultaneously lessening burden on public health laboratories.

CDC requests OMB approval for an estimated 4,950 annual burden hours. There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Average number of responses per respondent	Average burden per response (in hours)
Public Health Laboratories	3a. Annual Report of Bacterial Specimen Testing Methods.	56	1	6/60

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondents	Form name	Number of respondents	Average number of responses per respondent	Average burden per response (in hours)
Public Health Laboratories	3b. Annual Evaluation and Performance Measurement Report for Bacterial Specimen Testing.	56	1	4
Public Health Laboratories	3c. Monthly Data Report Form for Bacterial Specimen Testing.	56	12	4
Public Health Laboratories	3d. AR Lab Network Alerts—Bacterial Specimen Testing.	56	34	6/60
Public Health Laboratories	3e. Annual Evaluation and Performance Measurement Report (*Candida* identification).	56	1	2
Public Health Laboratories	3f. Monthly Data Report Form for *Candida* identification.	56	12	2
Public Health Laboratories	3g. AR Lab Network Alerts Report Form for *Candida auris*.	56	13	6/60
Public Health Laboratories	3h. Annual Evaluation and Performance Measurement Report (*Neisseria gonorrhoeae*).	56	1	1
Public Health Laboratories	3i. AR Lab Network Alert and Monthly Data Report Form for *Neisseria gonorrhoeae*.	56	12	6/60
Public Health Laboratories	3j. Annual Evaluation and Performance Measurement Report (*C. auris* Whole Genome Sequencing).	56	1	1
Public Health Laboratories	3k. AR Lab Network Form for Isolate/Specimen-level Mycotics Testing (*C. auris* Whole Genome Sequencing).	56	12	6/60
Public Health Laboratories	3l. AR Lab Network Form for Phylogenetic Tree-level Mycotics Reporting (*C. auris* Whole Genome Sequencing).	56	12	6/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2023–03960 Filed 2–24–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–23–22FS]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''Artificial Stone Countertops: Exposures, Controls, Surveillance, & Translation'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on June 02, 2022 to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Artificial Stone Countertops: Exposures, Controls, Surveillance, & Translation—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

As a recently introduced technology in the United States, the Artificial Stone (AS) Countertop industry is not well defined; the obligation to monitor workers' health might not be known, considered, or understood; and education on potential hazard and health risks related to respirable crystalline silica (RCS) is limited. Exposure is associated with the development of silicosis, an irreversible, sometimes fatal, but preventable lung disease. Twenty-four cases of silicosis,

including two deaths, have been reported among AS fabrication workers in the United States. The anticipated impacts of this project are increased understanding of industry scale, practices, and medical monitoring, and increased collaboration and communication to inform the AS Countertop industry of industry hazards, methods to mitigate exposure, and improve medical surveillance. Understanding how or if current RCS recommendations and regulations are used by various AS Countertop fabrication facilities will identify approaches for improved intervention.

The purpose of the proposed collection is to conduct a survey with AS Countertop fabrication facilities to better understand: (1) work practices and controls related to respirable crystalline silica; (2) barriers or facilitators to implementation of medical and exposure monitoring requirements; (3) identify areas for potential intervention; and (4) identify countertop fabrication facilities willing to participate in future NIOSH exposure and health research.

The estimate of burden hours is based on an internal pilot test of the survey instrument. The average time for reviewing instructions, gathering mock information, and completing the survey was between 10–30 minutes. For the purposes of estimating burden hours, the median time to complete the survey is used. An estimated 8,600 respondents are anticipated to participate in the survey. for 2,150 annual burden hours. There are no costs to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Facility Managers/Owners	Workplace Survey	8,600	1	15/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2023–03959 Filed 2–24–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–23–22HY]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled, ''Centralized Institutional Review for the CDC Expanded Access Investigational New Device (EA–IND) for Use of Tecovirimat (TPOXX®) for Treatment of Human Non-Variola Orthopoxvirus Infections in Adults and Children (IND 116039/CDC #6402),'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on August 22, 2022, to obtain comments from the public and affected agencies. CDC received two comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Centralized Institutional Review for the CDC Expanded Access Investigational New Device (EA–IND) for ''Use of Tecovirimat (TPOXX®) for Treatment of Human Non-Variola Orthopoxvirus Infections in Adults and Children'' (IND 116039/CDC #6402)—New—Office of Science (OS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Monkeypox is a zoonosis, caused by the Orthopoxvirus (OPXV) Monkeypox virus (MPXV), and is endemic to forested areas of West and Central Africa. In humans, infection with MPXV can lead to a smallpox-like illness with fatal outcomes in up to 11% of patients without prior smallpox vaccination.

Since May 2022, clusters of monkeypox cases, have been reported in 19 countries that do not normally have monkeypox, and the number of confirmed cases in the U.S. is rapidly increasing.

Tecovirimat (TPOXX) is FDA-approved for the treatment of human smallpox disease caused by Variola virus in adults and children. However, its use for other orthopoxvirus infections, including monkeypox, is not approved by the FDA. CDC currently holds a non-research expanded access Investigational New Drug (EA–IND) protocol that allows for the use of tecovirimat for primary or early empiric treatment of non-variola orthopoxvirus

infections, including monkeypox, in adults and children of all ages.

FDA regulations require that an Institutional Review Board (IRB) review, approve and maintain oversight of the activities under the EA–IND as set forth in 21 CFR parts 50, 56, and 312. The CDC IRB is positioned to serve as the central IRB for review and approval of the EA–IND consistent 21 CFR 56.114. This arrangement allows facilities to use or rely on the CDC IRB for centralized review and approval for this protocol in place of review by the site-specific IRB to help reduce duplication of effort, delays, and increased expenses. Any facility that receives tecovirimat for treatment of orthopoxvirus infection under the EA–IND may elect to rely on the CDC IRB to meet FDA's regulatory requirements.

The IRB review is required by FDA under the CDC's approved EA–IND. Therefore, CDC must maintain records of which facilities have elected to rely on the CDC IRB for centralized review and which facilities elect to obtain IRB review on their own. CDC will use collected data to track and document the institutions relying on the CDC IRB so they can provide TPOXX treatment to their patients with monkeypox under the EA–IND.

This collection was initially approved as an Emergency ICR in August 2022 (OMB Control No. 0920–1366), and is being submitted here to create a standard version of the collection. CDC requests OMB approval for an estimated 1,333 annual burden hours. There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number responses per respondent	Avg. burden per response (in hours)
Hospital/IRB Administrators	CDC IRB Authorization Agreement (for review).	500	1	1
Hospital/IRB Administrators	CDC IRB Authorization Agreement (for completion and submission to CDC).	500	10	10/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2023–03961 Filed 2–24–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3430–FN]

Application From the Joint Commission (TJC) for Continued Approval of its Psychiatric Hospital Accreditation Program

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces our decision to approve the Joint Commission for continued recognition as a national accrediting organization for psychiatric hospitals that wish to participate in the Medicare or Medicaid programs.

DATES: This notice is effective February 25, 2023 through February 25, 2029.

FOR FURTHER INFORMATION CONTACT: Danielle Adams (410) 786–8818, Donald Howard (410) 786–6764 or Lillian Williams (410) 786–8636.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services from a psychiatric hospital provided certain requirements are met. Section 1861(f) of the Social Security Act (the Act) establishes distinct criteria for facilities seeking designation as a psychiatric hospital. Regulations concerning provider agreements are at 42 CFR part 489 and those pertaining to activities relating to the survey and certification of facilities are at 42 CFR part 488. The regulations at 42 CFR part 482, subpart E, specify the minimum conditions that a psychiatric hospital must meet to participate in the Medicare program, the scope of covered services, and the conditions for Medicare payment for psychiatric hospitals.

Generally, to enter into a provider agreement, a psychiatric hospital must first be certified by a State Survey Agency as complying with the conditions or requirements set forth in part 482 subpart E of our regulations. Thereafter, the psychiatric hospital is subject to regular surveys by a State Survey Agency to determine whether it continues to meet these requirements.

Section 1865(a)(1) of the Act provides that, if a provider entity demonstrates through accreditation by an approved national accrediting organization (AO) that all applicable Medicare conditions are met or exceeded, we may treat the provider entity as having met those conditions; that is, we may ''deem'' the provider entity as having met the requirements. Accreditation by an AO is voluntary and is not required for Medicare participation.

If an AO is recognized by the Secretary of the Department of Health and Human Services (the Secretary) as having standards for accreditation that meet or exceed Medicare requirements, any provider entity accredited by the national accrediting body's approved program may be deemed to meet the Medicare conditions. A national AO applying for approval of its accreditation program under part 488, subpart A, must provide Centers for Medicare & Medicaid Services (CMS) with reasonable assurance that the AO requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning the approval of AO are set forth at § 488.5. The regulations at § 488.5(e)(2)(i) require AO to reapply for continued approval of its accreditation program every 6 years or sooner as determined by CMS.

The Joint Commission's current term of approval for their psychiatric hospital accreditation program expires February 25, 2023.

II. Application Approval Process

Section 1865(a)(3)(A) of the Act provides a statutory timetable to ensure that our review of applications for CMS approval of an accreditation program is conducted in a timely manner. The Act provides no more than 210 days after the date of receipt of a complete application, including any documentation necessary to make the determination, for CMS to complete its application review process. Within 60 days after receiving a complete application, we must publish a notice in the **Federal Register** that identifies the national accrediting body making the request, describes the request, and provides no less than a 30-day public

comment period. At the end of the 210-day period, we must publish a notice in the **Federal Register** approving or denying the application.

III. Provisions of the Proposed Notice

In the September 30, 2022 **Federal Register** (87 FR 59435), we published a proposed notice announcing The Joint Commission (TJC) request for continued approval of its Medicare psychiatric hospital accreditation program. In the September 30, 2022 notice, we detailed our evaluation criteria. Under the authority of Section 1865(a)(2) of the Act and our regulations at § 488.5, we conducted a review of TJC's Medicare psychiatric hospital accreditation renewal application in accordance with the criteria specified by our regulations, which include, but are not limited to, the following:

- An onsite administrative review of TJC's: (1) Corporate policies; (2) financial and human resources available to accomplish the proposed surveys; (3) procedures for training, monitoring, and evaluation of its psychiatric hospital surveyors; (4) ability to investigate and respond appropriately to complaints against accredited psychiatric hospitals; and (5) survey review and decision-making process for accreditation.
- The comparison of TJC's Medicare psychiatric hospital accreditation program standards to our current Medicare hospitals Conditions of Participation (CoPs) and psychiatric hospital special conditions.
- A documentation review of TJC's psychiatric hospital survey process to:

++ Determine the composition of the survey team, surveyor qualifications, and TJC's ability to provide continuing surveyor training.

++ Compare TJC's processes to those we require of state survey agencies, including periodic resurvey and the ability to investigate and respond appropriately to complaints against accredited psychiatric hospitals.

++ Evaluate TJC's procedures for monitoring psychiatric hospitals it has found to be out of compliance with TJC's program requirements. (This pertains only to monitoring procedures when TJC identifies non-compliance. If noncompliance is identified by a state survey agency through a validation survey, the state survey agency monitors corrections as specified at § 488.9(c)).

++ Assess TJC's ability to report deficiencies to the surveyed hospital and respond to the psychiatric hospital's plan of correction in a timely manner.

++ Establish TJC's ability to provide CMS with electronic data and reports necessary for effective validation and assessment of the organization's survey process.

++ Determine the adequacy of TJC's staff and other resources.

++ Confirm TJC's ability to provide adequate funding for performing required surveys.

++ Confirm TJC's policies with respect to surveys being unannounced.

++ Confirm TJC's policies and procedures to avoid conflicts of interest, including the appearance of conflicts of interest, involving individuals who conduct surveys or participate in accreditation decisions.

++ Obtain TJC's agreement to provide CMS with a copy of the most current accreditation survey together with any other information related to the survey as we may require, including corrective action plans.

IV. Analysis of and Responses to Public Comments on the Proposed Notice

In accordance with section 1865(a)(3)(A) of the Act, the September 30, 2022 proposed notice also solicited public comments regarding whether TJC's requirements met or exceeded the Medicare CoPs for psychiatric hospitals. We received one comment in response to the proposed notice.

Comment: A commenter expressed concern about TJC's ability to protect disabled patients in facilities that engage in misconduct and that do not follow best practices.

Response: We appreciate this comment and the commenter's concern for patient safety. We continue to prioritize patient safety and our responsibility for oversight of AOs. As described in Section III of this notice, CMS takes various steps when considering to approve or not approve a national AO. Each national AO wishing to be recognized by Medicare as a national AO must go through a rigorous process to obtain CMS approval. We remain steadfast in our commitment to keeping the public informed of our evaluation process for national AO seeking CMS approval.

V. Provisions of the Notice

A. Differences Between TJC's Standards and Requirements for Accreditation and Medicare Conditions of Participation (CoPs) and Survey Process Requirements

We compared TJC's psychiatric hospital accreditation program requirements and survey process with the Medicare CoPs at Part 482 subpart E, and the survey and certification process requirements of Parts 488 and 489. Our review and evaluation of TJC's psychiatric hospital application, which were conducted as described in section III of this notice, yielded the following areas where, as of the date of this notice, TJC has completed revising its survey processes in order to demonstrate that it uses survey processes that are comparable to state survey agency processes by:

- Providing additional training to ensure that TJC psychiatric hospital surveyors document findings of noncompliance consistent with the regulatory requirement in Section § 488.5 (a)(4)(iv).
- Providing additional training to surveyors to ensure any actions taken by the facility to address the deficiencies include specific information in the corrective measures, as provided by § 488.5 (a)(4)(vii), and are consistent with the plan of correction requirements as described in the State Operations Manual (SOM), Chapter 2, Section 2728B.
- Revising TJC's intake/triage process for all complaint requirements to ensure comparability with CMS requirements, § 488.5(a)(12), and consistent with the SOM, Chapter 5, Section 5075.2.
- Revising TJC's complaint policy regarding offsite investigations and maximum timeframes to investigate complaints as described in SOM, Chapter 5, Sections 5075.5 and 5075.9.

B. Term of Approval

Based on our review and observations described in section III. and V. of this notice, we approve TJC as a national AO for psychiatric hospitals that request participation in the Medicare program. The decision announced in this notice is effective February 25, 2023 through February 25, 2029. In accordance with § 488.5(e)(2)(i), the term of the approval will not exceed 6 years.

VI. Collection of Information Requirements

This document does not impose information collection requirements; that is, reporting, recordkeeping. or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Chiquita Brooks-LaSure, having reviewed and approved this document, authorizes Lynette Wilson, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Dated: February 21, 2023.

Lynette Wilson,

Federal Register Liaison, Centers for Medicare & Medicaid Services.

[FR Doc. 2023–03925 Filed 2–24–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–2782]

Antimicrobial Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Antimicrobial Drugs Advisory Committee. The general function of the committee is to provide advice and recommendations to FDA on regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

DATES: The meeting will be held virtually on March 16, 2023, from 9 a.m. to 5 p.m. Eastern Time.

ADDRESSES: Please note that due to the impact of the COVID–19 pandemic, all meeting participants will be joining this advisory committee meeting via an online teleconferencing platform. Answers to commonly asked questions about FDA advisory committee meetings may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2022–N–2782. Please note that late, untimely filed comments will not be considered. The docket will close on March 15, 2023. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of March 15, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Comments received on or before March 9, 2023, will be provided to the committee. Comments received after that date will be taken into consideration by FDA. In the event that the meeting is cancelled, FDA will continue to evaluate any relevant applications or information, and consider any comments submitted to the docket, as appropriate.

You may submit comments 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–2022–N–2782 for ''Antimicrobial Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments.'' Received comments, 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 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.'' FDA 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 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 the 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: Joyce Frimpong, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–7973, email: *AMDAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last-minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and

scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The meeting presentations will be heard, viewed, captioned, and recorded through an online teleconferencing platform. The committee will discuss new drug application (NDA) 217188, for PAXLOVID (nirmatrelvir and ritonavir co-packaged tablets) for oral use, submitted by Pfizer, Inc. The proposed indication is treatment of mild-to-moderate coronavirus disease (COVID–19) in adults who are at high risk for progression to severe COVID–19, including hospitalization or death.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available on FDA's website at the time of the advisory committee meeting. Background material and the link to the online teleconference meeting room will be available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link. The meeting will include slide presentations with audio components to allow the presentation of materials in a manner that most closely resembles an in-person advisory committee meeting.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. All electronic and written submissions to the Docket (see **ADDRESSES**) on or before March 9, 2023, will be provided to the committee. Oral presentations from the public will be scheduled between approximately 1:30 p.m. and 2:30 p.m. Eastern Time. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before March 2, 2023. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by March 3, 2023.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Joyce Frimpong (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 22, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–03971 Filed 2–24–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–0465]

Agency Information Collection Activities; Proposed Collection; Comment Request; Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions of our regulations requiring that the Agency receive prior notice before food is imported or offered for import into the United States.

DATES: Either electronic or written comments on the collection of information must be submitted by April 28, 2023.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 28, 2023. Comments 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 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–

2023–N–0465 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002.'' Received comments, 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 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.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed 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) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002—21 CFR 1.278 to 1.285

OMB Control Number 0910–0520—Extension

The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Bioterrorism Act) added section 801(m) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 381(m)), which requires that FDA receive prior notice for food, including food for animals, that is imported or offered for import into the United States. Sections 1.278 to 1.282 of FDA regulations (21 CFR 1.278 to 1.282) set forth the requirements for submitting prior notice; §§ 1.283(d) and 1.285(j) (21 CFR 1.283(d) and 1.285(j)) set forth the procedure for requesting Agency review after FDA has refused admission of an article of food under section 801(m)(1) of the FD&C Act or placed an article of food under hold under section 801(l) of the FD&C Act; and § 1.285(i) sets forth the procedure for post-hold submissions.

Section 304 of the FDA Food Safety Modernization Act (Pub. L. 111–353) amended section 801(m) of the FD&C Act to require a person submitting prior notice of imported food, including food for animals, to report, in addition to other information already required, ''any country to which the article has been refused entry.'' Advance notice of imported food allows FDA, with the support of the U.S. Customs and Border Protection (CBP), to target import inspections more effectively and help protect the nation's food supply against terrorist acts and other public health emergencies. By requiring that a prior notice contain specific information that indicates prior refusals by any country and identifies the country or countries, the Agency may better identify imported food shipments that may pose safety and security risks to U.S. consumers.

This information collection enables FDA to make better informed decisions in managing the potential risks of imported food shipments into the United States. Any person with knowledge of the required information may submit prior notice for an article of food. Thus, the respondents to this information collection may include importers, owners, ultimate consignees, shippers, and carriers.

FDA regulations require that prior notice of imported food be submitted electronically using CBP's Automated Broker Interface of the Automated Commercial Environment (ABI/ACE) (§ 1.280(a)(1)) or the FDA Prior Notice System Interface (PNSI) (Form FDA 3540) (§ 1.280(a)(2)). PNSI is an electronic submission system available on the FDA Industry Systems page at *https://www.access.fda.gov/.* Information the Agency collects in the prior notice submission includes: (1) the submitter and transmitter (if different from the submitter); (2) entry type and CBP identifier; (3) the article of food, including complete FDA product code; (4) the manufacturer, for an article of food no longer in its natural state; (5) the grower, if known, for an article of food that is in its natural state; (6) the FDA Country of Production; (7) the name of any country that has refused entry of the article of food; (8) the shipper, except for food imported by international mail; (9) the country from which the article of food is shipped or, if the food is imported by international

mail, the anticipated date of mailing and country from which the food is mailed; (10) the anticipated arrival information or, if the food is imported by international mail, the U.S. recipient; (11) the importer, owner, and ultimate consignee, except for food imported by international mail or transshipped through the United States; (12) the carrier and mode of transportation, except for food imported by international mail; and (13) planned shipment information, except for food imported by international mail (§ 1.281).

Much of the information collected for prior notice is identical to the information collected for FDA importer's entry notice, which has been approved under OMB control number 0910–0046. The information in an importer's entry notice is collected electronically via CBP's ABI/ACE at the same time the respondent files an entry for import with CBP. To avoid double-counting the burden hours already counted in the importer's entry notice information collection, the burden hour analysis in table 1 reflects FDA's estimate of the reduced burden for prior notice submitted through ABI/ACE in column 6 entitled ''Average Burden per Response.''

In addition to submitting a prior notice, a submitter should cancel a prior notice and must resubmit the information to FDA if information changes after the Agency has confirmed a prior notice submission for review (*e.g.,* if the identity of the manufacturer changes) (§ 1.282). However, changes in the estimated quantity, anticipated arrival information, or planned shipment information do not require resubmission of prior notice after the Agency has confirmed a prior notice submission for review (§ 1.282(a)(1)(i) to (iii)). In the event that FDA refuses admission to an article of food under section 801(m)(1) or the Agency places it under hold under section 801(l) of the FD&C Act, §§ 1.283(d) and 1.285(j) (21 CFR 1.283(d) and 1.285(j)) set forth the procedure for requesting FDA's review and the information required in a request for review. In the event that the Agency places an article of food under hold under § 801(l) of the FD&C Act, § 1.285(i) (21 CFR 1.285(i)) sets forth the procedure for, and the information to be included in, a post-hold submission.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section	FDA form No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Prior Notice Submissions:						
Through ABI/ACE						
1.280 through 1.281	N/A	1,900	7,895	15,000,500	0.167 (10 minutes)	[2] 2,505,084
Through PNSI						
1.280 through 1.281	[3] 3540	13,000	231	3,003,000	0.384 (23 minutes)	1,153,152
Subtotal						3,658,236
Cancellations:						
Through ABI/ACE						
1.282	N/A	25,000	1	25,000	0.25 (15 minutes)	6,250
Through PNSI						
1.282 and 1.283(a)(5)	3540	50,000	1	50,000	0.25 (15 minutes)	12,500
Subtotal						18,750
Requests for Review and Post-hold Submissions:						
1.283(d) and 1.285(j)	N/A	1	1	1	8	8
1.285(i)	N/A	500	1	500	1	500
Subtotal						508
Total				18,079,001		3,677,494

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] To avoid double counting, an estimated 396,416 burden hours already accounted for in the importer's entry notice information collection approved under OMB control number 0910–0046 are not included in the total.
[3] The term ''Form FDA 3540'' refers to the electronic submission system known as PNSI, which is available at *https://www.access.fda.gov/.*

Table 1 reflects the annual estimated reporting burden associated with the information collection. During the next 3 years, we estimate each respondent will need approximately 10 minutes per submission for a total of 15,000,500 annual submissions and 2,505,083.5 rounded up to 2,505,084 annual hours of burden. Similarly, we estimate 13,000 users submitting an average of 231 notices annually, requiring approximately 23 minutes per submission. Cumulatively, this totals 3,003,000 annual responses and 1,153,152 annual hours of burden.

Regarding cancellations of prior notices, we estimate 25,000 respondents averaging 1 cancellation annually and requiring 15 minutes to do so. Cumulatively this totals 25,000 annual submissions and 6,250 annual hours of burden. Similarly, we estimate 50,000 registered users submitting an average of 1 cancellation annually and requiring 15 minutes to do so. Cumulatively this totals 50,000 annual responses and 12,500 annual hours of burden.

We estimate that we will receive one submission annually under § 1.283(d) or § 1.285(j) over the next 3 years. It takes approximately 8 hours to prepare a submission, which results in 8 hours of burden.

Finally, for an average of 500 post-hold submissions annually, we estimate it will take respondents 1 hour to prepare the written notification described in § 1.285(i)(2)(i), for a total of 500 annual burden hours.

Based on our experience and the average number of prior notice submissions, cancellations, and requests for review received in the past 3 years, we are adjusting our burden estimate for this information collection by increasing the number of responses and total burden. The number of responses has increased by 3,146,589 responses (from 14,932,412 to 18,079,001). The total burden has increased by 769,918 hours (from 2,907,576 to 3,677,494). We attribute the adjustment to an increase in the number of responses.

Dated: February 22, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–03991 Filed 2–24–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–0028]

Timothy Baxter; Denial of Hearing; Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is denying a request for a hearing submitted by Dr. Timothy Baxter (Dr. Baxter) and is issuing an order under the Federal Food, Drug, and Cosmetic Act (FD&C Act) debarring Dr. Baxter for 5 years from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Dr. Baxter was convicted of a misdemeanor under Federal law for conduct relating to the regulation of a drug product under the FD&C Act and that the type of conduct underlying the conviction undermines the process for the regulation of drugs. In determining the appropriateness and period of Dr. Baxter's debarment, FDA has considered the applicable factors listed in the FD&C Act. Dr. Baxter has failed to file with the Agency information and analyses sufficient to create a basis for a hearing concerning this action.

DATES: The order is applicable February 27, 2023.

ADDRESSES: Any application for termination of debarment by Dr. Baxter under section 306(d) of the FD&C Act (21 U.S.C. 335a(d)) (application) may be submitted as follows:

Electronic Submissions

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. An application submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your application will be made public, you are solely responsible for ensuring that your application 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 application, that information will be posted on *https://www.regulations.gov.*
- If you want to submit an application with confidential information that you do not wish to be made available to the public, submit the application 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 a written/paper application submitted to the Dockets Management Staff, FDA will post your application, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: Your application must include the Docket No. FDA–2021–N–0028. An application will be placed in the docket and, unless 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 application with confidential information that you do not wish to be made publicly available, submit your application 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 your application. 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 application 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, 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 between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500. Publicly available submissions may be seen in the docket.

FOR FURTHER INFORMATION CONTACT: Rachael Vieder Linowes, Office of Scientific Integrity, Food and Drug Administration, *Rachael.Linowes@fda.hhs.gov,* 240–402–5931.

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(b)(2)(B)(i)(I) of the FD&C Act permits FDA to debar an individual if it finds that: (1) the individual has been convicted of a misdemeanor under Federal law ''for conduct relating to the development or approval, including the process for development or approval, of any drug product or otherwise relating to the regulation of drug products'' under the FD&C Act and (2) the type of conduct that served as the basis for the conviction undermines the process for the regulation of drugs.

On August 31, 2020, in the U.S. District Court for the Western District of Virginia, Dr. Baxter pled guilty to a misdemeanor violation of the FD&C Act. Specifically, he pled guilty to causing the introduction or delivery for introduction of a misbranded drug into interstate commerce in violation of sections 301(a), 303(a)(1), and 502(a) of the FD&C Act (21 U.S.C. 331(a), 333(a)(1), and 352(a)). In the plea agreement pursuant to which Dr. Baxter pled guilty, he agreed that ''all the facts set forth in the Information [filed by the Federal government on the same day] are true and correct and provide the Court with a sufficient factual basis to support [his] plea.'' The Information provided that, at the time of the conduct underlying his conviction, Dr. Baxter was the Global Medical Director of Reckitt Benckiser Pharmaceuticals Inc. (RBP).'' [1] During that time, according to the Information, RBP's Medical Affairs Manager, who reported directly to Dr. Baxter, provided false or misleading analysis and charts to the Massachusetts Medicaid program (MassHealth), as a means of persuading MassHealth to

[1] As noted in the Information, ''on or about December 23, 2014, RBP was renamed Indivior, Inc, and became a subsidiary of Indivior PLC. After on or about December 23, 2014, Dr. Baxter was the Chief Medical Officer of Indivior PLC.''

reimburse patients for a drug named Suboxone Film, which RBP marketed.

As framed by the Information, the false and misleading data and analysis provided to MassHealth—relating to the unintended pediatric exposure rates for Suboxone Film relative to similar tablet products—constituted ''labeling'' for the drug under section 201(m) of the FD&C Act (21 U.S.C. 321(m)) and thus misbranded the drug under section 502(a) of the FD&C Act). As discussed further below, in pleading guilty pursuant to the Information, Dr. Baxter conceded that he was a responsible corporate officer (RCO) at RBP that ''failed to prevent and promptly correct the distribution of false and misleading unintended pediatric exposure data and marketing claims to MassHealth'' and ''caused the introduction and delivery for introduction into interstate commerce of . . . a drug [(Suboxone Film)] that was misbranded in that the drug's labeling was false and misleading'' (*see United States* v. *Park,* 421 U.S. 658, 673–74 (1975)).

By letter dated February 25, 2021, FDA's Office of Regulatory Affairs (ORA) notified Dr. Baxter of its proposal to debar him for 5 years from providing services in any capacity to a person having an approved or pending drug product application and provided him with an opportunity to request a hearing on the proposal. ORA found that Dr. Baxter is subject to debarment under section 306(b)(2)(B)(i)(I) of the FD&C Act on the basis of his misdemeanor conviction under Federal law for conduct both relating to the regulation of a drug product under the FD&C Act and undermining the Agency's process for regulating drugs. The proposal also outlined findings concerning the factors ORA considered to be applicable in determining the appropriateness and period of debarment, as provided in section 306(c)(3) of the FD&C Act. ORA found that a 5-year period of debarment is appropriate. Specifically, ORA found that the nature and seriousness of the offense and the nature and extent of voluntary steps to mitigate the effect on the public are unfavorable factors for Dr. Baxter. ORA stated that it viewed the absence of prior convictions involving matters within FDA's jurisdiction as a favorable factor. ORA concluded that ''the facts supporting the unfavorable factors outweigh those supporting the favorable factor and therefore warrant the imposition of a 5-year period of debarment.''

By letter dated March 26, 2021, through counsel, Dr. Baxter requested a hearing on ORA's proposal to debar him. On May 4, 2021, he submitted a ''Memorandum of Facts and Arguments in Support of Hearing Request'' (Memorandum). In this Memorandum, Dr. Baxter makes legal, factual, and policy-based arguments regarding the proffered basis for his debarment in ORA's proposal.

Under the authority delegated to her by the Commissioner of Food and Drugs, the Chief Scientist has considered Dr. Baxter's request for a hearing. Hearings are granted only if there is a genuine and substantial issue of fact. As discussed in more detail below, hearings will not be granted on issues of policy or law, on mere allegations, on denials or general descriptions of positions and contentions, on data and information insufficient to justify the factual determination urged if accurate and presented at a hearing, or on factual issues that are not determinative with respect to the action requested (see § 12.24(b) (21 CFR 12.24(b))). The Chief Scientist has considered Dr. Baxter's arguments and concluded that they are unpersuasive and fail to raise a genuine and substantial issue of fact requiring a hearing.

II. Arguments

In his Memorandum, Dr. Baxter makes a series of legal and policy arguments challenging whether he is subject to debarment and, if so, whether debarment for 5 years is appropriate. Many of Dr. Baxter's arguments are intertwined with his efforts to raise a genuine and substantial issue of fact with respect to the findings in ORA's proposal to debar him. Dr. Baxter's legal and factual arguments largely turn on the extent to which the specific conduct underlying his conviction subjects him to debarment under section 306(b)(2)(B)(i) of the FD&C Act and the extent to which there are genuine and substantial issues of fact with respect to ORA's findings under section 306(b)(2)(B)(i) and the applicable considerations under section 306(c)(3). In challenging the facts underlying ORA's findings and the proposed period of debarment, Dr. Baxter contends that some of the findings in ORA's proposal go beyond the facts to which he admitted during the criminal proceedings and are demonstrably false. Specifically, he disputes ORA's proposed findings: (1) that he ''helped oversee [RBP's] efforts to secure formulary coverage for Suboxone Film from [MassHealth]'' and a strategy to that end; (2) that his misdemeanor offense involved the provision of false and misleading information to MassHealth that included ''overstated safety claims''; (3) that the conduct underlying his conviction ''put children at risk.''

In challenging those proposed findings, Dr. Baxter argues extensively that he is entitled to a hearing because not only are there genuine and substantial issues of fact with respect to them but they are conclusory and do not appear to rest on substantial evidence. He effectively contends, therefore, that he is entitled to a hearing on those findings for further development and an opportunity to challenge them. However, nothing in the relevant FDA regulations, section 306(i) of the FD&C Act, or the Administrative Procedure Act (APA) (5 U.S.C. 551–559) requires more than an opportunity to raise genuine and substantial issues of fact with respect to the findings in ORA's proposal. As Dr. Baxter notes, section 306(i) of the FD&C Act requires FDA to provide an ''opportunity for an agency hearing on disputed issues of material fact'' before debarring any person. As noted by ORA in its proposal, FDA implements adjudications required under section 5 U.S.C. 554(a), including debarment matters, as formal evidentiary hearings under part 12 (21 CFR part 12).

Under § 12.24(b), consistent with the APA and case law, there are criteria for granting a hearing. Pursuant to that regulation, the Agency will grant a request for hearing only if the material submitted in support of the hearing request shows, in relevant part: (1) ''[t]here is a genuine and substantial factual issue for resolution at a hearing,'' (2) ''[t]he factual issue can be resolved by available and specifically identified reliable evidence,'' (3) ''[t]he data and information submitted, if established at a hearing, would be adequate to justify resolution of the factual issue in the way sought by the person,'' and (4) ''[r]esolution of the factual issue in the way sought by the person is adequate to justify the action requested.'' The regulation further clarifies that ''[a] hearing will not be granted on issues of policy or law'' and that ''a hearing will not be granted on factual issues that are not determinative with respect to the action requested.''

The factual challenges in Dr. Baxter's Memorandum, such as whether his conduct put children at risk, do not justify granting his hearing request. Dr. Baxter appears to acknowledge, as he must, that the facts to which he pled guilty—*i.e.,* the findings of the court that entered a criminal judgment against him—are not in dispute. Dr. Baxter's arguments highlighting those findings by ORA that go beyond the facts to which he admitted as part of his guilty plea do not create a genuine and

substantial issue of fact, nor are those findings determinative with respect to whether Dr. Baxter is subject to debarment and whether a debarment period of 5 years is appropriate. For reasons discussed in detail below, it is not necessary to go beyond the facts to which Dr. Baxter pled guilty and the other undisputed facts in ORA's proposal to conclude that Dr. Baxter is subject to debarment under section 306(b)(2)(B)(i) of the FD&C Act and that debarment for 5 years is appropriate under section 306(c)(3).

For the sake of simplicity and efficiency, what follows is an assessment of Dr. Baxter's legal, factual, and policy-based arguments by reference only to the facts to which he pled guilty or the other undisputed findings in ORA's proposal.

A. Dr. Baxter Is Subject to Debarment

Dr. Baxter first argues that he is not subject to debarment under section 306(b)(2)(B)(i) of the FD&C Act. Dr. Baxter maintains that a misdemeanor conviction for causing the introduction of a misbranded drug into interstate commerce under the Responsible Corporate Officer (RCO) doctrine is ''not sufficient to impose debarment'' and that his criminal conduct lacks a sufficient nexus to ''the regulation of drug products'' under the FD&C Act. Dr. Baxter contends that his conduct does not undermine the process for the regulation of drugs and that, because the drug product at issue had already received FDA approval, the misleading communication at issue did not relate to the approval or the approval process. In support of these arguments, he points to the legislative history of section 306 of the FD&C Act:

> As the House Report to H.R. 2454 explains, this section ''gives FDA the authority to debar a person . . . for conduct relating to the development or approval of generic drugs.'' In addition ''[c]onviction of certain other crimes, such as bribery, fraud, and obstruction of justice, could also be the basis for debarment'' because the seriousness of those crimes undermines the trustworthiness of the individual, such a conviction ''provide[s] evidentiary support for a finding that the individual should not be allowed to submit or assist in the submission of a generic drug application even though the crime did not directly involve the approval process'' [emphasis removed]. Thus, there is no indication that Congress intended to make any conviction under Title 21 grounds for permissive debarment, regardless of whether or not the conduct had anything to do with the drug approval process or fraud or similarly serious offenses.

Dr. Baxter contends that ''the legislative history makes clear that conduct that 'undermines the process for the regulation of drugs' is conduct that either undermines the approval process itself or constitutes such egregious fraud that it supports the conclusion that the individual can never be trusted to participate in the pharmaceutical industry'' (emphases removed). Finally, Dr. Baxter argues that ORA's finding that his conduct was of a type that undermines the process for the regulation of drugs is unsupported because, while it was ''technical misbranding,'' there was never any harm or risk to the public.

Section 306(b)(2)(B)(i) of the FD&C Act specifically provides for debarring individuals convicted of Federal misdemeanors related to the regulation of drug products. If the language of the statute is clear, there is no need to look outside the statute to its legislative history in order to ascertain the statute's meaning (*Chamber of Commerce of United States* v. *Whiting,* 563 U.S. 582, 599 (2011)). Furthermore, as the Supreme Court has repeatedly held, the language in the FD&C Act should be construed in a manner that is consistent with its overall public health purpose. When we are dealing with the public health, the language of the FD&C Act should not be read too restrictively, but rather as ''consistent with the Act's overriding purpose to protect the public health'' (*United States* v. *Article of Drug Bacto-Unidisk,* 394 U.S. 784, 798 (1969)).

Dr. Baxter's general argument that the conduct underlying his conviction lacks a sufficient nexus to the regulation of drugs to subject him to debarment under section 306(b)(2)(B)(i)(I) of the FD&C Act lacks merit. Simply put, he pled guilty to causing the introduction of a misbranded drug into interstate commerce in violation of the FD&C Act (specifically, sections 301(a), 303(a)(1), and 502(a) of the FD&C Act). In section 306(b)(2)(B)(i)(I), ''a misdemeanor under Federal law or a felony under State law for conduct . . . otherwise relating to the regulation of drug products'' subjects an individual to permissive debarment. There are no genuine and substantial issues of fact regarding whether Dr. Baxter pled guilty to—and therefore committed—a misdemeanor under Federal law. When that Federal misdemeanor is for conduct that directly violated the FD&C Act with respect to drug labeling, there is no question that such violation relates to the regulation of drugs under that statutory authority.

Dr. Baxter makes many similar arguments with respect to whether the conduct to which he pled guilty as part of his misdemeanor plea is ''the type of conduct [that] . . . undermines the process for the regulation of drugs'' under the FD&C Act in the sense contemplated by section 306(b)(2)(B)(i)(I) of the FD&C Act. In doing so, he attempts to distinguish between conduct relating to the development and approval process for drug products and conduct relating to other aspects of drug regulation under the FD&C Act. Although he supports that distinction by pointing to the legislative history of section 306 and offering policy arguments, neither section 306(b)(2)(B)(i)(I) nor the FD&C Act as a whole bear out that distinction. The plain language of section 306(b)(2)(B)(i)(I) does not draw the distinction urged by Dr. Baxter and indeed expands the scope of the statutory provision beyond conduct relating to the development and approval process by including the language ''otherwise relating to the regulation of drug products.'' With respect to the purpose of FD&C Act as a whole, the Supreme Court has found that its aims go well beyond the development and approval process for drug products: ''Its purpose [is] to safeguard the consumer by applying the Act to articles from the moment of their introduction into interstate commerce all the way to the moment of their delivery to the ultimate consumer'' (*United States* v. *Sullivan,* 332 U.S. 689, 696 (1948)).

The Chief Scientist also rejects Dr. Baxter's further arguments that he is not subject to debarment under section 306(b)(2)(B)(i)(I) of the FD&C Act because he pled guilty to a Federal misdemeanor offense without admitting any intent to violate the law or knowledge of wrongdoing and because the underlying offense did not involve ''fraud, bribery, [or] similar crimes.'' Given that section 306(b)(2)(B)(i) of the FD&C Act explicitly permits debarring individuals convicted of Federal misdemeanors related to the regulation of drug products and that a misdemeanor violation of the FD&C Act itself is a strict liability offense under section 303(a)(1) of the FD&C Act, it stands to reason that criminal intent is not required to subject an individual to debarment under section 306(b)(2)(B)(i)(I). As ORA correctly determined, however, his conduct went beyond a mere technical violation of the FD&C Act:

> [Dr. Baxter's] actions undermined the process for the regulation of drugs because [he] failed to prevent [RBC] from sending false and misleading data and information to MassHealth related to the rate of unintended pediatric exposure to Suboxone Film and did not promptly correct such information and data.

Indeed, the Information to which Dr. Baxter pled guilty provided that he, ''as a responsible [RBP] executive failed to prevent and promptly correct the distribution of the false and misleading unintended pediatric exposure data and marketing claims to MassHealth'' and that, accordingly, he caused the introduction and delivery for introduction of a misbranded drug into interstate commerce. He cannot now hide behind his arguments that he lacked specific knowledge that the labeling for the Suboxone Film was false and misleading in an attempt to overcome the debarment resulting from the facts to which he admitted as part of his plea agreement. As the Supreme Court has reasoned, in keeping with the FD&C Act's purpose of protecting the public from adulterated and misbranded products, Congress chose to place the burden of protecting the public on those who play a role in manufacturing and distributing those products rather than on consumers, who cannot protect themselves (*United States* v. *Dotterweich,* 320 U.S. 277, 280–81 (1943)). The duty imposed on RCOs ''requires the highest standard of foresight and vigilance'':

> The requirements of foresight and vigilance imposed on responsible corporate agents are beyond question demanding, and perhaps onerous, but they are no more stringent than the public has a right to expect of those who voluntarily assume positions of authority in business enterprises whose services and products affect the health and well-being of the public that supports them (*Park,* 421 U.S. at 672–73).

The type of conduct to which Dr. Baxter pled guilty failed to meet the duty imposed on RCOs and undermined the process for the regulation of drugs in the sense contemplated by both section 306(b)(2)(B)(i)(I) and the FD&C Act as a whole.

In light of the foregoing, the Chief Scientist has found that Dr. Baxter has failed to raise a genuine and substantial issue of fact with respect to: (1) whether the conduct serving as the basis of his Federal misdemeanor conviction related to the regulation of drugs and is the type of conduct that undermines the process for the regulation of drugs and thus (2) whether he is subject to debarment under the terms of section 306(b)(2)(B)(i)(I) of the FD&C Act.

B. Appropriateness of a 5-Year Debarment Period

In support of his hearing request, Dr. Baxter further argues in his Memorandum that he is entitled to a hearing on ORA's findings with respect to the considerations in section 306(c)(3) of the FD&C Act. Dr. Baxter contends that ORA's assessment of the nature and seriousness of his offense and the nature and extent of voluntary steps to mitigate the impact on the public were based on errors of fact, logic, and law. Dr. Baxter also argues that ORA's proposal gave insufficient weight to the third factor, his lack of prior convictions involving matters within the jurisdiction of FDA. Additionally, Dr. Baxter challenges the appropriateness of the proposed 5-year debarment period.

Dr. Baxter first challenges ORA's assessment of the nature and seriousness of his offense under section 306(c)(3)(A) of the FD&C Act. Yet, as ORA found and has been discussed at length above, Dr. Baxter took responsibility for RBP's introducing, and delivering for introduction, a misbranded drug into interstate commerce. Dr. Baxter admitted as part of his guilty plea that he was in a position both to prevent the violations resulting from his subordinate's conduct—*i.e.,* the inclusion of false and misleading information in the labeling for Suboxone Film—or to correct them promptly. But he did not. Building on the reasoning above with respect to whether the type of conduct serving as the basis of Dr. Baxter's misdemeanor conviction undermined the process for the regulation of drugs, the Chief Scientist finds that Dr. Baxter's role and responsibility in the introduction of a drug whose labeling and false and misleading under section 502(a) of the FD&C Act—especially when the labeling at issue went directly to a State Medicaid agency and when viewed within the range of potential misdemeanor convictions that might subject an individual to permissive debarment under section 306(b)(2)(B)(i)(I) of the FD&C Act—is sufficiently serious to warrant treatment as an unfavorable factor. In short, Dr. Baxter has failed to raise a genuine and substantial issue of fact with respect to ORA's findings regarding the nature and seriousness of his offense under section 306(c)(3)(A) of the FD&C Act.

Dr. Baxter next argues that, in evaluating ''the nature and extent of voluntary steps to mitigate the impact of any offense involved'' under section 306(c)(3)(C) of the FD&C Act, ORA did not fully consider that there was no negative impact on the public to mitigate and that he nonetheless did play a role in sending a correction letter to MassHealth. Specifically, Dr. Baxter maintains that he could not have taken any action prior to the Federal government's investigation into the matter because he was not aware of the wrongful conduct. Finally, Dr. Baxter also contends that ORA ''ignored that Dr. Baxter accepted responsibility for his violation and agreed to cooperate with the Government, as evidenced by the plea agreement.''

The facts to which Dr. Baxter pled guilty belie his arguments now that any role he played in correcting his violations should be construed as a voluntary step taken in mitigation in the sense contemplated by section 306(c)(3)(C) of the FD&C Act. As part of his guilty plea, he admitted that he was an RCO ''with authority to either prevent in the first instance or to promptly correct the provision of false and misleading information to MassHealth and that he took neither action.'' He cannot now claim that his corrective action was sufficiently prompt to be meaningful, and he does not dispute that he directed the correction ''only after an investigation was opened into this matter.'' Dr. Baxter states that ORA's proposal does not ''suggest there was any other action that Dr. Baxter could have or should have done to 'mitigate the impact to the public.' '' He does not, however, present any reason to believe that he took additional steps to mitigate the effect of his offense on the public. Additionally, Dr. Baxter's guilty plea does not qualify as a voluntary step to mitigate the impact of his offense on the public under section 306(c)(3)(C) of the FD&C Act. Accordingly, the Chief Scientist finds that Dr. Baxter has failed to raise a genuine and substantial issue of fact with respect to ORA's findings regarding the voluntary steps taken by him to mitigate the effect of his offense on the public under section 306(c)(3)(C) of the FD&C Act.

Based on the undisputed record before me, primarily encompassing the facts to which Dr. Baxter pled guilty, the Chief Scientist finds that a 5-year debarment is appropriate. Although Dr. Baxter has no previous criminal convictions related to matters within the jurisdiction of FDA, this sole favorable factor does not counterbalance the nature and seriousness of his offense and lack of voluntary steps promptly taken to mitigate the effect of that offense on the public. As has been discussed at length, Dr. Baxter admitted as part of his guilty plea that, as an RCO, he possessed the authority, opportunity, and responsibility to prevent or promptly correct conduct that caused false and misleading information to go to a State Medicaid agency and thereby caused the introduction of a misbranded drug into interstate commerce. His failure to prevent or promptly correct conduct breached the fundamental responsibility as an RCO when he

voluntarily assumed a ''position of authority in [a] business enterprise whose services and products affect the health and well-being of the public'' (*Park,* 421 U.S. at 573). In short, the Chief Scientist agrees with ORA's conclusion in its proposal that ''the facts supporting the unfavorable factors outweigh those supporting the favorable factor, and therefore warrant the imposition of a 5-year period of debarment.''

C. Remaining Legal Arguments

Finally, Dr. Baxter argues that debarring him for 5 years would be arbitrary and capricious and an abuse of discretion. Dr. Baxter contends that debarment is a remedial measure and that his conduct is ''untethered'' to that remedial purpose because his conduct did not undermine confidence in the drug approval process and thus ''makes the deterrence value of any debarment practically nonexistent—and potentially harmful.'' Additionally, he argues that his one conviction does not warrant debarment. Dr. Baxter also argues that debarment would be arbitrary and capricious because FDA has not previously debarred an individual in a ''pure'' RCO case. Finally, Dr. Baxter contends that debarring him for the maximum period would be arbitrary and capricious because his conduct differs in meaningful ways from that of others who received 5-year debarments.

As is extensively discussed above, however, Dr. Baxter did not plead guilty based purely on strict liability. He admitted as part of his guilty plea that he was an RCO ''with authority to either prevent in the first instance or to promptly correct the provision of false and misleading information to MassHealth and that he took neither action.'' (*see Park,* 421 U.S. at 673–74). As discussed above, Dr. Baxter's role at RBP and his conviction as an RCO does not lessen the seriousness of the conviction or underlying conduct but instead elevates it to a higher level of concern given his role within the company.

As Dr. Baxter notes, FDA's debarment authority is a remedial measure, and not a punitive one, and a tool to protect the public health (*see generally DiCola* v. *Food and Drug Admin.,* 77 F.3d 504 (D.C. Cir. 1996); *Bhutani* v. *U.S. Food and Drug Admin.,* 161 F. App'x 589, 593 (7th Cir. 2006)). As explained extensively above, Dr. Baxter's conduct significantly undermined the process for the regulation of drugs. Therefore, his conduct is not ''untethered'' to the remedial purpose of debarment; rather, his conduct fits squarely into the category of conduct that warrants debarment under section 306(b)(2)(B)(i)(I) of the FD&C Act. While Dr. Baxter contends that his conduct does not require any additional remedial measures, his arguments to that effect ignore that the conduct underlying his conviction calls into question whether, when in a position to prevent or promptly correct violations of the FD&C Act, he would do so and thus uphold the protections to public health afforded by that statute.

Based on Dr. Baxter's arguments and the case law he cites, he appears to be relying on the judicial standard for review of Agency decision-making in the APA at 5 U.S.C. 706(2), which directs courts to ''hold unlawful and set aside agency action[s]'' that are ''arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.'' As the Supreme Court has held, the question under that standard is whether the Agency has provided a reasonable explanation for the substance its decision:

> The APA's arbitrary-and-capricious standard requires that agency action be reasonable and reasonably explained. Judicial review under that standard is deferential, and a court may not substitute its own policy judgment for that of the agency. A court simply ensures that the agency has acted within a zone of reasonableness and, in particular, has reasonably considered the relevant issues and reasonably explained the decision (*FCC* v. *Prometheus Radio Project,* 141 S. Ct. 1150, 1158, 209 L. Ed. 2d 287 (2021)).

In this matter, as reflected in the lengthy discussion above, the Agency has reasonably considered the relevant issues and fully explained its decision to debar Dr. Baxter.

Although Dr. Baxter points to other individuals who pled guilty to misdemeanors based on liability as RCOs and who have not been debarred, he provides no details with respect to those individuals' convictions. Even assuming, however, that those individuals were similarly situated to him, his bare assertion that an agency cannot choose to begin pursuing debarment of individuals for certain discrete categories of Federal misdemeanor convictions because it has not done so in the past is unfounded.

Dr. Baxter further argues, however, that the Agency has debarred other individuals for less than 5 years when it was undisputed that those individuals did not act with knowledge or intent in violating the FD&C Act. For example, Dr. Baxter specifically points to a doctor who was a principal in a medical practice who unknowingly used an unapproved product on patients while representing that it was an FDA-approved product *(see generally Douglas M. Hargrave Denial of Hearing; Final Debarment Order,* 80 FR 11995 (March 5, 2015)). As Dr. Baxter notes, FDA debarred Dr. Hargrave for 2 years instead of 5 years. However, unlike Dr. Hargrave Dr. Baxter explicitly admitted during his criminal proceedings that he was in a position of authority that should have enabled him to prevent or promptly correct the violative conduct.

As discussed, in terms of section 306(b)(2)(B)(i)(I) and 306(c)(3) of the FD&C Act are clear, and the Agency has exercised its discretion here in a manner consistent with the permissive debarment of many other individuals convicted of Federal misdemeanors related to the regulation of drugs. Accordingly, Dr. Baxter's argument that debarring him is arbitrary, capricious, and contrary to law lacks merit.

III. Findings and Order

Therefore, the Chief Scientist, under section 306(b)(2)(B)(i)(I) of the FD&C Act and under authority delegated to her by the Commissioner of Food and Drugs, finds that: (1) Dr. Baxter has been convicted of a misdemeanor under Federal law for conduct relating to the development or approval, including the process for development or approval, of a drug product or otherwise relating to the regulation of a drug product under the FD&C Act and (2) the type of conduct which served as the basis for the conviction undermines the process for the regulation of drugs. FDA has considered the applicable factors listed in section 306(c)(3) of the FD&C Act and determined that a debarment of 5 years is appropriate.

As a result of the foregoing findings, Dr. Baxter is debarred for 5 years from providing services in any capacity to a person with an approved or pending drug product application under section 505, 512, or 802 of the FD&C Act (21 U.S.C. 355, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective February 27, 2023 (see 21 U.S.C. 335a(c)(1)(B) and (c)(2)(A)(iii) and 21 U.S.C. 321(dd)). Any person with an approved or pending drug product application, who knowingly uses the services of Dr. Baxter, in any capacity during his period of debarment, will be subject to civil money penalties (section 307(a)(6) of the FD&C Act (21 U.S.C. 335b(a)(6))). If Dr. Baxter, during his period of debarment, provides services in any capacity to a person with an approved or pending drug product application, he will be subject to civil money penalties (section 307(a)(7) of the FD&C Act). In addition, FDA will not accept or review any abbreviated new drug applications

submitted by or with the assistance of Dr. Baxter during his period of debarment (section 306(c)(1)(B) of the FD&C Act).

Dated: February 21, 2023.

Namandjé N. Bumpus,

Chief Scientist.

[FR Doc. 2023–03946 Filed 2–24–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–D–0073]

Neovascular Age-Related Macular Degeneration: Developing Drugs for Treatment; Draft 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 draft guidance for industry entitled ''Neovascular Age-Related Macular Degeneration: Developing Drugs for Treatment.'' This guidance is intended to provide recommendations to sponsors developing drugs intended to treat neovascular age-related macular degeneration focusing on eligibility criteria, trial design considerations, and efficacy endpoints to enhance clinical trial data quality and to foster greater efficiency in development programs.

DATES: Submit either electronic or written comments on the draft guidance by May 30, 2023 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA–2022–D–0073 for ''Neovascular Age Related Macular Degeneration: Developing Drugs for Treatment.'' 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 the draft 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 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 draft guidance document.

FOR FURTHER INFORMATION CONTACT: Wiley A. Chambers, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Avenue, Bldg. 22, Rm. 6108, Silver Spring, MD 20993, 301–796–0690; or Diane Maloney, 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 draft guidance for industry entitled ''Neovascular Age-Related Macular Degeneration: Developing Drugs for Treatment.'' This draft guidance document, once finalized, will foster greater efficiency in development programs for drugs intended to treat neovascular age-related macular degeneration.

This draft guidance is being issued consistent with FDA's good guidance

practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Neovascular Age-Related Macular Degeneration: Developing Drugs for Treatment.'' 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. 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 312 pertaining to the submission of investigational new drug applications have been approved under OMB control number 0910–0014. The collections of information in 21 CFR part 314 pertaining to the submission of new drug applications have been approved under OMB control number 0910–0001. The collections of information in 21 CFR part 601 pertaining to biologics license applications have been approved under OMB control number 0910–0338.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: February 22, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–03949 Filed 2–24–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–0105]

Shaun Thaxter; Denial of Hearing; Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is denying a request for a hearing submitted by Shaun Thaxter (Thaxter) and is issuing an order under the Federal Food, Drug, and Cosmetic Act (FD&C Act) debarring Thaxter for 5 years from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Thaxter was convicted of a misdemeanor under Federal law for conduct relating to the regulation of a drug product under the FD&C Act and that the type of conduct underlying the conviction undermines the process for the regulation of drugs. In determining the appropriateness and period of Thaxter's debarment, FDA has considered the applicable factors listed in the FD&C Act. Thaxter has failed to file with the Agency information and analyses sufficient to create a basis for a hearing concerning this action.

DATES: The order is applicable February 27, 2023.

ADDRESSES: Any application for termination of debarment by Thaxter under section 306(d) of the FD&C Act (21 U.S.C. 335a(d)) (application) may be submitted as follows:

Electronic Submissions

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. An application submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your application will be made public, you are solely responsible for ensuring that your application 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 application, that information will be posted on *https://www.regulations.gov.*
- If you want to submit an application with confidential information that you do not wish to be made available to the public, submit the application 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 a written/paper application submitted to the Dockets Management Staff, FDA will post your application, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All applications must include the Docket No. FDA–2021–N–0105. Received applications 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 application with confidential information that you do not wish to be made publicly available, submit your application 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 your application. 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 application 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, 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 between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500. Publicly available submissions may be seen in the docket.

FOR FURTHER INFORMATION CONTACT: Rachael Vieder Linowes, Office of Scientific Integrity, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4206, Silver Spring, MD 20993, 240–402–5931.

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(b)(2)(B)(i)(I) of the FD&C Act permits FDA to debar an individual if FDA finds that (1) the individual has been convicted of a misdemeanor under Federal law ''for conduct relating to the development or approval, including the process for development or approval, of any drug product or otherwise relating to the regulation of drug products'' under the FD&C Act and (2) the type of conduct that served as the basis for the conviction undermines the process for the regulation of drugs.

On June 30, 2020, in the U.S. District Court for the Western District of Virginia, Thaxter pled guilty to a misdemeanor violation of the FD&C Act. Specifically, he pled guilty to causing the introduction or delivery for introduction of a misbranded drug into interstate commerce in violation of sections 301(a), 303(a)(1), and 502(a) of the FD&C Act (21 U.S.C. 331(a), 333(a)(1) and 352(a)). In the plea agreement pursuant to which Thaxter pled guilty, he agreed that ''all the facts set forth in the Information [filed by the Federal government on the same day] are true and correct and provide the Court with a sufficient factual basis to support [his] plea.'' The Information provided that, at the time of the conduct underlying his conviction, Thaxter was ''the highest-ranking executive of Reckitt Benckiser Pharmaceuticals Inc. ('RBP').'' [1] During that time, according to the Information, RBP's Medical Affairs Manager provided false or misleading analysis and charts to the Massachusetts Medicaid program (MassHealth), as a means of persuading MassHealth to reimburse patients for a drug named Suboxone Film, which RBP marketed.

As framed by the Information, the false and misleading data and analysis provided to MassHealth—related to the unintended pediatric exposure rates for Suboxone Film relative to similar tablet products—constituted ''labeling'' for the drug under section 201(m) of the FD&C Act (21 U.S.C. 321(m)) and thus misbranded the drug under section 502(a). As discussed further below, in pleading guilty pursuant to the Information, Thaxter conceded that he was a responsible corporate officer at RBP that ''failed to prevent and promptly correct the distribution of [] false and misleading unintended pediatric exposure data and marketing claims to MassHealth'' and ''caused the introduction and delivery for introduction into interstate commerce of . . . a drug [(Suboxone Film)] that was misbranded in that the drug's labeling was false and misleading'' (see *United States* v. *Park,* 421 U.S. 658, 673–74 (1975)). On October 22, 2020, the court entered a criminal judgment against Thaxter and sentenced him to 6 months in Federal prison.

By letter dated March 18, 2021, FDA's Office of Regulatory Affairs (ORA) notified Thaxter of its proposal to debar him for 5 years from providing services in any capacity to a person having an approved or pending drug product application and provided him with an opportunity to request a hearing on the proposal. ORA found that Thaxter is subject to debarment under section 306(b)(2)(B)(i)(I) of the FD&C Act on the basis of his misdemeanor conviction under Federal law for conduct both relating to drug products under the FD&C Act and undermining the Agency's process for regulating drugs. The proposal also outlined findings concerning the factors ORA considered to be applicable in determining the appropriateness and period of debarment, as provided in section 306(c)(3) of the FD&C Act. ORA found that a 5-year period of debarment is appropriate. Specifically, ORA found that the nature and seriousness of the offense and the nature and extent of voluntary steps to mitigate the effect on the public are unfavorable factors for Thaxter. ORA stated that it viewed the absence of prior convictions involving matters within FDA's jurisdiction as a favorable factor. ORA concluded that ''the facts supporting the unfavorable factors outweigh those supporting the favorable factor, and therefore warrant the imposition of a five-year period of debarment.''

By letter dated April 28, 2021, through counsel, Thaxter requested a hearing on ORA's proposal to debar him. On May 28, 2021, he submitted a ''Memorandum of Facts and Arguments in Support of Request for Hearing'' (Memorandum). In this Memorandum, Thaxter makes legal, factual, and policy-based arguments regarding the proffered basis for his debarment in ORA's proposal.

Under the authority delegated to her by the Commissioner of Food and Drugs, the Chief Scientist has considered Thaxter's request for a hearing. Hearings are granted only if there is a genuine and substantial issue of fact. As discussed in more detail below, hearings will not be granted on issues of policy or law, on mere allegations, on denials or general descriptions of positions and contentions, on data and information insufficient to justify the factual determination urged if accurate and presented at a hearing, or on factual issues that are not determinative with respect to the action requested (see § 12.24(b) (21 CFR 12.24(b))). The Chief Scientist has considered Thaxter's arguments and concluded that they are unpersuasive and fail to raise a genuine and substantial issue of fact requiring a hearing.

II. Arguments

In his Memorandum, Thaxter makes a series of legal and policy arguments challenging whether he is subject to debarment and, if so, whether debarment for 5 years is appropriate. Many of Thaxter's arguments are intertwined with his efforts to raise a genuine and substantial issue of fact with respect to the findings in ORA's proposal to debar him. Thaxter's legal and factual arguments largely turn on the extent to which the specific conduct underlying his conviction subjects him to debarment under section 306(b)(2)(B)(i) of the FD&C Act and the extent to which there are genuine and substantial issues of fact with respect to ORA's findings under section 306(b)(2)(B)(i) and the applicable considerations under section 306(c)(3). In challenging the facts underlying ORA's findings and ultimate debarment proposal, Thaxter contends that some of the findings in ORA's proposal go beyond the facts to which he admitted during the criminal proceedings and are demonstrably false. Specifically, he disputes ORA's proposed findings: (1) that the conduct underlying his conviction put patients and their children at risk, (2) that MassHealth relied on the false and misleading information to expand coverage to include Suboxone Film, and (3) that his conduct exposed patients to misbranded drugs.

In challenging those proposed findings, Thaxter argues extensively that he is entitled to a hearing because not only are there genuine and substantial issues of fact with respect to those findings but they are conclusory and do not appear to rest on substantial evidence. He effectively contends, therefore, that he is entitled to a hearing on those findings for further development and an opportunity to challenge them. However, nothing in

[1] As noted in the Information, ''on or about December 23, 2014, RBP was renamed Indivior, Inc, and became a subsidiary of Indivior PLC. After on or about December 23, 2014, Thaxter was Chief Executive Officer of Indivior PLC.''

the relevant FDA regulations, section 306(i) of the FD&C Act, or the Administrative Procedure Act (APA) requires more than an opportunity to raise genuine and substantial issues of fact with respect to the findings in ORA's proposal. As Thaxter notes, section 306(i) of the FD&C Act requires FDA to provide an ''opportunity for an agency hearing on issues of material fact'' before debarring any person. As noted by ORA in its proposal, FDA implements adjudications required under section 5 U.S.C. 554(a), including debarment matters, as formal evidentiary hearings under 21 CFR part 12.

Under § 12.24(b), consistent with the APA and case law, there are criteria for granting a hearing. Pursuant to that regulation, the Agency will grant a request for hearing only if the material submitted in support of the hearing request shows, in relevant part: (1) ''[t]here is a genuine and substantial factual issue for resolution at a hearing,'' (2) ''[t]he factual issue can be resolved by available and specifically identified reliable evidence,'' (3) ''[t]he data and information submitted, if established at a hearing, would be adequate to justify resolution of the factual issue in the way sought by the person,'' and (4) ''[r]esolution of the factual issue in the way sought by the person is adequate to justify the action requested.'' The regulation further clarifies that ''[a] hearing will not be granted on issues of policy or law'' and that ''a hearing will not be granted on factual issues that are not determinative with respect to the action requested.''

The factual challenges in Thaxter's Memorandum do not justify granting his hearing request. Even Thaxter himself does not dispute the facts to which he pled guilty. Rather, Thaxter attempts to show that those undisputed facts do not support ORA's proposed findings. Specifically, Thaxter argues that only disputed facts could plausibly support a finding that his conduct harmed children or patients or that MassHealth actually relied on the false and misleading information in making its ultimate decision to add Suboxone Film to its formulary. Thaxter appears to acknowledge, as he must, that the facts to which he pled guilty—*i.e.,* the findings of the court that entered a criminal judgment against him—are not in dispute. In addition, he does not contest several other discrete findings in ORA's proposal. For reasons discussed in detail below, it is not necessary to go beyond the facts to which Thaxter pled guilty and the other undisputed facts in ORA's proposal to conclude that Thaxter is subject to debarment under section 306(b)(2)(B)(i) of the FD&C Act and that debarment for 5 years is appropriate under section 306(c)(3).

For the sake of simplicity and efficiency, what follows is an assessment of the remainder of Thaxter's legal, factual, and policy-based arguments by reference only to the facts to which he pled guilty or the other undisputed findings in ORA's proposal. Consequently, the Chief Scientist need not further address Thaxter's arguments regarding the accuracy of ORA's findings regarding whether the conduct underlying his conviction exposed patients or their children to risk and misbranded drugs or caused MassHealth to rely on the false and misleading information.

A. Thaxter Is Subject to Debarment

Thaxter argues that he is not subject to debarment under section 306(b)(2)(B)(i) of the FD&C Act because the conduct to which he pled guilty did not ''undermine[ ] the process for the regulation of drugs'' in the sense contemplated by that statutory provision:

> To issue a final order of debarment, 21 U.S.C. 335a requires a finding by the Secretary [under section 335a(b)(2)(B)] that ''the type of conduct which served as the basis for such conviction undermines the process for the regulation of drugs.'' . . . This phrase is not defined in the statute. But the statute's structure and purpose, legislative history, and FDA's own precedent make clear that the statute is intended to reach individuals and entities that either: (1) engage in conduct that undermines the development or approval process itself; or (2) engage in significant fraud or blameworthy behavior such that the extraordinary remedy of debarment would be appropriate to prevent that person from even indirectly participating in the process of drug approval and regulation.

In addition to raising constitutional issues regarding any contrary construction of section 335a(b)(2)(B), discussed in more detail below, he maintains, ''There is no reason to conclude that Congress intended FDA to impose the draconian debarment sanction for infractions that do not significantly undermine the regulatory process.'' Thaxter further argues that his criminal conduct lacks a sufficient nexus to ''the regulation of drug products'' under the FD&C Act and did not include sufficiently fraudulent or blameworthy behavior to warrant debarment if such conduct did not relate to the development or approval process for drugs:

> [His] conviction is not related to the development or approval process itself, and the conviction as described in the Information is not sufficiently severe standing alone to call into question the integrity of the process for review and approval of drug products such that it would warrant debarment as contemplated by the drafters of the statute. [He] had no bad intent and no contemporaneous knowledge of the underlying 2012 misstatements by an employee who did not report to him directly. When he learned about the misstatements in 2015—more than two years after they were made—he directed their correction. He engaged in no fraud or dishonesty, and he was not required to pay any restitution to MassHealth or any other entity. His crime was being in a position of authority at [RBP] and failing to prevent a subordinate employee who did not report to him directly from sending inaccurate data about Suboxone [Film] to a MassHealth official. It had nothing at all to do with the development or approval process of Suboxone, and it did not involve fraud, bribery, or obstruction of justice, or anything else to support a conclusion that he cannot be trusted to participate in the pharmaceutical industry.

In support of these arguments, Thaxter points to the legislative history of section 306 of the FD&C Act and contends further that FDA's own public statements during the legislative process ''demonstrate how the debarment authority was primarily concerned with addressing significant fraud and misconduct within the development or approval process for drugs.'' Section 306(b)(2)(B)(i) of the FD&C Act, however, specifically provides for debarring individuals convicted of Federal misdemeanors related to the regulation of drug products. If the language of the statute is clear, there is no need to look outside the statute to its legislative history to ascertain the statute's meaning (*Chamber of Commerce of United States* v. *Whiting* 63 U.S. 582, 599 (2011)). Furthermore, as the Supreme Court has repeatedly held, the language in the FD&C Act should be construed in a manner that is consistent with its overall public health purpose. When we are dealing with the public health, the language of the FD&C Act should not be read too restrictively, but rather as ''consistent with the Act's overriding purpose to protect the public health'' (*United States* v. *Bacto-Unidisk,* 394 U.S. 784, 798 (1969)).

Thaxter's further argument that he is not subject to debarment under section 306(b)(2)(B)(i)(I) of the FD&C Act because he pled guilty to a Federal misdemeanor offense without admitting any intent to violate the law or knowledge of wrongdoing is also unavailing. Given that section 306(b)(2)(B)(i) explicitly permits debarring individuals convicted of Federal misdemeanors related to the regulation of drug products and that a misdemeanor violation of the FD&C Act itself is a strict liability offense under

section 303(a)(1), it stands to reason that criminal intent is not required to subject an individual to debarment under section 306(b)(2)(B)(i)(I). In this case, however, Thaxter's guilty plea was not based on strict liability or ''pure, vicarious liability,'' as he argues. As highlighted in ORA's proposal, his conviction was based on his failure to prevent RBC ''from sending false and misleading information to MassHealth related to the relative rate of unintended pediatric exposures of Suboxone Film'' and ''to promptly correct that information once it was provided.'' Indeed, the Information to which Thaxter pled guilty provided that he, ''as a responsible [RBP] executive failed to prevent and promptly correct the distribution of the false and misleading unintended pediatric exposure data and marketing claims to MassHealth'' and that, accordingly, he caused the introduction and delivery for introduction of a misbranded drug into interstate commerce. He cannot now hide behind his arguments that he lacked specific knowledge that the labeling for the Suboxone Film was false and misleading in attempting to overcome the debarment resulting from the facts admitted to as part of his plea agreement. As the Supreme Court has reasoned, in keeping with the FD&C Act's purpose of protecting the public from adulterated and misbranded products, Congress chose to place the burden of protecting the public on those who play a role in manufacturing and distributing those products rather than on consumers, who cannot protect themselves (*United States* v. *Dotterweich,* 320 U.S. 277, 280–81 (1943)). The duty imposed on responsible corporate officers (RCOs) ''requires the highest standard of foresight and vigilance'':

> The requirements of foresight and vigilance imposed on responsible corporate agents are beyond question demanding, and perhaps onerous, but they are no more stringent than the public has a right to expect of those who voluntarily assume positions of authority in business enterprises whose services and products affect the health and well-being of the public that supports them (*Park,* 421 U.S. at 672–73).

Nor are Thaxter's arguments that his conduct underlying his conviction ''lack[ed] the required nexus to the 'process for the regulation of drugs'" to subject him to debarment under section 306(b)(2)(B)(i)(I) of the FD&C Act availing. Simply put, he pled guilty to causing the introduction of a misbranded drug into interstate commerce *in violation of the FD&C Act* (specifically, sections 301(a), 303(a)(1), and 502(a) of the FD&C Act). In section 306(b)(2)(B)(i)(I), ''a misdemeanor under Federal law or a felony under State law for conduct . . . otherwise relating to the regulation of drug products'' subjects an individual to permissive debarment. There are no genuine and substantial issues of fact regarding whether Thaxter pled guilty to—and therefore committed—a misdemeanor under Federal law. When that Federal misdemeanor is for conduct that directly violated the FD&C Act with respect to drug labeling, there is no question that such violation relates to the regulation of drugs under that statutory authority.

Thaxter makes many similar arguments with respect to whether the conduct to which he pled guilty as part of his misdemeanor plea is ''the type of conduct [that] . . . undermines the process for the regulation of drugs'' under the FD&C Act in the sense contemplated by section 306(b)(2)(B)(i)(I) of the FD&C Act. In doing so, he attempts to distinguish between conduct relating to the development and approval process for drug products and conduct relating to other aspects of drug regulation under the FD&C Act. Although he supports that distinction by pointing to the legislative history of section 306 and offering policy arguments, neither section 306(b)(2)(B)(i)(I) nor the FD&C Act as a whole bear out that distinction. The plain language of section 306(b)(2)(B)(i)(I) does not draw the distinction urged by Thaxter and indeed expands the scope of the statutory provision beyond conduct relating to the development and approval process by including the language ''otherwise relating to the regulation of drug products.'' With respect to the purpose of FD&C Act as a whole, the Supreme Court has found that its aims go well beyond the development and approval process for drug products: ''Its purpose [is] to safeguard the consumer by applying the Act to articles from the moment of their introduction into interstate commerce all the way to the moment of their delivery to the ultimate consumer'' (*United States* v. *Sullivan,* 332 U.S. 689, 696 (1948)).

Thaxter nonetheless argues that the ''underlying facts of [his] plea only demonstrate[] a 'technical' misbranding'' and that thus his conduct did not undermine the process for the regulation of drugs. As ORA correctly determined, however, his conduct went beyond a mere technical violation of the FD&C Act. Thaxter's conduct included providing inaccurate information about a drug product to a State health agency focused on the safety profile of the drug at issue:

> [Thaxter's] actions undermined the process for the regulation of drugs because [he] failed to prevent [RBP] from sending false and misleading data and information to MassHealth related to the rate of unintended pediatric exposure to Suboxone Film[] and did not promptly correct such information and data.

Notwithstanding Thaxter's assertions to the contrary, an important and fundamental objective of the FD&C Act is preventing the labeling of a drug product from containing false and misleading information about the product's safety profile.[2] The type of conduct to which Thaxter pled guilty did undermine the process for the regulation of drugs in the sense contemplated by both section 306(b)(2)(B)(i)(I) and the FD&C Act as a whole.

In light of the foregoing, the Chief Scientist finds that Thaxter has failed to raise a genuine and substantial issue of fact with respect to (1) whether the conduct serving as the basis of his Federal misdemeanor conviction related to the regulation of drugs and is the type of conduct that undermines the process for the regulation of drugs and thus (2) whether he is subject to debarment under the terms of section 306(b)(2)(B)(i)(I) of the FD&C Act.

B. Appropriateness of a 5-Year Debarment Period

In support of his hearing request, Thaxter further argues in his Memorandum that he is entitled to a hearing on ORA's findings with respect to the considerations in section 306(c)(3) of the FD&C Act. He contends both that ORA erred in considering only three of the six factors in section 306(c)(3) and that there are genuine and substantial issues of fact with respect to five of the six factors. With respect to the sixth factor, which concerns whether a person subject to debarment has prior convictions under the FD&C Act or for offenses for matters within the jurisdiction of FDA, Thaxter argues that ORA ''failed to afford any weight the fact that [he] has no prior convictions.''

Thaxter's argument that the Agency must consider all six factors in section 306(c)(3) of the FD&C Act in determining the appropriateness and period of his debarment under section 306(b)(2)(B)(i)(I) is belied by the language of the statute. FDA need only address the considerations in section

[2] In fact, as has already been discussed at length, Thaxter admitted that the conduct in question—for which he admitted responsibility as an RCO—misbranded a drug product while in the very chain of commerce that the Supreme Court has said the FD&C Act is intended to safeguard in order to protect the consumer (see *Sullivan,* 332 U.S. at 696).

306(c)(3) ''where applicable.'' The considerations in section 306(c)(3) apply not only to individuals but also to corporations, partnerships, and associations subject to permissive debarment under section 306(b)(2) and (3). Thus not all aspects of the considerations are necessarily applicable in every case.

In his Memorandum, Thaxter specifically points to the considerations in section 306(c)(3) of the FD&C Act on which ORA made no findings in its proposal, specifically paragraphs (B), (D), and (E). Paragraphs (D) and (E) are not applicable to Thaxter based on the undisputed record before FDA. Under section 306(c)(3)(D), FDA must, ''where applicable,'' consider ''whether the extent to which changes in ownership, management or operations have corrected the causes of any offense involved and provide reasonable assurances that the offense will not occur in the future.'' Under 306(c)(3)(E), the Agency must, again ''where applicable,'' consider ''whether the person to be debarred is able to present adequate evidence that current production of drugs subject to abbreviated new drug applications [ANDAs] and all pending [ANDAs] are free of fraud and material false statements.''

Those two considerations are rarely, if ever, applicable to an individual, particularly one that is no longer employed by the business entity where that individual committed the offenses at issue, as is the case here. Whether it is appropriate to debar an individual as a remedial measure to protect the integrity of the process for regulating drugs and, if so, for how long, turns on an assessment of the individual in light of the conduct underlying the offense and other factors related to the individual. The applicable considerations for individuals under section 306(c)(3) of the FD&C Act thus do not typically hinge on corrective actions at a corporation or any other efforts made by that corporation to prevent the promulgation of fraud or materially false statements.

The focus under section 306(c)(3)(D) of the FD&C Act is on whether there have been changes in ownership, management, or operations that might provide assurances that the offense at issue will not occur again. This consideration could only be meaningful to assessing the appropriateness and period of debarment for an individual if those changes occurred at a business enterprise in which the individual is currently engaged and the individual could not acquire a position elsewhere in the drug industry absent debarment. Furthermore, not only does Thaxter attempt to expand the scope of section 306(c)(3)(E) to include measures taken to prevent the promulgation of fraud or materially false information beyond those relating to ANDAs, he relies on the steps taken by another person: Invidior PLC (Invidior), a successor corporation to RBP for which he also served as Chief Executive Officer. Nonetheless, insofar as Thaxter describes evidence or raises facts about corrective actions at RBP's successor company, Invidior, the Chief Scientist evaluates those proffered facts and arguments in the context of the consideration regarding ''voluntary steps'' in section 306(c)(3)(C), which is applicable to individuals.

In his Memorandum, as noted above, Thaxter argues that ORA's proposal to debar him for 5 years ignored the consideration in section 306(c)(3)(B) of the FD&C Act, namely ''the nature and extent of management participation in any offense involved, whether corporate policies encouraged the offense, including whether inadequate institutional controls contributed the offense.'' He contends that the Agency should grant ''a hearing to ensure this factor is afforded proper weight in FDA's consideration of the [section 306(c)(3)] factors.'' In support of this position, Thaxter points to his motivations, as the highest-ranking executive officer at RBP, to encourage the truthful promotion of Suboxone Film and other buprenorphine-containing products and to prevent abuse and diversion, and he lists a series of company policies, initiatives, and communications in which he claims to have had a hand in issuing or developing.

In contrast to the considerations in paragraphs (D) and (E) of section 306(c)(3) of the FD&C Act, the Agency has often considered the factor in subparagraph (B) in assessing the appropriateness and period of debarment for individuals under section 306(b)(2)(B)(i)(I) of the FD&C Act (see, *e.g.,* ''Dilip Patel; Denial of Hearing; Final Debarment Order'' (83 FR 48829 at 48830, September 27, 2018)). The record before FDA does not disclose why ORA did not find that consideration to be applicable here, and the proposal does not cite the consideration as either a favorable or unfavorable factor. Even if the Agency were to consider the factor in section 306(c)(3)(B) in assessing the appropriateness and period of Thaxter' debarment in light of the additional policies, initiatives, and communications described by him in his Memorandum, that factor would not be favorable.

As discussed above in relation to whether conduct underlying Thaxter's conviction was sufficiently serious to warrant debarment, and as highlighted in ORA's proposal, Thaxter admitted during his criminal proceedings that he was an RCO with authority to either prevent in the first instance or to promptly correct the provision of false and misleading information to MassHealth and that he took neither action. By admitting such authority and responsibility, Thaxter conceded both that he served in a managerial role for the offense involved and that the ''corporate policies and practices'' to which he points—many of which do not directly relate to the offense to which he pled guilty—were inadequate to prevent that offense. Indeed, the essence of his guilty plea as an RCO is that he failed to fulfill the duties imposed on him by the FD&C Act by having the policies and practices in place (including his own, as an individual RCO) to prevent the offense at issue. Given that the consideration in section 306(c)(3)(B) of the FD&C Act would not be favorable to Thaxter, even assuming the accuracy of the additional information provided by him, the Chief Scientist, like ORA, will not treat this consideration as either favorable or unfavorable.

With respect to the three considerations under section 306(c)(3) of the FD&C Act on which ORA made factual findings in its proposal to debar him, Thaxter disputes the factual basis for two of them and argues that ORA's proposal gives insufficient weight to the third. After separately evaluating the arguments with respect to the factual basis for two of the considerations—specifically, those under paragraphs (A) and (C)—the Chief Scientist assesses whether, taken together, the three considerations warrant debarment for 5 years, including the weight to be given the third under subparagraph (F).

Thaxter first argues that ORA's assessment of the nature and seriousness of his offense under section 306(c)(3)(A) is flawed: (1) because ORA erroneously relied on the premise that his criminal conduct ''put children at risk,'' and (2) because ''failing to prevent a subordinate employee from providing misleading information to a state Medicaid official more than eight years ago'' is not sufficiently serious or recent enough to warrant a 5-year debarment period, especially without a showing that such conduct resulted in ''drugs being tainted or counterfeited'' or ''patient care [being] compromised.'' It is not necessary to go beyond the facts to which Thaxter pled guilty to resolve the additional factual issues to which Thaxter now points. Whether Thaxter's

conduct ''put children at risk'' or compromised patient care is not determinative with respect to the appropriateness of debarring him for 5 years. It is also not necessary to reach whether his conduct caused drug products to be tainted or counterfeited.

Notwithstanding Thaxter's assertions to the contrary, as ORA found and has been discussed at length above, Thaxter took responsibility for RBP's introducing, and delivering for introduction, a misbranded drug into interstate commerce. He admitted as part of his guilty plea that he was in a position both to prevent the violations resulting from his subordinate's conduct—*i.e.,* the inclusion of false and misleading information in the labeling for Subluxone Film—or to correct them promptly. But he did not. Building on the reasoning above with respect to whether the type of conduct serving as the basis of Thaxter's misdemeanor conviction undermined the process for the regulation of drugs, the Chief Scientist finds that Thaxter's role and responsibility in the introduction of a drug whose labeling and false and misleading under section 502(a) of the FD&C Act—especially when the labeling at issue went directly to a State Medicaid agency and when viewed within the range of potential misdemeanor convictions that might subject an individual to permissive debarment under section 306(b)(2)(B)(i)(I)—is sufficiently serious to warrant treatment as an unfavorable factor. In short, Thaxter has failed to raise a genuine and substantial issue of fact with respect to ORA's findings regarding the nature and seriousness of his offense under section 306(c)(3)(A).

Thaxter next argues that, in evaluating ''the nature and extent of voluntary steps to mitigate the impact of any offense involved'' under section 306(c)(3)(C) of the FD&C Act, ORA did not fully consider his role in authorizing ''a disclosure to MassHealth alerting it to the misinformation sent previously.'' He takes issue with ORA's suggestion that ''the delay in sending the correction letter—which was not [his] fault . . . since he had no knowledge of the underlying conduct at the time—justifies discounting the weight of the corrective letter that [he] directed the Company to send promptly after he learned of the events at issue.'' Again, however, the facts to which Thaxter pled guilty belie this assertion. As part of his guilty plea, he admitted that he was an RCO ''with authority to either prevent in the first instance or to promptly correct the provision of false and misleading information to MassHealth and that he took neither action.'' He cannot now claim that his corrective action was prompt, and he does not dispute that he directed the correction ''only after an investigation was opened into this matter.''

Thaxter further maintains that, in light of the eventual corrective action directed by him, ORA's conclusion that he failed to ''take *any* steps to mitigate the potential impact on the public (emphasis Thaxter's)'' is unfounded. But neither ORA's evaluation of this consideration as a whole in the proposal nor the Chief Scientist's evaluation hinges to any meaningful degree on the omission of the word ''prompt'' in ORA's conclusion to that effect. Furthermore, although Thaxter argues that ''a hearing is needed to clarify the steps [he] took after he learned of the misstatement and the corrective action he directed the Company to take,'' he does not provide sufficient detail regarding ''voluntary steps'' under section 306(c)(3)(C) to deduce what those steps were and thus fails to present a material factual issue with respect to those steps to be resolved at a hearing.

Insofar as Thaxter points to additional, specific corrective actions, he does so in his arguments regarding paragraphs (D) and (E) of section 306(c)(3) of the FD&C Act in regard to the actions of Invidior, as noted above. With respect to whether changes in operations at Invidior have corrected the cause of his own misdemeanor offense, he points to a Corporate Integrity Agreement with the Office of Inspector General in the Department of Health and Human Services (CIA) into which the company entered as part of a comprehensive settlement agreement. However, Thaxter fails to point to any role he might have had in that CIA as an individual. Thaxter's arguments regarding the CIA's requirement that Invidior adopt ''detailed and state-of-the-art compliance measures'' to ensure that the manufacture and sale of its drug products remain free of fraud and materially false statement must fail on analogous reasoning. Accordingly, the Chief Scientist finds that Thaxter has failed to raise a genuine and substantial issue of fact with respect to ORA's findings regarding the voluntary steps taken by him to mitigate the effect of his offense on the public under section 306(c)(3)(C).

Based on the undisputed record before FDA, primarily encompassing the facts to which Thaxter pled guilty, the Chief Scientist finds that a 5-year debarment is appropriate. Although Thaxter has no previous criminal convictions related to matters within the jurisdiction of FDA, this sole favorable factor does not counterbalance the nature and seriousness of his offense and lack of voluntary steps promptly taken to mitigate the effect of that offense on the public. As has been discussed at length, Thaxter admitted as part of his guilty plea that, as an RCO, he possessed the authority, opportunity, and responsibility to prevent or promptly correct conduct that caused false and misleading information to go to a State Medicaid agency and thereby caused the introduction of a misbranded drug into interstate commerce. His failure to prevent or promptly correct conduct breached the fundamental responsibility as an RCO when he voluntarily assumed a ''position[ ] of authority in [a] business enterprise[ ] whose services and products affect the health and well-being of the public'' (*Park,* 421 U.S. at 573). In short, the Chief Scientist agrees with ORA's conclusion in its proposal that ''the facts supporting the unfavorable factors outweigh those supporting the favorable factor, and therefore warrant the imposition of a five-year period of debarment.''

C. Remaining Legal Arguments

In addition to the foregoing arguments regarding the statutory and factual basis for his debarment, Thaxter argues that debarring him ''for a non-intent, strict liability misdemeanor, without any assessment of underlying knowledge or lack of participation in the conduct of the offense'' would violate ''both his procedural and substantive due process rights'' under the Fifth Amendment, given the liberty and property interests at stake. He claims a lack of notice that he could be subject to debarment for conduct as an RCO. Relying on *Morissette* v. *United States,* 342 U.S. 246, 256 (1952), he also argues that the effect debarment will have on his employment opportunities in his chosen profession and his reputation go beyond the effects of a misdemeanor conviction contemplated by the Supreme Court in that case.

As is extensively discussed above, however, Thaxter did not plead guilty based purely on strict liability. He admitted as part of his guilty plea that he was an RCO ''with authority to either prevent in the first instance or to promptly correct the provision of false and misleading information to MassHealth and that he took neither action.'' (see *Park,* 421 U.S. at 673–74). As discussed above, under the terms of section 306(b)(2)(B)(i)(I) of the FD&C Act, he is subject to permissive debarment for up to 5 years based on the Federal misdemeanor to which he pled guilty.

The FD&C Act itself provides for misdemeanor liability under section 303(a)(1). Taken together, section 306(b)(2)(B)(i)(I) and (c)(3) prescribes the circumstances under which the Agency will exercise its discretion to debar individuals convicted of misdemeanors under the FD&C Act. Furthermore, in this case, the Agency has made the appropriate findings and considered the proper statutory criteria in evaluating the appropriateness and period of Thaxter's debarment. Accordingly, the Chief Scientist does not agree that Thaxter's debarment for 5 years violates his right to due process.

Thaxter next argues that debarring him for 5 years would be ''unreasonable and would not comport with the basic requirements of reasoned decision-making'' unless FDA were to justify ''the radical departure from precedent that debarring [him] would represent.'' He argues further that ''it would be arbitrary, capricious, and contrary to law for FDA to [debar] a party that has not taken action that poses a significant threat to the integrity of the regulatory system'' or ''not to hold a hearing to support its position.''

Based on Thaxter's arguments and the case law he cites, he appears to be relying on the judicial standard for review of Agency decision-making in the APA at 5 U.S.C. 706(2), which directs courts to ''hold unlawful and set aside agency action[s]'' that are ''arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.'' As the Supreme Court has held, the question under that standard is whether the Agency has provided a reasonable explanation for the substance its decision:

> The APA's arbitrary-and-capricious standard requires that agency action be reasonable and reasonably explained. Judicial review under that standard is deferential, and a court may not substitute its own policy judgment for that of the agency. A court simply ensures that the agency has acted within a zone of reasonableness and, in particular, has reasonably considered the relevant issues and reasonably explained the decision (*FCC* v. *Prometheus Radio Project,* 141 S. Ct. 1150, 1158, 209 L. Ed. 2d 287 (2021)).

In this matter, as reflected in the lengthy discussion above, the Agency has reasonably considered the relevant issues and fully explained its decision to debar Thaxter. Although Thaxter points to other individuals who pled guilty to misdemeanors based on liability as RCOs and who have not been debarred, he provides no details with respect to those individuals' convictions. Even assuming, however, that those individuals were similarly situated to him, his bare assertion that an Agency cannot choose to begin pursuing debarment of individuals for certain discrete categories of Federal misdemeanor convictions because it has not done so in the past is unfounded. As discussed, the terms of section 306(b)(2)(B)(i)(I) and (c)(3) of the FD&C Act are clear, and the Agency has exercised its discretion here in a manner consistent with the permissive debarment of many other individuals convicted of Federal misdemeanors. Accordingly, Thaxter's argument that debarring him is arbitrary, capricious, and contrary to law lacks merit.

III. Findings and Order

Therefore, the Chief Scientist, under section 306(b)(2)(B)(i)(I) of the FD&C Act and under authority delegated to her by the Commissioner of Food and Drugs, finds that (1) Thaxter has been convicted of a misdemeanor under Federal law for conduct relating to the development or approval, including the process for development or approval, of a drug product or otherwise relating to the regulation of a drug product under the FD&C Act and (2) the type of conduct which served as the basis for the conviction undermines the process for the regulation of drugs. FDA has considered the applicable factors listed in section 306(c)(3) of the FD&C Act and determined that a debarment of 5 years is appropriate.

As a result of the foregoing findings, Thaxter is debarred for 5 years from providing services in any capacity to a person with an approved or pending drug product application under sections 505, 512, or 802 of the FD&C Act (21 U.S.C. 355, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective (see **DATES**) (see 21 U.S.C. 335a(c)(1)(B) and (c)(2)(A)(iii) and 21 U.S.C. 321(dd)). Any person with an approved or pending drug product application, who knowingly uses the services of Thaxter, in any capacity during his period of debarment, will be subject to civil money penalties (section 307(a)(6) of the FD&C Act (21 U.S.C. 335b(a)(6))). If Thaxter, during his period of debarment, provides services in any capacity to a person with an approved or pending drug product application, he will be subject to civil money penalties (section 307(a)(7) of the FD&C Act). In addition, FDA will not accept or review any abbreviated new drug applications submitted by or with the assistance of Thaxter during his period of debarment (section 306(c)(1)(B) of the FD&C Act).

Dated: February 21, 2023.

Namandjé N. Bumpus,

Chief Scientist.

[FR Doc. 2023–03941 Filed 2–24–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–1046]

Wojciech Lesniak: Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (FD&C Act) debarring Wojciech Lesniak for a period of 5 years from importing or offering for import any drug into the United States. FDA bases this order on a finding that Mr. Lesniak engaged in a pattern of importing or offering for import misbranded drugs (*i.e.,* in an amount, frequency, or dosage that is inconsistent with his personal or household use) that are not designated in an authorized electronic data interchange system as products regulated by FDA. Mr. Lesniak was given notice of the proposed debarment and was given an opportunity to request a hearing to show why he should not be debarred. As of November 21, 2022 (30 days after receipt of the notice), Mr. Lesniak had not responded. Mr. Lesniak's failure to respond and request a hearing constitutes a waiver of his right to a hearing concerning this matter.

DATES: This order is applicable February 27, 2023.

ADDRESSES: Any application by Mr. Lesniak for termination of debarment under section 306(d)(1) of the FD&C Act (21 U.S.C. 335a(d)(1)) may be submitted as follows:

Electronic Submissions

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. An application submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your application will be made public, you are solely responsible for ensuring that your application 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 application, that information will be posted on *https://www.regulations.gov.*

▪ If you want to submit an application with confidential information that you do not wish to be made available to the public, submit the application as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

▪ *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 a written/paper application submitted to the Dockets Management Staff, FDA will post your application, as well as any attachments, except for information submitted, marked, and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All applications must include the Docket No. FDA–2022–N–1046. Received applications 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 application with confidential information that you do not wish to be made publicly available, submit your application 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 your application. 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 application 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, 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 between 9 a.m. and 4 p.m., Monday through Friday. Publicly available submissions may be seen in the docket.

FOR FURTHER INFORMATION CONTACT: Jaime Espinosa (ELEM–4144), Division of Enforcement, Office of Strategic Planning and Operational Policy, Office of Regulatory Affairs, Food and Drug Administration, 240–402–8743, or *debarments@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(b)(1)(D) of the FD&C Act (21 U.S.C. 335a(b)(1)(D)) permits debarment of an individual from importing or offering for import any drug into the United States if the FDA finds, as required by section 306(b)(3)(D) of the FD&C Act, that the individual has engaged in a pattern of importing or offering for import misbranded drugs (*i.e.* in an amount, frequency, or dosage that is inconsistent with personal or household use by the importer), that are not designated in an entry in an authorized electronic data interchange system as products regulated by FDA.

After an investigation, FDA discovered that Mr. Lesniak has engaged in numerous instances of importing or offering for import misbranded drugs; all the parcels containing the misbranded drugs serving as the basis for this action, described in further detail below, were intercepted by FDA at either the Miami or the Newark International Mail Facilities (IMF) and were addressed to Mr. Lesniak at an address connected to him.

On or about June 28, 2019, Mr. Lesniak offered for import a parcel intercepted and processed by FDA at the Newark IMF and which was addressed to him. This parcel contained multiple products. FDA determined that one of the products contained in this parcel was 280 tablets of BAYER ASPIRIN C (Acidum acetylsalicylicum 400 milligram (mg) + Acidum Ascorbicum 240 mg) and was refused entry on August 15, 2019, because the product's required label or labeling appeared to not be in English, in violation of 21 CFR. 201.15(c)(1). FDA also determined that another product contained in this parcel was 360 tablets of APAP (paracetamolum 500 mg) tabletki powlekane. The product was refused entry on August 15, 2019, because the product's required label or labeling appeared to not be in English, in violation of 21 CFR. 201.15(c)(1). FDA also determined that another product contained in this parcel was 300 tablets of APAP EXTRA (Paracetamolum 500 mg + Caffeinum 65 mg). The product was refused entry on August 15, 2019, because the product's required label or labeling appeared to not be in English, in violation of 21 CFR 201.15(c)(1). The product was a misbranded drug pursuant to section 502(c) of the FD&C Act. FDA also determined that another product contained in this parcel was 156 tablets of ALTACET TABLETKI (Aluminii Acetas Tartas 1 gram (g)). The product was refused entry on August 15, 2019, because the product's required label or labeling appeared to not be in English, in violation of 21 CFR 201.15(c)(1). All the products in this parcel were misbranded drugs pursuant to section 502(c) of the FD&C Act.

On or about July 02, 2019, Mr. Lesniak offered for import a parcel intercepted and processed by FDA at the Newark IMF and which was addressed to him. This parcel contained multiple products. The FDA determined that one of the products contained in this parcel was 600 g of MASC CYNKOWA (Zinc Oxidi urguentum) 10%. The product was refused entry on August 22, 2019, because the product's required label or labeling appeared to not be in English, in violation of 21 CFR 201.15(c)(1), and because the product appeared to be an over-the-counter drug without required labeling. FDA determined that one of the products contained in this parcel was 960 tablets of NO–SPA (Drotaverini hydrochloridum 40 mg). The product was refused entry on August 22, 2019, because the product's required label or labeling appeared to not be in English, in violation of 21 CFR 201.15(c)(1), and because the product appeared to be an over-the-counter drug without required labeling. FDA determined that one of the products contained in this parcel was 80 tablets of RANIGAST MAX (Ranitidinum 150 mg). The product was refused entry on August 22, 2019, because the product's required label or labeling appeared to not be in English, in violation of 21 CFR 201.15(c)(1), and because the product appeared to be an over-the-counter drug without required labeling. FDA determined that one of the products contained in this parcel was 3 packages of OROFAR TOTAL

ACTION (Benzoxonii chloridum + Lidocaini Hydrochloridum (2.5 mg + 1,5 mg/milliliters (ml))). The product was refused entry on August 22, 2019, because the product's required label or labeling appeared to not be in English, in violation of 21 CFR 201.15(c)(1), and because the product appeared to be an over-the-counter drug without required labeling. FDA determined that one of the products contained in this parcel was 10 packages of MASC ICHTIOLOWA (Ammonii Bituminosulfonatis Unguentum FP 10%). The product was refused entry on August 22, 2019, because the product's required label or labeling appeared to not be in English, in violation of 21 CFR 201.15(c)(1), and because the product appeared to be an over-the-counter drug without required labeling. All of the products in this parcel were misbranded drugs pursuant to section 502(c) of the FD&C Act.

On or about July 02, 2019, Mr. Lesniak offered for import another parcel intercepted and processed by the FDA at the Newark IMF and which was addressed to him. FDA determined that one of the products contained in this parcel was 530 tablets of RANIGAST MAX (Ranitidinum 150mg). The product was refused entry on August 23, 2019, because the product's required label or labeling appeared to not be in English, in violation of 21 CFR 201.15(c)(1). FDA determined that one of the products contained in this parcel was 25 packages of LIOTON 1000 ZEL (Heparinum Natricum). The product was refused entry on August 23, 2019, because the product's required label or labeling appeared to not be in English, in violation of 21 CFR 201.15(c)(1). FDA determined that one of the products contained in this parcel was 10 packages of MASC ICHTIOLOWA (Ammonii bituminosulfonatis unguentum FP). The product was refused entry on August 23, 2019, because the product's required label or labeling appeared to not be in English, in violation of 21 CFR 201.15(c)(1). FDA determined that one of the products contained in this parcel was 20 packages of OPOKAN ACTIGEL (100mg/ml, zel Naproxenum). The product was refused entry on August 23, 2019, because the product's required label or labeling appeared to not be in English, in violation of 21 CFR 201.15(c)(1). FDA determined that one of the products contained in this parcel was 3 packages of ALTACEL ZEL (Aluminii Acetotartras 10mg/g). The product was refused entry on August 23, 2019, because the product's required label or labeling appeared to not be in English, in violation of 21 CFR 201.15(c)(1). All the products in this parcel were misbranded drugs pursuant to section 502(c) of the FD&C Act.

On or about January 4, 2022, Mr. Lesniak offered for import another parcel intercepted and processed by FDA at the Miami IMF and which was addressed to him. FDA determined that one of the products contained in this parcel was 4 boxes of DIOHESPAN MAX and was a misbranded drug pursuant to section 502(c) of the FD&C Act because the product's required label or labeling was not in English in violation of 21 CFR 201.15(c)(1) and the drug was not included in a list required by section 510(j) of the FD&C Act. FDA determined that another one of the products contained in this parcel was 4 boxes of NEO–ANGIN and was a misbranded drug pursuant to section 502(c) of the FD&C Act because the product's required label or labeling was not in English, in violation of 21 CFR 201.15(c)(1), and the drug was not included in a list required by section 510(j) of the FD&C Act. FDA determined that another one of the products contained in this parcel was 10 boxes of FURAGINUM and was a misbranded drug pursuant to section 502(c) of the FD&C Act because the product's required label or labeling was not in English, in violation of 21 CFR 201.15(c)(1), and the drug was not included in a list required by section 510(j) of the FD&C Act. FDA determined that another one of the products contained in this parcel was 10 boxes of ALTACET and was a misbranded drug pursuant to section 502(c) of the FD&C Act because the product's required label or labeling was not in English, in violation of 21 CFR 201.15(c)(1), and the drug was not included in a list required by section 510(j) of the FD&C Act. FDA determined that another one of the products contained in this parcel was 17 boxes of RUTINOSCORBIN and was a misbranded drug pursuant to section 502(c) of the FD&C Act because the product's required label or labeling was not in English, in violation of 21 CFR 201.15(c)(1), and it was determined the drug is not included in a list required by section 510(j) of the FD&C Act. FDA determined that another one of the products contained in this parcel was 10 boxes of ESPUMISAN MAX and was a misbranded drug pursuant to section 502(c) of the FD&C Act because the product's required label or labeling was not in English, in violation of 21 CFR 201.15(c)(1), and it was determined the drug is not included in a list required by section 510(j) of the FD&C Act. FDA determined that another one of the products contained in this parcel was 18 boxes of RAPHACHOLIN FORTE and was a misbranded drug pursuant to section 502(c) of the FD&C Act because the product's required label or labeling was not in English, in violation of 21 CFR 201.15(c)(1), and it was determined the drug is not included in a list required by section 510(j) of the FD&C Act. FDA determined that another one of the products contained in this parcel was 20 boxes of WEGIEL LECZNICZY and was a misbranded drug pursuant to section 502(c) of the FD&C Act because the product's required label or labeling was not in English, in violation of 21 CFR 201.15(c)(1), and it was determined the drug is not included in a list required by section 510(j) of the FD&C Act. FDA determined that another one of the products contained in this parcel was 41 boxes of GRIPEX MAX and was a misbranded drug pursuant to section 502(c) of the FD&C Act because the product's required label or labeling was not in English, in violation of 21 CFR 201.15(c)(1), and it was determined the drug was not included in a list required by section 510(j) of the FD&C Act. All the products in this parcel were destroyed on March 11, 2022.

On or about February 16, 2022, Mr. Lesniak offered for import a parcel intercepted and processed by the FDA at the Miami IMF and which was addressed to him. FDA determined that the product contained in this parcel was 42 boxes of FLEGAMINA CLASSIC and was a misbranded drug pursuant to section 502(c) of the FD&C Act because the product's required label or labeling was not in English, in violation of 21 CFR 201.15(c)(1). The product was destroyed on March 11, 2022.

On or about February 16, 2022, Mr. Lesniak offered for import another parcel intercepted and processed by the FDA at the Miami IMF and which was addressed to him. FDA determined that the product contained in this parcel was 42 boxes of FLEGAMINA CLASSIC and was a misbranded drug pursuant to section 502(c) of the FD&C Act because the product's required label or labeling was not in English, in violation of 21 CFR 201.15(c)(1). The product was destroyed on March 11, 2022.

On or about February 18, 2022, Mr. Lesniak offered for import a parcel intercepted and processed by the FDA at the Miami IMF and which was addressed to him. FDA determined that the product contained in this parcel was 42 boxes of FLEGAMINA CLASSIC and was a misbranded drug pursuant to section 502(c) of the FD&C Act because the product's required label or labeling was not in English, in violation of 21 CFR 201.15(c)(1), and it was determined

the drug was not included in a list required by section 510(j) of the FD&C Act. The product was refused entry on March 22, 2022.

As a result of this pattern of importing or offering for import misbranded drugs (*i.e.* in an amount, frequency, or dosage that is inconsistent with his personal or household use) that are not designated in an authorized electronic data interchange system as products regulated by FDA, in accordance with section 306(b)(3)(D) of the FD&C Act (21 U.S.C. 335a(b)(3)(D)), FDA sent Mr. Lesniak, by certified mail on October 17, 2022, a notice proposing to debar him for a 5-year period from importing or offering for import any drug into the United States. In proposing a debarment period, FDA weighed the considerations set forth in section 306(c)(3) of the FD&C Act that it considered applicable to Mr. Lesniak's pattern of conduct and concluded that his conduct warranted the imposition of a five-year period of debarment. The proposal informed Mr. Lesniak of the proposed debarment and offered him an opportunity to request a hearing, providing 30 days from the date of receipt of the letter in which to file the request, and advised him that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. Mr. Lesniak received the proposal and notice of opportunity for a hearing on October 22, 2022. Mr. Lesniak failed to request a hearing within the timeframe prescribed by regulation and has, therefore, waived his opportunity for a hearing and waived any contentions concerning his debarment. (21 CFR part 12).

II. Findings and Order

Therefore, the Assistant Commissioner, Office of Human and Animal Food Operations, under section 306(b)(3)(D) of the FD&C Act, under authority delegated to the Assistant Commissioner, finds that Mr. Wojciech Lesniak has engaged in a pattern of importing or offering for import misbranded drugs (*i.e.* in an amount, frequency, or dosage that is inconsistent with his personal or household use) that are not designated in an authorized electronic data interchange system as products regulated by FDA. FDA finds that this pattern of conduct should be accorded a debarment period of 5 years as provided by section 306(c)(2)(A)(iii) of the FD&C Act.

As a result of the foregoing finding, Mr. Lesniak is debarred for a period of 5 years from importing or offering for import any drug into the United States, effective (see **DATES**). Pursuant to section 301(cc) of the FD&C Act (21 U.S.C. 331(cc)), the importing or offering for import into the United States of any drug by, with the assistance of, or at the direction of Mr. Lesniak is a prohibited act.

Dated: February 22, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–03958 Filed 2–24–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–P–1013]

Determination That CHANTIX (Varenicline Tartrate) Tablets, 0.5 Milligram and 1 Milligram, Has Not Been Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) has determined that CHANTIX (varenicline tartrate) tablets, 0.5 milligram (mg) and 1 mg, has not been withdrawn from sale for reasons of safety or effectiveness to the extent that the drug can be manufactured or formulated in a manner that satisfies any applicable acceptable intake limit for nitrosamine impurities. This determination means that FDA will not begin procedures to withdraw approval of abbreviated new drug applications (ANDAs) that refer to this drug product, and it will allow FDA to continue to approve ANDAs that refer to the product as long as they meet relevant legal and regulatory requirements.

FOR FURTHER INFORMATION CONTACT: David Faranda, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6258, Silver Spring, MD 20993–0002, 301–796–8767, *David.Faranda@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Section 505(j) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(j)) allows the submission of an ANDA to market a generic version of a previously approved drug product. To obtain approval, the ANDA applicant must show, among other things, that the generic drug product: (1) has the same active ingredient(s), dosage form, route of administration, strength, conditions of use, and (with certain exceptions) labeling as the listed drug, which is a version of the drug that was previously approved, and (2) is bioequivalent to the listed drug. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

Section 505(j)(7) of the FD&C Act requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug has been withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approval of an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

CHANTIX (varenicline tartrate) tablets, 0.5 mg and 1 mg, is the subject of NDA 021928, held by PF Prism CV (c/o Pfizer Inc.), and initially approved on May 10, 2006. CHANTIX is indicated for use as an aid to smoking cessation treatment.

PF Prism CV has voluntarily discontinued marketing of CHANTIX (varenicline tartrate) tablets, 0.5 mg and 1 mg. The levels of the N-nitroso-varenicline (NNV) impurity in Chantix exceeded FDA's acceptable intake limit.[1] FDA's current understanding is

[1] Nitrosamine impurities in the drug supply are an important public health concern to which the Agency is dedicating significant resources. As explained in FDA's Guidance for Industry, *Control of Nitrosamine Impurities in Human Drugs,* ''Nitrosamine compounds are potent genotoxic agents in several animal species and some are classified as probable or possible human carcinogens by the International Agency for Research on Cancer (IARC). They are referred to as ''cohort of concern'' compounds in the ICH guidance for industry *M7(R1) Assessment and Control of DNA Reactive (Mutagenic) Impurities in Pharmaceuticals To Limit Potential Carcinogenic Risk* (March 2018).'' Many drug products have been found to contain levels of nitrosamines that are unacceptable or require further evaluation. FDA's current understanding is that nitrosamine levels in affected drug products have different causes and may be controlled using different strategies, including formulation design (*i.e.,* adding antioxidants or adding pH adjusters that modify the microenvironment to base or neutral pH) and supplier qualification programs.

that the NNV impurity can be controlled within the acceptable intake limit by sponsors of varenicline products within the context of their particular applications.

CHANTIX (varenicline tartrate) tablets, 0.5 mg and 1 mg, is currently listed in the ''Discontinued Drug Product List'' section of the Orange Book.

Medley Pharmaceuticals Ltd. submitted a citizen petition dated June 6, 2022 (Docket No. FDA–2022–P–1013), under 21 CFR 10.30, requesting that the Agency determine whether CHANTIX (varenicline tartrate) tablets, 0.5 mg and 1 mg, were withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that CHANTIX (varenicline tartrate) tablets, 0.5 mg and 1 mg, has not been withdrawn for reasons of safety or effectiveness to the extent that the drug can be manufactured or formulated in a manner that satisfies any applicable acceptable intake limit for nitrosamine impurities.

Accordingly, the Agency will continue to list CHANTIX (varenicline tartrate) tablets, 0.5 mg and 1 mg, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. FDA will not begin procedures to withdraw approval of approved ANDAs that refer to this drug product. Additional ANDAs for this drug product may be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs, including satisfying any applicable acceptable intake limit for nitrosamine impurities. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: February 22, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–03947 Filed 2–24–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program: Revised Amount of the Average Cost of a Health Insurance Policy

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: HRSA is publishing an updated monetary amount of the average cost of a health insurance policy as it relates to the National Vaccine Injury Compensation Program (VICP).

FOR FURTHER INFORMATION CONTACT: CDR George Reed Grimes, Director, Division of Injury Compensation Programs, Health Systems Bureau, HRSA, by mail at 5600 Fishers Lane, 08N186B, Rockville, Maryland 20857; or call (301) 443–9350.

SUPPLEMENTARY INFORMATION: Section 100.2 of the VICP's implementing regulation (42 CFR part 100) states that the revised amount of an average cost of a health insurance policy, as determined by the Secretary of Health and Human Services (the Secretary), is effective upon its delivery by the Secretary to the United States Court of Federal Claims (the Court) and will be published periodically in a notice in the **Federal Register**. The Secretary delegated this responsibility to the HRSA Administrator. This figure is calculated using the most recent Medical Expenditure Panel Survey-Insurance Component data available as the baseline for the average monthly cost of a health insurance policy. This baseline is adjusted by the annual percentage increase/decrease obtained from the most recent annual Kaiser Family Foundation (KFF) Employer Health Benefits Survey.

In 2022, Medical Expenditure Panel Survey-Insurance Component, available at *www.meps.ahrq.gov,* published the annual 2021 average total single premium per enrolled employee at private-sector establishments that provide health insurance. The figure published was $7,380. This figure is divided by 12 to determine the cost per month of $615.00. The $615.00 figure is increased or decreased by the percentage change reported by the most recent KFF Employer Health Benefits Survey, available at *www.kff.org.* The increase from 2021 to 2022 was 2.2 percent. By adding this percentage increase, the calculated average monthly cost of a health insurance policy for a 12-month period is $628.53.

Therefore, the Secretary announces that the revised average cost of a health insurance policy under the VICP is $628.53 per month. In accordance with § 100.2, the revised amount was effective upon its delivery by the Secretary to the Court. Such notice was delivered to the Court on February 21, 2023.

Carole Johnson,

Administrator.

[FR Doc. 2023–03919 Filed 2–24–23; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request; Office for the Advancement of Telehealth Outcome Measures, OMB No. 0915–0311—Extension

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than April 28, 2023.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 14N136B, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Samantha Miller, the HRSA Information Collection Clearance Officer, at 301–594–4394.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

Information Collection Request Title: Office for the Advancement of Telehealth Outcome Measures OMB No. 0915–0311—Extension.

Abstract: This clearance request is for extending the approval of the Office for Advancement of Telehealth Outcome Measures that are currently approved under OMB No. 0915–0311, with an expiration date of October 31, 2023. To help carry out its mission, HRSA created this set of performance measures that grantees of the Telehealth Network Grant Program can use to evaluate the effectiveness of their services programs and monitor their progress using performance reporting data.

Need and Proposed Use of the Information: As required by the Government Performance and Review Act of 1993, all federal agencies must develop strategic plans describing their overall goal and objectives. HRSA has worked with grantees of the Telehealth Network Grant Program to develop performance measures to be used to evaluate and monitor the progress of the grantees. Grantee goals are to improve access to needed services; reduce rural practitioner isolation; improve health system productivity and efficiency; and improve patient outcomes. In each of these categories, specific indicators were designed to be reported through a performance monitoring website. Measures for the Telehealth Network Grant Program capture awardee-level and aggregate data that illustrate the impact and scope of federal funding along with assessing these efforts. The measures speak to the Office for Advancement of Telehealth's progress toward meeting the goals, specifically telehealth services delivered through Emergency Departments.

Likely Respondents: Telehealth Network Grant Program Grantees.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Performance Improvement Measurement System	29	1	29	7	203
Total	29		29		203

HRSA specifically requests comments on: (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2023–03912 Filed 2–24–23; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than April 28, 2023.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or by mail to the HRSA Information Collection Clearance Officer, Room 14N136B, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Samantha Miller, the HRSA Information Collection Clearance Officer, at (301) 594–4394.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information collection request title for reference.

Information Collection Request Title: Enhancing HIV Care of Women, Infants, Children and Youth Building Capacity through Communities of Practice OMB No. 0915–xxxx–New.

Abstract: HRSA aims to increase delivery of evidence-based interventions that enhance client outcomes, increase the skill level of the HIV workforce providing care and treatment to Women, Infants, Children and Youth, and involve partnerships for dissemination of best practices to Ryan White HIV/AIDS Program (RWHAP) Part D participants. To that end, HRSA seeks to implement a Communities of Practice (CoP) platform for RWHAP Part D recipients. A CoP engages recipient teams in improvement learning sessions using subject matter experts along with application experts who help recipient teams select, test, and implement changes on the front line of care. Through organizational self-assessments, didactic learning on specific care topics, goals setting, and work plan development, each team can strategically benefit their organization. CoPs afford participants the opportunity to work in a group to solve a recognized challenge related to a CoP domain and support dialogue among participants and the consultant/subject matter experts. Recipient teams commit to

working over a period of 12 months, alternating between Learning Sessions in which teams come together to learn about the chosen topic and to plan changes, and Action Periods in which the teams return to their respective organizations and test those changes in their clinic settings. The domains for the proposed CoPs are trauma informed care, pre-conception counseling, and youth transitioning into adult HIV care services.

Need and Proposed Use of the Information: Process and outcome evaluations are a critical part of ensuring that CoP initiatives were implemented as planned and met their intended outcome. Evaluation of technical assistance (TA) depends on establishing clear goals and plans from the beginning of the process. This includes specifying the intended impact of the TA with concrete, measurable objectives. To judge performance against goals, HRSA will administer TA evaluation surveys following TA and training, webinars, teleconferences, and meetings. Findings will drive quality improvement activities and reports.

The evaluation plan focuses on process and impact evaluation of all CoP Teams (Pre-Conception Counseling and Sexual Health, Trauma-Informed Care, and Transitioning Adolescents to Adult Care) over the duration of the 4-year period of performance. The evaluation plan components will be operationalized to include TA satisfaction measures (reaction), change in knowledge after the TA (learning), and change in behavior or practice after the introduction of evidence-based interventions (behavior). More specifically, the evaluation plan includes (1) post TA satisfaction measures, (2) pre-post measures of CoP staff knowledge about effective practices, (3) retrospective measures to gather measures of CoP staff knowledge for the first community of practice only, and (4) measures of TA usefulness and impact on CoP performance.

Likely Respondents: Up to 90 RWHAP Part D Women, Infant, Children, Youth recipients will participate in the CoPs. Each recipient may have up to six staff members who may complete the survey.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Pre-conception Counseling Community of Practice Retrospective Pre-test-Post Assessment	90	1	90	.4733	42.6
Community of Practice Pre-Assessment	180	1	180	.2900	52.2
Community of Practice Post-Assessment	180	1	180	.3767	67.8
Community of Practice Session Assessment	270	6	1,620	.0767	124.3
Targeted and Intensive TA Assessment	120	1	120	.0833	10.0
Foundational TA Assessment	150	1	150	.0616	9.2
	990	.....	2,340	.....	306.1

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2023–03911 Filed 2–24–23; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

RIN 0917–AA22

Reimbursement Rates for Calendar Year 2023

AGENCY: Indian Health Service, HHS.

ACTION: Notice.

SUMMARY: Notice is provided that the Director of the Indian Health Service (IHS) has approved the rates for inpatient and outpatient medical care provided by the IHS facilities for Calendar Year 2023.

SUPPLEMENTARY INFORMATION:

Background

The Director of the Indian Health Service (IHS), under the authority of sections 321(a) and 322(b) of the Public Health Service Act (42 U.S.C. 248 and 249(b)), Public Law 83–568 (42 U.S.C. 2001(a)), and the Indian Health Care Improvement Act (25 U.S.C. 1601 *et seq.*), has approved the following rates for inpatient and outpatient medical care provided by IHS facilities for Calendar Year 2023 for Medicare and Medicaid beneficiaries, beneficiaries of other federal programs, and for recoveries under the Federal Medical Care Recovery Act (42 U.S.C. 2651–2653). The inpatient rates for Medicare Part A are excluded from the table below. That is because Medicare inpatient payments for IHS hospital facilities are made based on the prospective payment system, or (when IHS facilities are designated as Medicare Critical Access Hospitals) on a reasonable cost basis. Since the inpatient per diem rates set forth below do not include all physician services and practitioner services, additional payment shall be available to the extent that those services are provided.

Inpatient Hospital per Diem Rate (Excludes Physician/Practitioner Services)
Calendar Year 2023
Lower 48 States $4,333
Alaska $3,478
Outpatient per Visit Rate (Excluding Medicare)
Calendar Year 2023
Lower 48 States $654
Alaska $862
Outpatient per Visit Rate (Medicare)
Calendar Year 2023
Lower 48 States $620
Alaska $801
Medicare Part B Inpatient Ancillary per Diem Rate
Calendar Year 2023
Lower 48 States $829
Alaska $1,066

Outpatient Surgery Rate (Medicare)

Established Medicare rates for freestanding Ambulatory Surgery Centers.

Effective Date for Calendar Year 2023 Rates

Consistent with previous annual rate revisions, the Calendar Year 2023 rates will be effective for services provided on or after January 1, 2023, to the extent consistent with payment authorities, including the applicable Medicaid State plan.

Roselyn Tso,

Director, Indian Health Service.

[FR Doc. 2023–03896 Filed 2–24–23; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Oral, Dental and Craniofacial Sciences Study Section.

Date: March 24, 2023.
Time: 11:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Richard Michael Lovering, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1000J, Bethesda, MD 20892, (301) 867–5309, *loveringrm@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: The Cancer Biotherapeutics Development (CBD).
Date: March 27–28, 2023.
Time: 9:00 a.m. to 7:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Melrose Hotel, 2430 Pennsylvania Ave. NW, Washington, DC 20037.
Contact Person: Laurie Ann Shuman Moss, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 867–5309, *laurie.shumanmoss@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Molecular Genetics and Genomics.
Date: March 27, 2023.
Time: 10:00 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Mollie Kim Manier, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–0510, *mollie.manier@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Viral Dynamics and Transmission.
Date: March 28–29, 2023.
Time: 10:00 a.m. to 7:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Sharon Isern, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 810J, Bethesda, MD 20892, (301) 435–0000, *iserns2@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Immunity and Host Defense.
Date: March 28, 2023.
Time: 10:00 a.m. to 2:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Deanna C Bublitz, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–4005, *deanna.bublitz@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Motor Control and Rehabilitation.
Date: March 28, 2023.
Time: 10:00 a.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Sara Louise Hargrave, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, Bethesda, MD 20892, (301) 443–7193, *hargravesl@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR21–089 Specific Pathogen Free Macaque Colonies (U42 Clinical Trial Not Allowed).
Date: March 28, 2023.
Time: 10:30 a.m. to 2:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Anthony Wing Sang Chan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 809K, Bethesda, MD 20892, (301) 496–9392, *chana3@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Biology of Aging and Infection.
Date: March 28, 2023.
Time: 12:00 p.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Jimok Kim, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6107 Rockledge Drive, Bethesda, MD 20892, (301) 402–8559, *jimok.kim@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Epidemiology and Population Health.
Date: March 28, 2023.
Time: 12:00 p.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Lisa Tisdale Wigfall, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1007G, Bethesda, MD 20892, (301) 594–5622, *wigfalllt@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Respiratory Sciences.
Date: March 29–30, 2023.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Imoh Sunday Okon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817, 301–347–8881, *imoh.okon@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 22, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–03969 Filed 2–24–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; RFA: Expanding Prevention Strategies for Mental Disorders in Mobile Populations in Humanitarian Crises.

Date: March 22, 2023.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Regina Dolan-Sewell, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Bethesda, MD 20852, (240) 796–6785, *regina.dolan-sewell@nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Pathway to Independence Awards (K99/R00) A.

Date: March 23, 2023.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: David W. Miller, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Bethesda, MD 20892–9608, 301–443–9734, *millerda@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Addressing Mental Health Disparities Research Gaps: Aggregating and Mining Existing Data Sets for Secondary Analyses (R01).

Date: March 23, 2023.

Time: 11:00 a.m. to 4:15 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Rebecca Steiner Garcia, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Bethesda, MD 20892–9608, 301–443–4525, *steinerr@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; BRAIN Initiative: Integration and Analysis of BRAIN Initiative Data.

Date: March 23, 2023.

Time: 12:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Jasenka Borzan, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institutes of Mental Health, Neuroscience Center, 6001 Executive Blvd., Bethesda, MD 20892, 301–435–1260, *jasenka.borzan@nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: February 21, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–03918 Filed 2–24–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0051]

National Flood Insurance Program (NFIP); Assistance to Private Sector Property Insurers, Notice of FY 2024 Arrangement

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency announces the Fiscal Year 2024 Financial Assistance/Subsidy Arrangement for private property insurers interested in participating in the National Flood Insurance Program's Write Your Own Program.

DATES: Interested insurers must submit intent to subscribe or re-subscribe to the Arrangement by May 30, 2023.

FOR FURTHER INFORMATION CONTACT: Sarah Devaney Ice, Federal Insurance and Mitigation Administration, FEMA, 400 C St. SW, Washington, DC 20472 (mail); (202) 320–5577 (phone); or *sarah.devaney-ice@fema.dhs.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Background

The National Flood Insurance Act of 1968 (NFIA) (42 U.S.C. 4001 *et seq.*) authorizes the Administrator of the Federal Emergency Management Agency (FEMA) to establish and carry out a National Flood Insurance Program (NFIP) to enable interested persons to purchase flood insurance. *See* 42 U.S.C. 4011(a). Under the NFIA, FEMA may use insurance companies and other insurers, insurance agents and brokers, and insurance adjustment organizations as fiscal agents of the United States to help it carry out the NFIP. *See* 42 U.S.C. 4071. To this end, FEMA may ''enter into any contracts, agreements, or other appropriate arrangements'' with private insurance companies to use their facilities and services in administering the NFIP on such terms and conditions as they agree upon. *See* 42 U.S.C. 4081(a).

Pursuant to this authority, FEMA enters into a standard Financial Assistance/Subsidy Arrangement (Arrangement) with private sector property insurers, also known as Write Your Own (WYO) companies, to sell NFIP flood insurance policies under their own names and adjust and pay

claims arising under the Standard Flood Insurance Policy (SFIP). Each Arrangement entered into by a WYO company must be in the form and substance of the standard Arrangement, a copy of which is published in the **Federal Register** annually, at least 6 months prior to becoming effective. *See* 44 CFR 62.23(a). To learn more about FEMA's WYO Program, please visit *https://nfipservices.floodsmart.gov/write-your-own-program.*

II. Notice of Availability

Insurers interested in participating in the WYO Program for Fiscal Year 2024 must contact Sarah Devaney Ice at *sarah.devaney-ice@fema.dhs.gov* by May 30, 2023.

Prior participation in the WYO Program does not guarantee FEMA will approve continued participation. FEMA will evaluate requests to participate in light of publicly available information, industry performance data, and other criteria listed in 44 CFR 62.24 and the FY 2024 Arrangement, copied below. FEMA encourages private insurance companies to supplement this information with customer satisfaction surveys, industry awards or recognition, or other objective performance data. In addition, private insurance companies should work with their vendors and subcontractors involved in servicing and delivering their insurance lines to ensure FEMA receives the information necessary to effectively evaluate the criteria set forth in its regulations.

FEMA will send a copy of the offer for the FY 2024 Arrangement, together with related materials and submission instructions, to all private insurance companies successfully evaluated by the NFIP. If FEMA, after conducting its evaluation, chooses not to renew a Company's participation, FEMA, at its option, may require the continued performance of all or selected elements of the FY 2023 Arrangement for a period required for orderly transfer or cessation of the business and settlement of accounts, not to exceed 18 months. *See* FY 2023 Arrangement, Article II.D. All evaluations, whether successful or unsuccessful, will inform both an overall assessment of the WYO Program and any potential changes FEMA may consider regarding the Arrangement in future fiscal years.

Any private insurance company with questions may contact FEMA at: Sarah Devaney Ice, Federal Insurance and Mitigation Administration, FEMA, 400 C St. SW, Washington, DC 20472 (mail); (202) 320–5577 (phone); or *sarah.devaney-ice@fema.dhs.gov* (email).

III. Fiscal Year 2024 Arrangement

Pursuant to 44 CFR 62.23(a), FEMA must publish the Arrangement at least six months prior to the Arrangement becoming effective. The FY 2024 Arrangement provided below is substantially similar to the previous year's Arrangement, but includes the following substantive changes:

1. In Article III.A (Undertakings of the Company), under Operations Plan, FEMA is requiring WYO companies to submit a Policy Retention Plan, describing the Company's efforts and methods to retain and renew policies to better inform FEMA on how WYO companies communicate with policyholders and support policy retention.

2. In Article III.A (Undertakings of the Company), under subsection (5) (Operations Plan), FEMA is redesignating subsections (c)–(h) as (d)–(i) because it has added a new requirement of a Policy Retention Plan under (c). Aside from the addition of a Policy Retention Plan, FEMA is not making any other substantive changes to its requirement that WYO companies submit an Operations Plan within ninety calendar days of the commencement of this Arrangement.

3. In Article IV.C (Loss Costs, Expenses, Expense Reimbursement, and Premium Refunds), FEMA is removing ''geographic area'' from its determination of alternative Adjuster Fee Schedules to better ensure that adjuster resources are available throughout the Nation following a catastrophic flood. Alternative Adjuster Fee schedules for the FY 2024 Arrangement will now be based solely on losses incurred during a specified time frame.

4. In Article IV.D (Loss Costs, Expenses, Expense Reimbursement, and Premium Refunds), FEMA is requiring WYO companies to comply with the NFIP Litigation Manual in both its conduct and oversight of litigation. To the extent that the manual does not address specific issues, FEMA is directing WYO companies to continue to follow their own customary business practices for other lines of insurance not sold under the Arrangement.

5. In Article IV.D (Loss Costs, Expenses, Expense Reimbursement, and Premium Refunds), FEMA is removing the requirement that WYO companies comply with their customary business practices in the oversight of litigation because this subsection (IV.D.3.d) is now addressed in IV.D.3.b, discussed above.

The Fiscal Year 2024 Arrangement reads as follows:

Financial Assistance/Subsidy Arrangement

Article I. General Provisions

A. Parties. The parties to the Financial Assistance/Subsidy Arrangement are the Federal Emergency Management Agency (FEMA) and the Company.

B. Purpose. The purpose of this Financial Assistance/Subsidy Arrangement is to authorize the Company to sell and service flood insurance policies made available through the National Flood Insurance Program (NFIP) and adjust and pay claims arising under such policies as fiscal agents of the Federal Government.

C. Authority. This Financial Assistance/Subsidy Arrangement is authorized under the National Flood Insurance Act of 1968 (NFIA) (42 U.S.C. 4001 *et seq.*), and in particular, section 1345(a) of the NFIA (42 U.S.C. 4081(a)), as implemented by 44 CFR 62.23 and 62.24.

Article II. Commencement and Termination

A. The effective period of this Arrangement begins on October 1, 2023, and terminates no earlier than September 30, 2024, subject to extension pursuant to Articles II.D and II.H. FEMA may provide financial assistance only for policy applications and endorsements accepted by the Company during this period pursuant to the Program's effective date, underwriting, and eligibility rules.

B. Pursuant to 44 CFR 62.23(a), FEMA will publish the Arrangement and the terms for subscription or re-subscription for Fiscal Year 2025 in the **Federal Register** no later than April 1, 2024. Upon such publication, the Company must notify FEMA of its intent to re-subscribe or not re-subscribe to the WYO Program for the following term within ninety (90) calendar days.

C. Requesting Participation in WYO Program. Insurers interested in participating in the WYO Program, who have never participated in the program, or who are returning to the program after a period of non-participation, must submit a written request to participate.

1. Participation is then contingent on submission of both:

a. A completed application package, the requirements and contents of which FEMA will outline in its written response to the request to participate.

b. A completed operations plan, whose requirements and contents are outlined at Article III.A.5 of this Arrangement.

2. Insurers who are already participating in the program must submit their operations plan within ninety (90) days as outlined in Article III.A.5 of this Arrangement.

D. In addition to the requirements of Article II.B, in order to ensure uninterrupted service to policyholders, the Company must notify FEMA within thirty (30) calendar days of when the Company elects not to re-subscribe to the WYO Program during the term of this Arrangement. If so notified, or if FEMA chooses not to renew the Company's participation, FEMA, at its option, may require the continued performance of all or selected elements of this Arrangement for the period required for orderly transfer or cessation of business and settlement of accounts, not to exceed eighteen (18) months after the end of this Arrangement (September 30, 2024), and may either require transfer of activities to FEMA under Article II.D.1 or allow transfer of activities to another WYO company under Article II.D.2:

1. FEMA may require the Company to transfer all activities under this Arrangement to FEMA. Within thirty (30) calendar days of FEMA's election of this option, the Company must deliver to FEMA the following:

a. A plan for the orderly transfer to FEMA of any continuing responsibilities in administering the policies issued by the Company under the Program including provisions for coordination assistance.

b. All data received, produced, and maintained through the life of the Company's participation in the Program, including certain data, as determined by FEMA, in a standard format and medium.

c. All claims and policy files, including those pertaining to receipts and disbursements that have occurred during the life of each policy. In the event of a transfer of the services provided, the Company must provide FEMA with a report showing, on a policy basis, any amounts due from or payable to policyholders, agents, brokers, and others as of the transition date.

d. All funds in its possession with respect to any policies transferred to FEMA for administration and the unearned expenses retained by the Company.

e. A point of contact within the Company responsible for addressing issues that may arise from the Company's previous participation under the WYO Program.

2. Within ninety (90) calendar days of receiving the Company's data and supporting documentation, FEMA will notify the Company of the date that FEMA will complete the transfer.

3. FEMA may allow the Company to transfer all activities under this Arrangement to one or more other WYO companies. Prior to commencing such transfer, the Company must submit, and FEMA must approve, a formal request. Such request must include the following:

a. An assurance of uninterrupted service to policyholders.

b. A detailed transfer plan providing for either: (1) the renewal of the Company's NFIP policies by one or more other WYO companies; or (2) the transfer of the Company's NFIP policies to one or more other WYO companies.

c. A description of who the responsible party will be for liabilities relating to losses incurred by the Company in this or preceding Arrangement years.

d. A point of contact within the Company responsible for addressing issues that may arise from the Company's previous participation under the WYO Program.

E. Cancellation by FEMA.

1. FEMA may cancel financial assistance under this Arrangement in its entirety upon thirty (30) calendar days written notice to the Company stating one or more of the following reasons for such cancellation:

a. Fraud or misrepresentation by the Company subsequent to the inception of the Arrangement.

b. Nonpayment to FEMA of any amount due.

c. Material failure to comply with the requirements of this Arrangement or with the written standards, procedures, or guidance issued by FEMA relating to the NFIP and applicable to the Company.

d. Failure to maintain compliance with WYO company participation criteria at 44 CFR 62.24.

e. Any other cause so serious or compelling a nature that affects the Company's present responsibility.

2. If FEMA cancels this Arrangement pursuant to Article II.E.1, FEMA may require the transfer of administrative responsibilities and the transfer of data and records as provided in Article II.D.1.a-d. If transfer is required, the Company must remit to FEMA the unearned expenses retained by the Company. In such event, FEMA will assume all obligations and liabilities owed to policyholders under such policies, arising before and after the date of transfer.

3. As an alternative to the transfer of the policies to FEMA pursuant to Article II.E.2, FEMA will consider a proposal, if it is made by the Company, for the assumption of responsibilities by another WYO company as provided in Article II.D.3.

F. In the event that the Company is unable or otherwise fails to carry out its obligations under this Arrangement by reason of any order or directive duly issued by the Department of Insurance of any jurisdiction to which the Company is subject, including but not limited to being placed in receivership or run-off status by a State Department of Insurance, the Company agrees to transfer, and FEMA will accept, any and all WYO policies issued by the Company and in force as of the date of such inability or failure to perform. In such event FEMA will assume all obligations and liabilities within the scope of the Arrangement owed to policyholders arising before and after the date of transfer, and the Company will immediately transfer to FEMA all needed records and data and all funds in its possession with respect to all such policies transferred and the unearned expenses retained by the Company. As an alternative to the transfer of the policies to FEMA, FEMA will consider a proposal, if it is made by the Company, for the assumption of responsibilities by another WYO company as provided by Article II.D.3. The Company shall immediately notify FEMA if:

1. An independent financial rating company downgrades its financial strength during its period of performance under this Arrangement; or

2. It receives a State department of insurance order or directive making it unable to carry out its obligations under this Arrangement, including but not limited to being placed in receivership or run-off status by a State department of insurance.

G. In the event the Act is amended, repealed, expires, or if FEMA is otherwise without authority to continue the Program, FEMA may cancel financial assistance under this Arrangement for any new or renewal business, but the Arrangement will continue for policies in force that shall be allowed to run their term under the Arrangement.

H. If FEMA does not publish the Fiscal Year 2025 Arrangement in the **Federal Register** on or before April 1, 2024, then FEMA may require the continued performance of all or selected elements of this Arrangement through December 31, 2025, but such extension may not exceed the expiration of the six (6) month period following publication of the Fiscal Year 2025 Arrangement in the **Federal Register**.

Article III. Undertakings of the Company

A. Responsibilities of the Company.

1. Policy Issuance and Maintenance. The Company must meet all requirements of the Financial Control Plan and any guidance issued by FEMA. The Company is responsible for the following:

a. Compliance with Rating Procedures.

b. Eligibility Determinations.

c. Policy Issuances.

d. Policy Endorsements.

e. Policy Cancellations.

f. Policy Correspondence.

g. Payment of Agents' Commissions.

h. Fund management, including the receipt, recording, disbursement, and timely deposit of NFIP funds.

2. The Company must provide a live customer service agent that (1) is accessible to all policyholders via telephone during business days, and (2) can resolve commonplace customer service issues.

3. Claims Processing.

a. In general. The Company must process all claims consistent with the Standard Flood Insurance Policy, Financial Control Plan, Claims Manual, other guidance adopted by FEMA, and as much as possible, with the Company's standard business practices for its non-NFIP policies.

b. Adjuster registration. The Company may not use an independent adjuster to adjust a claim unless the independent adjuster:

i. Holds a valid Flood Control Number issued by FEMA; or

ii. Participates in the Flood Adjuster Capacity Program.

c. Claim reinspections. The Company must cooperate with any claim reinspection by FEMA.

4. Reports. The Company must certify its business under the WYO Program through monthly financial reports in accordance with the requirements of the Pivot Use Procedures. The Company must follow the Financial Control Plan and the WYO Accounting Procedures Manual. FEMA will validate and audit, in detail, these data and compare the results against Company reports.

5. Operations Plan. Within ninety (90) calendar days of the commencement of this Arrangement, the Company must submit a written Operations Plan to FEMA describing its efforts to perform under this Arrangement. The plan must include the following:

a. Private Flood Insurance Separation Plan. If applicable, a description of the Company's policies, procedures, and practices separating their NFIP flood insurance lines of business from their non-NFIP flood insurance lines of business, including its implementation of Article III.E.

b. Marketing Plan. A marketing plan describing the Company's forecasted growth, efforts to achieve that growth, and ability to comply with any marketing guidelines provided by FEMA.

c. Policy Retention Plan. A retention plan describing the Company's efforts to retain and renew policies and methods of communicating with policyholders on renewals.

d. Customer Service Plan. A description of overall customer service practices, including ongoing and planned improvement efforts.

e. Distribution Plan. A description of the Company's NFIP flood insurance distribution network, including anticipated numbers of agents, efforts to train those agents, and an average rate of commissions paid to producers by state.

f. Catastrophic Claims Handling Plan. A catastrophic claims handling plan describing how the Company will respond and maintain service standards in catastrophic flood events, including:

i. Deploying mobile or temporary claims centers to provide immediate policyholder assistance, including submission of notice of loss and claim status information.

ii. Preparing people, processes, and tools for claims processing in remote work scenarios.

iii. Preparing communications in advance for readiness throughout the year including a suite of printed and digital materials (*e.g.,* advertisements, educational materials, social media messaging, website blogs and announcements) that provide key messaging to stakeholders, including policyholders, agents, and the public following a catastrophic flood event.

iv. Identifying the core areas of information technology that need to be scaled pre-event or are scalable post-event.

g. Business Continuity Plan. A business continuity plan identifying threats and risks facing the Company's NFIP-related operations and how the Company will maintain operations in the event of a disaster affecting its operational capabilities.

h. Privacy Protection Plan. A privacy protection plan that describes the Company's standards for using and maintaining personally identifiable information.

i. System Security Plan. A system security plan that describes system boundaries, system environments of operation, how security requirements are implemented, and the relationships with or connections to other systems, including plans of action that describe how unimplemented security requirements will be met and how any planned mitigations will be implemented, prepared in accordance with either:

i. National Institute of Standards and Technology (NIST) Special Publication (SP) 800–171 ''Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations'', Revision 2, *https://csrc.nist.gov/publications/detail/sp/800-171/rev-2/final*; or

ii. Another comparable standard deemed acceptable by FEMA.

B. Time Standards. WYO companies must meet the time standards provided below. Time will be measured from the date of receipt through the date the task is completed. In addition to the standards set forth below, all functions performed by the Company must be in accordance with the highest reasonably attainable quality standards generally used in the insurance and data processing field. Applicable time standards are:

1. Application Processing—fifteen (15) business days (Note: if the policy cannot be sent due to insufficient or erroneous information or insufficient funds, the Company must send a request for correction or added moneys within ten (10) business days.

2. Renewal processing—seven (7) business days.

3. Endorsement processing—fifteen (15) business days.

4. Cancellation processing—fifteen (15) business days.

5. File examination—seven (7) business days from the day the Company receives the final report.

6. Claims draft processing—seven (7) business days from completion of file examination.

7. Claims adjustment—forty-five (45) calendar days average from the receipt of Notice of Loss (or equivalent) through completion of examination.

8. Upload transactions to Pivot—one (1) business day.

C. Policy Issuance.

1. The flood insurance subject to this Arrangement must be only that insurance written by the Company in its own name pursuant to the Act.

2. The Company must issue policies under the regulations prescribed by FEMA, in accordance with the Act, on a form approved by FEMA.

3. The Company must issue all policies in consideration of such premiums and upon such terms and conditions and in such states or areas or subdivisions thereof as may be designated by FEMA and only where

the Company is licensed by State law to engage in the property insurance business.

D. Lapse of Authority or Appropriation. FEMA may require the Company to discontinue issuing policies subject to this Arrangement immediately in the event Congressional authorization or appropriation for the NFIP is withdrawn.

E. Separation of Finances and Other Lines of Flood Insurance.

1. The Company must separate Federal flood insurance funds from all other Company accounts, at a bank or banks of its choosing for the collection, retention and disbursement of Federal funds relating to its obligation under this Arrangement, less the Company's expenses as set forth in Article IV. The Company must remit all funds not required to meet current expenditures to the United States Treasury, in accordance with the provisions of the WYO Accounting Procedures Manual.

2. Other Undertakings of the Company.

a. Clear communication. If the Company also offers insurance policies covering the peril of flood outside of the NFIP in any geographic area in which Program authorizes the purchase of flood insurance, the Company must ensure that all public communications (whether written, recorded, electronic, or other) regarding non-NFIP insurance lines would not lead a reasonable person to believe that the NFIP, FEMA, or the Federal Government in any way endorses, sponsors, oversees, regulates, or otherwise has any connection with the non-NFIP insurance line. The Company may assure compliance with this requirement by prominently including in such communications the following statement: ''This insurance product is not affiliated with the National Flood Insurance Program.''

b. Data protection. The company may not use non-public data, information, or resources obtained in course of executing this Arrangement to further or support any activities outside the scope of this Arrangement.

F. Claims. The Company must investigate, adjust, settle, and defend all claims or losses arising from policies issued under this Arrangement. Payment of flood insurance claims by the Company bind FEMA, subject to appeal.

G. Compliance with Agency Standards and Guidelines.

1. The Company must comply with the Act, regulations, written standards, procedures, and guidance issued by FEMA relating to the NFIP and applicable to the Company, including, but not limited to the following:

a. WYO Program Financial Control Plan.

b. Pivot Use Procedures.

c. NFIP Flood Insurance Manual.

d. NFIP Claims Manual.

e. NFIP Litigation Manual.

f. WYO Accounting Procedures Manual.

g. WYO Bulletins.

2. The Company must market flood insurance policies in a manner consistent with marketing guidelines established by FEMA.

3. FEMA may require the Company to collect customer service information to monitor and improve their program delivery.

4. The Company must notify its agents of the requirement to comply with State regulations regarding flood insurance agent education, notify agents of flood insurance training opportunities, and assist FEMA in periodic assessment of agent training needs.

H. Compliance with Appeals Process.

1. In general. FEMA will notify the Company when a policyholder files an appeal. After notification, the Company must provide FEMA the following information:

a. All records created or maintained pursuant to this Arrangement requested by FEMA.

b. A comprehensive claim file synopsis, redacted of personally identifiable information, that includes a summary of the appeal issues, the Company's position on each issue, and any additional relevant information. If, in the process of writing the synopsis, the Company determines that it can address the issue raised by the policyholder on appeal without further direction, it must notify FEMA. The Company will then work directly with the policyholder to achieve resolution and update FEMA upon completion. The Company may have a claims examiner review the file who is independent from the original decision and who possesses the authority to overturn the original decision if the facts support it.

2. Cooperation. The Company must cooperate with FEMA throughout the appeal process until final resolution. This includes adhering to any written appeals guidance issued by FEMA.

3. Resolution of Appeals. FEMA will close an appeal when:

a. FEMA upholds the denial by the Company.

b. FEMA overturns the denial by the Company and all necessary actions that follow are completed.

c. The Company independently resolves the issue raised by the policyholder without further direction.

d. The policyholder voluntarily withdraws the appeal.

e. The policyholder files litigation.

4. Processing of Additional Payments from Appeal. The Company must follow established NFIP adjusting practices and claim handling procedures for appeals that result in additional payment to a policyholder when FEMA does not explicitly direct such payment during the review of the appeal.

5. Time Standards.

a. Provide FEMA with requested files pursuant to Article III.H.1.a—ten (10) business days after request.

b. Provide FEMA with comprehensive claim file synopsis pursuant to Article III.H.1.b—ten (10) business days after request.

c. Responding to inquiries from FEMA regarding an appeal—ten (10) business days after inquiry.

d. Inform FEMA of any litigation filed by a policyholder with a current appeal—ten (10) business days of notice.

I. Subrogation.

1. In general. Consistent with Federal law and guidance, the Company must use its customary business practices when pursuing subrogation.

2. Referral to FEMA. Pursuant to 44 CFR 62.23(i)(8), in lieu of the Company pursuing a subrogation claim, WYO companies may refer such claims to FEMA.

3. Notification. No more than ten (10) calendar days after either the Company identifies a possible subrogation claim or FEMA notifies the Company of a possible subrogation claim, the Company must notify FEMA of its intent to pursue the claim or refer the claim to FEMA.

4. Cooperation. Pursuant to 44 CFR 62.23(i)(11), the Company must extend reasonable cooperation to FEMA's Office of the Chief Counsel on matters related to subrogation.

J. Access to Records. The Company must furnish to FEMA such summaries and analysis of information including claim file information and property address, location, and/or site information in its records as may be necessary to carry out the purposes of the Act, in such form as FEMA, in cooperation with the Company, will prescribe.

K. System for Award Management (SAM). The Company must be registered in the System for Award Management. Such registration must have an active status during the period of performance under this Arrangement. The Company must ensure that its SAM registration is accurate and up to date.

L. Cybersecurity.

1. In general. Unless the Company uses a compliance alternative pursuant to Article III.L.2, the Company must

implement the security requirements specified by National Institute of Standards and Technology (NIST) Special Publication (SP) 800–171 ''Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations'', Revision 2 (*https://csrc.nist.gov/publications/detail/sp/800-171/rev-2/final*) for any system that processes, stores, or transmits information that requires safeguarding or dissemination controls pursuant to and consistent with law, regulations, this Arrangement, or other applicable requirements, including information protected pursuant to Article XII.C and personally identifiable information of NFIP applicants and policyholders. Such implementation must be validated by a third-party assessment organization.

2. Compliance alternatives. In lieu of compliance with Article IV.L.1, the Company may either:

a. Provide FEMA with documentation that the Company is securing the systems subject to the requirements of Article III.L.1 with either:

i. ISO/IEC 27001, *https://www.iso.org/isoiec-27001-information-security.html*;

ii. NIST Cybersecurity Framework, *https://csrc.nist.gov/publications/detail/sp/800-171/rev-2/final*;

iii. Cybersecurity Maturity Model Certification (CMMC 2.0), *https://dodcio.defense.gov/CMMC/*;

iv. Service and Organization Controls (SOC) 2, *https://www.aicpa.org/interestareas/frc/assuranceadvisoryservices/sorhome.html*; or

v. Another comparable standard deemed acceptable by FEMA.

b. Provide a plan of action that describes how unimplemented security requirements of NIST SP 800–171, rev. 2, (*https://csrc.nist.gov/publications/detail/sp/800-171/rev-2/final*) will be met and how any planned mitigations will be implemented as part of the system security plan required under Article III.A.4.h.

Article IV. Loss Costs, Expenses, Expense Reimbursement, and Premium Refunds

A. The Company is liable for operating, administrative, and production expenses, including any State premium taxes, dividends, agents' commissions or any other expense of whatever nature incurred by the Company in the performance of its obligations under this Arrangement but excluding other taxes or fees, such as municipal or county premium taxes, surcharges on flood insurance premium, and guaranty fund assessments.

B. Payment for Selling and Servicing Policies.

1. Operating and Administrative Expenses. The Company may withhold, as operating and administrative expenses, other than agents' or brokers' commissions, an amount from the Company's written premium on the policies covered by this Arrangement in reimbursement of all of the Company's marketing, operating, and administrative expenses, except for allocated and unallocated loss adjustment expenses described in Article IV.C. This amount will equal the sum of the average industry expenses ratios for ''Other Act.'', ''Gen. Exp.'' And ''Taxes'' calculated by aggregating premiums and expense amounts for each of five property coverages using direct premium and expense information to derive weighted average expense ratios. For this purpose, FEMA will use data for the property/casualty industry published, as of March 15 of the prior Arrangement year, in Part III of the Insurance Expense Exhibit in A.M. Best Company's Aggregates and Averages for the following five property coverages: Fire, Allied Lines, Farmowners Multiple Peril, Homeowners Multiple Peril, and Commercial Multiple Peril (non-liability portion).

2. Agent Compensation. The Company may retain fifteen (15) percent of the Company's written premium on the policies covered by this Arrangement as the commission allowance to meet the commissions or salaries of insurance agents, brokers, or other entities producing qualified flood insurance applications and other related expenses.

3. Growth Bonus. FEMA may increase the amount of expense allowance retained by the Company depending on the extent to which the Company meets the marketing goals for the Arrangement year contained in marketing guidelines established pursuant to Article III.G.2. The total growth bonuses paid to companies pursuant to this Arrangement may not exceed two (2) percent of the aggregate net written premium collected by all WYO companies. FEMA will pay the Company the amount of any increase after the end of the Arrangement year.

C. FEMA will reimburse Loss Adjustment Expenses as follows:

1. FEMA will reimburse unallocated loss adjustment expenses to the Company pursuant to a ''ULAE Schedule'' coordinated with the Company and provided by FEMA.

2. FEMA will reimburse allocated loss adjustment expenses to the Company pursuant to a ''Fee Schedule'' coordinated with the Company and provided by FEMA. To ensure the availability of qualified insurance adjusters during catastrophic flood events, FEMA may, in its sole discretion, temporarily authorize the use of an alternative Fee Schedule with increased amounts during the term of this Arrangement for losses incurred during a time frame established by FEMA.

3. FEMA will reimburse special allocated loss expenses and subrogation expenses reimbursable under 44 CFR 62.23(i)(8) to the Company in accordance with guidelines issued by FEMA.

D. Loss Payments.

1. The Company must make loss payments for flood insurance policies from federal funds retained in the bank account(s) established under Article III.E.1 and, if such funds are depleted, from Federal funds withdrawn from the National Flood Insurance Fund pursuant to Article V.

2. Loss payments include payments because of litigation that arises under the scope of this Arrangement, and the Authorities set forth herein. All such loss payments and related expenses must meet the documentation requirements of the Financial Control Plan and of this Arrangement, and the Company must comply with the litigation documentation and notification requirements established by FEMA. Failure to meet these requirements may result in FEMA's decision not to provide reimbursement.

3. Oversight of Litigation.

a. Any litigation resulting from, related to, or arising from the Company's compliance with the written standards, procedures, and guidance issued by FEMA arises under the National Flood Insurance Act of 1968 or regulations, and such legal issues raise a Federal question.

b. The Company must conduct and oversee litigation arising out of the Company's participation in the NFIP in accordance with the National Flood Insurance Program Litigation Manual. If not addressed by the NFIP Litigation Manual, the Company should utilize its customary business practices for its defense of property and casualty litigation, including billing rates and standards.

c. FEMA will not reimburse the Company for any award or judgment for damages and any costs to defend litigation that is either:

i. Grounded in actions by the Company that are significantly outside the scope of this Arrangement; or

ii. Involves issues of agent negligence.

E. Refunds. The Company must make premium refunds required by FEMA to applicants and policyholders from Federal flood insurance funds referred to in Article III.E.1, and, if such funds are depleted, from funds derived by withdrawing from the National Flood Insurance Fund pursuant to Article V. The Company may not refund any premium to applicants or policyholders in any manner other than as specified by FEMA since flood insurance premiums are funds of the Federal Government.

F. Suspension and Debarment.

1. In general. The Company may not contract with or employ any person who is suspended or debarred from participating in federal transactions pursuant to 2 CFR part 180 (covering federal nonprocurement transactions) or 48 CFR part 9, subpart 9.4 (covering federal procurement transactions) in relation to this Arrangement.

2. Reimbursement. FEMA will not reimburse the company for any expenses incurred in violation of Article IV.F.1.

3. Compliance. The Company may ensure compliance with Article IV.F.1 by:

a. Checking the System for Awards Management at *sam.gov*;

b. Collecting a certification from that person; or

c. Adding a clause or condition to the transaction with that person.

Article V. Undertakings of the Government

A. FEMA must enable the Company to withdraw funds from the National Flood Insurance Fund daily, if needed, pursuant to prescribed procedures implemented by FEMA. FEMA will increase the amounts of the authorizations as necessary to meet the obligations of the Company under Article IV.C–E. The Company may only request funds when net premium income has been depleted. The timing and amount of cash advances must be as close as is administratively feasible to the actual disbursements by the recipient organization for allowable expenses. Request for payment may not ordinarily be drawn more frequently than daily. The Company may withdraw funds from the National Flood Insurance Fund for any of the following reasons:

1. Payment of claims, as described in Article IV.D.

2. Refunds to applicants and policyholders for insurance premium overpayment, or if the application for insurance is rejected or when cancellation or endorsement of a policy results in a premium refund, as described in Article IV.E.

3. Allocated and unallocated loss adjustment expenses, as described in Article IV.C.

B. FEMA must provide technical assistance to the Company as follows:

1. NFIP policy and history.

2. Clarification of underwriting, coverage, and claims handling.

3. Other assistance as needed.

C. FEMA must provide the Company with a copy of all formal written appeal decisions conducted in accordance with Section 205 of the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004, Public Law 108–264 and 44 CFR 62.20.

D. Prior to the end of the Arrangement period, FEMA may provide the Company a statistical summary of their performance during the signed Arrangement period. This summary will detail the Company's performance individually, as well as compare the Company's performance to the aggregate performance of all WYO companies and the NFIP Direct Servicing Agent.

Article VI. Cash Management and Accounting

A. FEMA must make available to the Company during the entire term of this Arrangement the ability to withdraw funds from the National Flood Insurance Fund provided for in Article V. The Company may withdraw funds from the National Flood Insurance Fund for reimbursement of its expenses as set forth in Article V.A that exceed net written premiums collected by the Company from the effective date of this Arrangement or continuation period to the date of the draw. In the event that adequate funding is not available to meet current Company obligations for flood policy claim payments issued, FEMA must direct the Company to immediately suspend the issuance of loss payments until such time as adequate funds are available. The Company is not required to pay claims from their own funds in the event of such suspension.

B. The Company must remit all funds, including interest, not required to meet current expenditures to the United States Treasury, in accordance with the provisions of the WYO Accounting Procedures Manual or procedures approved in writing by FEMA.

C. In the event the Company elects not to participate in the Program in this or any subsequent fiscal year, or is otherwise unable or not permitted to participate, the Company and FEMA must make a provisional settlement of all amounts due or owing within three (3) months of the expiration or termination of this Arrangement. This settlement must include net premiums collected, funds withdrawn from the National Flood Insurance Fund, and reserves for outstanding claims. The Company and FEMA agree to make a final settlement, subject to audit, of accounts for all obligations arising from this Arrangement within eighteen (18) months of its expiration or termination, except for contingent liabilities that must be listed by the Company. At the time of final settlement, the balance, if any, due FEMA or the Company must be remitted by the other immediately and the operating year under this Arrangement must be closed.

D. Upon FEMA's request, the Company must provide FEMA with a true and correct copy of the Company's Fire and Casualty Annual Statement, and Insurance Expense Exhibit or amendments thereof as filed with the State Insurance Authority of the Company's domiciliary State.

E. The Company must comply with the requirements of the False Claims Act (41 U.S.C. 3729–3733), which prohibits submission of false or fraudulent claims for payment to the Federal Government.

Article VII. Arbitration

If any misunderstanding or dispute arises between the Company and FEMA with reference to any factual issue under any provisions of this Arrangement or with respect to FEMA's nonrenewal of the Company's participation, other than as to legal liability under or interpretation of the Standard Flood Insurance Policy, such misunderstanding or dispute may be submitted to arbitration for a determination that will be binding upon approval by FEMA. The Company and FEMA may agree on and appoint an arbitrator who will investigate the subject of the misunderstanding or dispute and make a determination. If the Company and FEMA cannot agree on the appointment of an arbitrator, then two arbitrators will be appointed, one to be chosen by the Company and one by FEMA.

The two arbitrators so chosen, if they are unable to reach an agreement, must select a third arbitrator who must act as umpire, and such umpire's determination will become final only upon approval by FEMA. The Company and FEMA shall bear in equal shares all expenses of the arbitration. Findings, proposed awards, and determinations resulting from arbitration proceedings carried out under this section, upon objection by FEMA or the Company, shall be inadmissible as evidence in any subsequent proceedings in any court of competent jurisdiction.

This Article shall indefinitely succeed the term of this Arrangement.

Article VIII. Errors and Omissions

A. In the event of negligence by the Company that has not resulted in litigation but has resulted in a claim against the Company, FEMA will not consider reimbursement of the Company for costs incurred due to that negligence unless the Company takes all reasonable actions to rectify the negligence and to mitigate any such costs as soon as possible after discovery of the negligence. The Company may choose not to seek reimbursement from FEMA.

B. If the Company has made a claim payment to an insured without including a mortgagee (or trustee) of which the Company had actual notice prior to making payment, and subsequently determines that the mortgagee (or trustee) is also entitled to any part of said claim payment, any additional payment may not be paid by the Company from any portion of the premium and any funds derived from any Federal funds deposited in the bank account described in Article III.E.1. In addition, the Company agrees to hold the Federal Government harmless against any claim asserted against the Federal Government by any such mortgagee (or trustee), as described in the preceding sentence, by reason of any claim payment made to any insured under the circumstances described above.

Article IX. Officials Not To Benefit

No Member or Delegate to Congress, or Resident Commissioner, may be admitted to any share or part of this Arrangement, or to any benefit that may arise therefrom; but this provision may not be construed to extend to this Arrangement if made with a corporation for its general benefit.

Article X. Offset

At the settlement of accounts, the Company and FEMA have, and may exercise, the right to offset any balance or balances, whether on account of premiums, commissions, losses, loss adjustment expenses, salvage, or otherwise due one party to the other, its successors or assigns, hereunder or under any other Arrangements heretofore or hereafter entered into between the Company and FEMA. This right of offset shall not be affected or diminished because of insolvency of the Company.

All debts or credits of the same class, whether liquidated or unliquidated, in favor of or against either party to this Arrangement on the date of entry, or any order of conservation, receivership, or liquidation, shall be deemed to be mutual debts and credits and shall be offset with the balance only to be allowed or paid. No offset shall be allowed where a conservator, receiver, or liquidator has been appointed and where an obligation was purchased by or transferred to a party hereunder to be used as an offset.

Although a claim on the part of either party against the other may be unliquidated or undetermined in amount on the date of the entry of the order, such claim will be regarded as being in existence as of the date of such order and any credits or claims of the same class then in existence and held by the other party may be offset against it.

Article XI. Equal Opportunity

A. Age Discrimination Act of 1975. The Company must comply with the requirements of the Age Discrimination Act of 1975, Public Law 94–135 (42 U.S.C. 6101 *et seq.*) which prohibits discrimination on the basis of age in any program or activity receiving federal financial assistance.

B. Americans with Disabilities Act. The Company must comply with the requirements of Titles I, II, and III of the Americans with Disabilities Act, Public Law 101–336 (42 U.S.C. 12101–12213), which prohibits recipients from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities.

C. Civil Rights Act of 1964—Title VI. The Company must comply with the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. Department of Homeland Security implementing regulations for the Act are found at 6 CFR part 21 and 44 CFR part 7.

D. Civil Rights Act of 1968. The Company must comply with Title VIII of the Civil Rights Act of 1968, which prohibits recipients from discriminating in the sale, rental, financing, and advertising of dwellings, or in the provision of services in connection therewith, on the basis of race, color, national origin, religion, disability, familial status, and sex as implemented by the U.S. Department of Housing and Urban Development at 24 CFR part 100.

E. Rehabilitation Act of 1973. The Company must comply with the requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which provides that no otherwise qualified handicapped individuals in the United States will, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

Article XII. Access to Books and Records

A. Audits. FEMA, the Department of Homeland Security, and the Comptroller General of the United States, or their duly authorized representatives, for the purpose of investigation, audit, and examination shall have access to any books, documents, papers and records of the Company that are pertinent to this Arrangement. The Company shall keep records that fully disclose all matters pertinent to this Arrangement, including premiums and claims paid or payable under policies issued pursuant to this Arrangement. Records of accounts and records relating to financial assistance shall be retained and available for three (3) years after final settlement of accounts, and to financial assistance, three (3) years after final adjustment of such claims. FEMA shall have access to policyholder and claim records at all times for purposes of the review, defense, examination, adjustment, or investigation of any claim under a flood insurance policy subject to this Arrangement.

B. Nondisclosure by FEMA. FEMA, to the extent permitted by law and regulation, will safeguard and treat information submitted or made available by the Company pursuant to this Arrangement as confidential where the information has been marked ''confidential'' by the Company and the Company customarily keeps such information private or closely-held. To the extent permitted by law and regulation, FEMA will not release such information to the public pursuant to a Freedom of Information Act (FOIA) request, 5 U.S.C. 552, without prior notification to the Company. FEMA may transfer documents provided by the Company to any department or agency within the Executive Branch or to either house of Congress if the information relates to matters within the organization's jurisdiction. FEMA may also release the information submitted pursuant to a judicial order from a court of competent jurisdiction.

C. Nondisclosure by Company.

1. In general. The Company, to the extent permitted by law, must safeguard and treat information submitted or made available by FEMA pursuant to this Arrangement as confidential where the information has been marked or identified as ''confidential'' by FEMA and FEMA customarily keeps such information private or closely-held. The Company may not disclose such confidential information to a third-party without the express written consent of FEMA or as otherwise required by law.

2. Other protections. Article XII.C.1 shall not be construed as to limit the effect of any other requirement on the Company to protect information from disclosure, including a joint defense agreement or under the Privacy Act.

Article XIII. Compliance With Act and Regulations

This Arrangement and all policies of insurance issued pursuant thereto are subject to Federal law and regulations.

Article XIV. Relationship Between the Parties and the Insured

Inasmuch as the Federal Government is a guarantor hereunder, the primary relationship between the Company and the Federal Government is one of a fiduciary nature, that is, to ensure that any taxpayer funds are accounted for and appropriately expended. The Company is a fiscal agent of the Federal Government, but is not a general agent of the Federal Government. The Company is solely responsible for its obligations to its insured under any policy issued pursuant hereto, such that the Federal Government is not a proper party to any lawsuit arising out of such policies.

Authority: 42 U.S.C. 4071, 4081; 44 CFR 62.23.

Jeffrey Jackson,

Assistant Administrator (Acting) for Federal Insurance, Federal Emergency Management Agency.

[FR Doc. 2023–03895 Filed 2–24–23; 8:45 am]

BILLING CODE 9111–52–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2022–0054; OMB No. 1660–0061]

Agency Information Collection Activities: Submission for OMB Review, Comment Request; Federal Assistance to Individuals and Households Program

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 30-Day notice of revision and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission seeks comments concerning the Federal Emergency Management Agency's (FEMA's) Individuals and Households Program, providing financial assistance to individuals whose primary residences were destroyed as a result of a Presidentially-declared disaster. This revision reduces the overall burden on the public by updating the amount of time needed to complete most of the instruments in this collection.

DATES: Comments must be submitted on or before March 29, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Information Management Division, 500 C St. SW, Washington, DC 20472, email address: *FEMA-Information-Collections-Management@fema.dhs.gov* or Brian Thompson, Supervisory Program Specialist, FEMA, Recovery Directorate by telephone at (540) 686–3602 or email at *Brian.Thompson6@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) (Pub. L. 93–288, as amended) is the legal basis for the Federal Emergency Management Agency (FEMA) to provide financial assistance and services to individuals applying for disaster assistance benefits in the event of a federally declared disaster. Regulations in *44 CFR 206.110—Federal Assistance to Individuals and Households (IHP)* implements the policy and procedures set forth in section 408 of the Stafford Act (42 U.S.C. 5174, as amended). This program provides financial assistance and, if necessary, direct assistance to eligible individuals and households who, as a direct result of a major disaster or emergency, have uninsured or under-insured, necessary expenses, and serious needs, and are unable to meet such expenses or needs through other means.

This proposed information collection previously published in the **Federal Register** on December 12, 2022, at 87 FR 76064 with a 60-day public comment period. No comments were received. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

Collection of Information

Title: Federal Assistance to Individuals and Households Program.

Type of Information Collection: Extension, with change, of a currently approved information collection.

OMB Number: 1660–0061.

FEMA Forms: FEMA Form FF–104–FY–21–114 (formerly 010–0–11), Individuals and Households Program (IHP)—Other Needs Assistance Administrative Option Selection; Development of State/Tribal Administrative Plan (SAP) for Other Needs Provision of IHP; FEMA Form FF–104–FY–21–115 (English) (formerly 010–0–12), Individuals and Households Program Application for Continued Temporary Housing Assistance; FEMA Form FF–104–FY–21–115–A (Spanish) (formerly 010–0–12S), Programa de Individuos y Familias Solicitud Para Continuar La Asistencia de Vivienda Temporera; Request for Approval of Late Registration; Appeal of Program Decision; FEMA Form FF–104–FY–21–116 (English) (formerly 009–0–95), Request for Advance Disaster Assistance; FEMA Form FF–104–FY–21–116–A (Spanish) (formerly 009–0–95S), Solicitud de Adelanto de la Asistencia por Desastre; FEMA Form FF–104–FY–21–117 (English) (formerly 009–0–96), Request to Stop Payment and Reissue Disaster Assistance Check; FEMA Form FF–104–FY–21–117–A (Spanish) (formerly 009–0–96S), Solicitud para Detener el Pago y Reemitir el Cheque de Asistencia por

Desastre; FEMA Form FF–104–FY–21–118—(English) (formerly 140–003d–1S), Authorization for the Release of Information Under the Privacy Act; FEMA Form FF–104–FY–21–118–A—(Spanish) (formerly 140–003d–1S), Autorización para la Divulgación de Información bajo el Acta de Privacidad.

Abstract: This information collection provides disaster survivors the opportunity to request approval of late applications, continued temporary housing assistance, request advance disaster assistance, stop payments not received in order to be reissued funds, and to appeal program decisions. This collection also allows for the establishment of an annual agreement between FEMA and states, territories, and tribal governments regarding how the Other Needs Assistance provision of IHP will be administered: by FEMA, by the state, territory, or tribal government, or jointly. This collection allows survivors to provide additional information after the initial disaster assistance registration period in support of their applications for assistance from FEMA's IHP. If the information in this collection is not collected, a delay in assistance provided to disaster survivors would occur.

Affected Public: Individuals or households; State, local or Tribal government.

Estimated Number of Respondents: 67,859.

Estimated Number of Responses: 112,163.

Estimated Total Annual Burden Hours: 64,328.

Estimated Total Annual Respondent Cost: $2,565,929.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $1,161,399.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Millicent Brown Wilson,

Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2023–03993 Filed 2–24–23; 8:45 am]

BILLING CODE 9111–24–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2022–0048; OMB No. 1660–0009]

Agency Information Collection Activities: Submission for OMB Review, Comment Request; The Declaration Process: Requests for Preliminary Damage Assessment (PDA), Requests for Supplemental Federal Disaster Assistance, Appeals, and Requests for Cost Share Adjustments

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: 30-Day notice of revision and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission seeks comments concerning the Declaration Process: Requests for Preliminary Damage Assessment (PDA), Requests for Supplemental Federal Disaster Assistance, Appeals, and Requests for Cost Share Adjustments collection. This collection allows states and Tribes to request a major disaster or emergency declaration.

DATES: Comments must be submitted on or before March 29, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Information Management Division, 500 C St. SW, Washington, DC 20472, email address: *FEMA-Information-Collections-Management@fema.dhs.gov* or Dean Webster, Declarations Unit, Federal Emergency Management Agency at (202) 646–2833 or *Dean.Webster@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: Under sections 401 and 501 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) (42 U.S.C 5170 and 5190), if a state or Tribe is impacted by an event of the severity and magnitude that is beyond its response capabilities, the state Governor or Chief Executive may seek a declaration by the President that a major disaster or emergency exists. Any major disaster or emergency request must be submitted through FEMA, which evaluates the request and makes a recommendation to the President about what response action to take. If the major disaster or emergency declaration request is granted, the state or Tribe may be eligible to receive assistance under 42 U.S.C. 5170a–5170c; 5172–5186; 5189c–5189d; and 5192. A state or Tribe may appeal denials of a major disaster or emergency declaration request for determinations under section 44 CFR 206.46 and seek an adjustment to the cost share percentage under section 44 CFR 206.47. FEMA is revising the currently approved information collection to account for an update in the estimates of the number of disaster declaration requests received each year.

This proposed information collection previously published in the **Federal Register** on December 12, 2022, at 87 FR 76067 with a 60-day public comment period. No comments were received. This notice also corrects two typographical errors in the previously published notice, which listed the number of respondents as 70 when the correct number of respondents is 140 and the estimated number of responses as 120 when the correct number of responses is 240. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

Collection of Information

Title: The Declaration Process: Requests for Preliminary Damage Assessment (PDA), Requests for Supplemental Federal Disaster

Assistance, Appeals, and Requests for Cost Share Adjustments.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0009.

FEMA Forms: FEMA Form FF–104–FY–22–232 (formerly 010–0–13), Request for Presidential Disaster Declaration Major Disaster or Emergency.

Abstract: When a disaster occurs, the Governor of the state or the Chief Executive of an affected Indian Tribal government may request a major disaster declaration or an emergency declaration. The Governor or Chief Executive should submit the request to the President through the appropriate Regional Administrator to ensure prompt acknowledgement and processing. The information obtained by joint Federal, state, and local preliminary damage assessments will be analyzed by FEMA regional senior level staff. The regional summary and the regional analysis and recommendation will include a discussion of state and local resources and capabilities, and other assistance available to meet the disaster related needs. The FEMA Administrator provides a recommendation to the President and also provides a copy of the Governor's or Chief Executive's request. In the event the information required by law is not contained in the request, the Governor's or Chief Executive's request cannot be processed and forwarded to the White House. In the event the Governor's request for a major disaster declaration or an emergency declaration is not granted, the Governor or Chief Executive may appeal the decision.

Affected Public: State, local or Tribal governments.

Estimated Number of Respondents: 140.

Estimated Number of Responses: 240.

Estimated Total Annual Burden Hours: 4,040.

Estimated Total Annual Cost: $208,218.

Estimated Respondents' Operation and Maintenance Costs: $0.

Estimated Respondents' Capital and Start-Up Costs: $0.

Estimated Total Annual Cost to the Federal Government: $9,193,769.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Millicent Brown Wilson,

Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2023–03992 Filed 2–24–23; 8:45 am]

BILLING CODE 9111–24–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. CISA–2023–0003]

Agency Information Collection Activities: .gov Registrar

AGENCY: Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

ACTION: 60-Day notice and request for comments; new collection (request for a new OMB control number).

SUMMARY: The .gov Registry Program within the Cybersecurity and Infrastructure Security Agency will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted until *April 28, 2023.*

ADDRESSES: You may submit comments, identified by docket number Docket # CISA–2023–0003, at:

○ *Federal eRulemaking Portal: http://www.regulations.gov.* Please follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number Docket # CISA–2023–0003. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

SUPPLEMENTARY INFORMATION: .gov is a 'top-level domain' (TLD), similar to .com, .org, or .us. Enterprises use a TLD to register a ''domain name'' (often simply called a domain) for use in their online services, like a website or email. Well-known .gov domains include *whitehouse.gov, congress.gov*, or *uscourts.gov*, but most .gov domains are from non-federal governments like *ny.gov* (State of New York) or *lacounty.gov* (LA County).

.gov is only available to bona fide U.S.-based government organizations and publicly controlled entities. When governments use .gov, they make it harder for would-be impostors to successfully impersonate them online.

Under the DOTGOV Act of 2020 (6 U.S.C. 665), CISA is responsible for the operation and security of the .gov TLD. Pursuant to that law, the .gov program at CISA works to ''provide simple and secure registration of .gov internet domains'', ''ensure that domains are registered and maintained only by authorized individuals'', and ''minimize the risk of .gov internet domains whose names could mislead or confuse users''. In order to provision .gov domains to eligible government entities and ensure adherence to the domain requirements published by CISA pursuant to 6 U.S.C. 665(c), CISA needs to collect information from requestors of .gov domains.

The information will be collected on an online web portal called the ''.gov registrar'', which is built and maintained by CISA. Requestors will be asked to provide information on the characteristics of their government entity (*e.g.,* name, type, physical location, current domain), their preferred .gov domain name (*e.g., example.gov*), their rationale for the name, organizational contact information (names, phone numbers, email addresses), and nameserver addresses.

Only U.S.-based government organizations are eligible for .gov domains; some of these organizations may be small entities. The collection has been developed to request only the information needed to confirm eligibility and adjudicate a .gov domain request.

Without this collection, CISA will be unable to assess the eligibility of requestors nor provision .gov domains to government organizations. That outcome would decrease cybersecurity for governments across the nation and minimize the public's ability to identify governments online.

In accordance with 6 U.S.C. 665(c)(4), CISA will ''limit the sharing or use of any information'' obtained through this

collection ''with any other Department component or any other agency for any purpose other than the administration of the .gov internet domain, the services described in subsection (e), and the requirements for establishing a .gov inventory described in subsection (h).'' Certain metadata for any approved domains (domain name, organization name, nameserver address, city/state information, security contact) will be published online.

This is a new collection.

The Office of Management and Budget is particularly interested in comments which:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Analysis

Agency: Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

Title: .gov registrar.

OMB Number: OMB CONTROL NUMBER.

Frequency: Once per domain registered.

Affected Public: Employees representing state, local, territorial, and tribal governments.

Number of Respondents: 1,500 per year.

Estimated Time per Respondent: 20 minutes.

Total Burden Hours: 500 hours.

Robert J. Costello,

Chief Information Officer, Department of Homeland Security, Cybersecurity and Infrastructure Security Agency.

[FR Doc. 2023–03915 Filed 2–24–23; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX23EN05ES90000; OMB Control Number 1028–NEW]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Evaluation of the Arctic Rivers Project

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA), the U.S. Geological Survey (USGS) is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before March 29, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. You may also submit comments by mail to U.S. Geological Survey, Information Collections Officer, 12201 Sunrise Valley Drive MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov.* Please reference OMB Control Number 1028–NEW in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this Information Collection Request (ICR), contact Ryan Toohey by email to *rtoohey@usgs.gov* or by telephone at 907–865–7802. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the PRA and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on June 6, 2022 (87 FR 34288. No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How the agency might minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personally identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Abstract: We will collect information from stakeholders of the Arctic Rivers Project, which include representatives of Indigenous communities in Alaska, representatives of Indigenous organizations, and others regarding the effectiveness of participatory methods and the achievement of overall project goals. Evaluation information will be collected via semi-structured interviews, surveys, and polls. Questions will focus on the relevancy of the project to participants, methods used to engage with participants, feedback about project components, input for the direction of the project, preferred communication methods, and

current and future use of project products. This information will allow for a greater understanding of the effectiveness of community engagement, the co-production process, and participation in the direction of the project. This information will help guide the project through its various phases, and it will help enhance communication and product development.

Title of Collection: Evaluation of the Arctic Rivers Project.

OMB Control Number: 1028–NEW.

Form Number: None.

Type of Review: New.

Respondents/Affected Public: Individuals/Indigenous governments.

Total Estimated Number of Annual Respondents: 150.

Total Estimated Number of Annual Responses: 150.

Estimated Completion Time per Response: 180 minutes.

Total Estimated Number of Annual Burden Hours: 450.

Respondent's Obligation: Voluntary.

Frequency of Collection: Once.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor, nor is a person required to respond to, a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the PRA (44 U.S.C. 3501 *et seq.*).

Stephen T. Gray,

Director, Alaska Climate Adaptation Science Center, U.S. Geological Survey.

[FR Doc. 2023–03977 Filed 2–24–23; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[234A2100DD/AAKC001030/A0A501010.999900]

Proposed Finding Against Federal Acknowledgment of the Grand River Bands of Ottawa Indians

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Department of the Interior (Department) gives notice that the Office of the Assistant Secretary—Indian Affairs (AS–IA) proposes to determine that the petitioner, Grand River Bands of Ottawa Indians (Petitioner #146), is not an Indian Tribe within the meaning of Federal law. This notice is based on a determination that Petitioner #146 does not meet one of the seven mandatory criteria for a government-to-government relationship with the United States. This proposed finding (PF) is based on only one criterion.

DATES: Comments on this PF are due on or before August 28, 2023. We must receive any request for a technical assistance meeting by April 28, 2023.

ADDRESSES: Please address comments on the PF or requests for a paper copy of the report to the Department of the Interior, Office of the Assistant Secretary—Indian Affairs, Attn: Office of Federal Acknowledgment, 1849 C Street NW, MS–4071 MIB, Washington, DC 20240. Electronic copies of the PF, as well as other related documents, are available on OFA's website (*www.bia.gov/as-ia/ofa*). Parties who make comments on the PF must also provide a copy of their comments to the Petitioner.

FOR FURTHER INFORMATION CONTACT: R. Lee Fleming, Director, Office of Federal Acknowledgment (OFA) at *comments@bia.gov* or (202) 513–7650.

SUPPLEMENTARY INFORMATION: Pursuant to 25 CFR 83.10(h) (1994),[1] the Department gives notice that the AS–IA proposes to determine that the Grand River Bands of Ottawa Indians (Petitioner #146), c/o Mr. Ron Yob, P.O. Box 2937, Grand Rapids, Michigan 49501–2937, is not an Indian Tribe within the meaning of the Federal law. This notice is based on a preliminary finding that the petitioner fails to satisfy one of the seven mandatory criteria for acknowledgement set forth in 25 CFR 83.7(a) through (g), and thus, does not meet the requirements for a government-to-government relationship with the United States. Please see the **SUPPLEMENTARY INFORMATION** section of this notice for more information about the public comment period.

Petitioner

The Department received a letter of intent from the Petitioner under the name ''Grand River Band Ottawa Council'' on November 16, 1994, and designated it Petitioner #146. On November 14, 1997, the Petitioner submitted a ''Petitioner Update'' form indicating that Petitioner #146 was now known as the ''Grand River Bands of Ottawa Indians,'' with Ron Yob and Joseph Genia as Co-Chairs. The Petitioner submitted materials for its documented petition in December 2000, July 2004, and November 2004. The Department conducted an initial review of these materials and provided Petitioner #146 with a technical assistance (TA) review letter on January 25, 2005. In June 2006 and March 2007, the Petitioner supplied materials in response to the TA review letter. The Department then placed Petitioner #146 on the ''Ready, Waiting for Active Consideration'' list on March 28, 2007.

The Department placed the Petitioner on active consideration on December 1, 2013. The Petitioner submitted no additional documents during the 60 days following, as allowed by the AS–IA's notice of ''information and guidance'' of March 31, 2005 (70 FR 16514), and as advised by a Department letter of December 12, 2013. In a letter dated March 12, 2014, the Department exercised its option under the same guidance to ask for information the Petitioner had not submitted.

In an August 27, 2014, the Petitioner furnished 569 membership files, a considerable increase from a membership list that the Petitioner had submitted in June 2014, which indicated the group had only 347 members. Additionally, thirty-six individuals on the June 2014 membership list also did not have membership files in the August 2014 submission. To ascertain the Petitioner's membership, the Department asked for an updated membership list and an explanation of which membership files were current. The Petitioner supplied this information on October 31, 2014. Petitioner #146 provided additional material on December 13, 2016, which the Department had requested in a teleconference with the group on November 3, 2016.

Due to these submission delays and the Department's competing priorities, including the review of other pending petitions, the Department extended the deadline for the PF to September 30, 2015. In the interim, on July 1, 2015, the Department issued a final rule that revised the acknowledgment regulations effective July 31, 2015. In a letter dated August 28, 2015, the Department provided Petitioner #146 an opportunity to choose, by September 29, 2015, whether to complete the evaluation process under the revised 2015 regulations or complete its evaluation under the 1994 version of the acknowledgment regulations. By letter dated September 14, 2015, the Petitioner's governing body informed the Department that it wished to have its petition evaluated under the 1994 regulations. On November 2, 2015, the Department acknowledged receipt of this letter and also extended the deadline for issuing the PF to March 28, 2016.

[1] All citations to 25 CFR part 83 in this notice are to the version of the Federal acknowledgment regulations as revised in 1994 unless otherwise indicated.

From March 2016 to April 2020, the Department found good cause to provide additional extensions of the date for issuance of the PF for Petitioner #146, pursuant to 83.10(h) of the 1994 regulations. On April 16, 2020, the Department conditionally suspended active consideration of the PF based on administrative problems caused by the COVID–19 emergency. The Department lifted the suspension on April 15, 2022, based on local public health conditions (transmission levels trending to moderate and low) and the reopening of facilities on the local, state, tribal, and Federal levels that are important for accessing information and records related to the consideration of the petition. Upon ending the conditional suspension, the Department scheduled the issuance of the PF to occur on or before October 12, 2022.

The Department held a teleconference with Petitioner #146 on June 28, 2022, per the Petitioner's request. The teleconference was held to answer Petitioner questions regarding the preparation of a current membership list, submission of new member enrollment files, and certification of the current membership list. Petitioner #146 subsequently submitted an updated current membership list and new member enrollment files, which were received by the Department on August 8, 2022. On October 4, 2022, the Department found good cause to issue a 120-day extension of the deadline for issuing the PF with an issuance date scheduled to occur on or before February 9, 2023. The Department subsequently issued a final, two-week extension, with an issuance date scheduled to occur on or before February 23, 2023.

Criterion 83.7(b) requires that ''a predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present.'' Section 83.1 defines ''Community'' as ''any group of people which can demonstrate that consistent interactions and significant social relationships exist within its membership and that its members are differentiated from and identified as distinct from nonmembers. Community must be understood in the context of the history, geography, culture and social organization of the group.''

Petitioner #146 claims descent from the historical Ottawa bands that originally lived in the area of Michigan surrounding the Grand River. With other Ottawa and Chippewa bands, these bands signed several treaties during the early- to mid-nineteenth century. Following the last of these treaties in 1855, the bands relocated to other parts of Michigan, with the largest groups of them moving to settlements in Oceana and Mason Counties and with smaller groups of them moving elsewhere.

While the Petitioner's members appear to descend from these historic Grand River-area bands (a claim that would be evaluated under criterion 83.7(e) in an amended PF if the deficiencies in the PF are resolved), the Petitioner has not demonstrated that its members comprise a distinct community that has existed as a community through time. In furtherance of its claim, the Petitioner submitted evidence of groups of descendants occasionally joining together for various purposes, including making claims against the Federal government, in the name of the ''Grand River bands.''

The Petitioner asserts that these activities support its claim of a continuously existing distinct community under criterion 83.7(b). However, the evidence relating to these periodic activities indicates otherwise. From one activity to another, the individuals purporting to act on behalf of the Grand River Bands changed significantly. Instead of reflecting the existence of a distinct community, these activities appear to have been performed by several different groups of descendants acting independently, in some cases, making different decisions on the same issues. Furthermore, the proportion of current members whose ancestors participated in any specific activity is low, relative to the total membership. In addition, those ancestors of members of Petitioner #146 who participated in the activities that the Petitioner claims demonstrate community represent only a small portion of each larger group of individuals who participated in the activities.

Instead of showing that Petitioner #146 represents a continuously existing community, the evidence shows that Petitioner #146 was formed recently by the merging of several different groups of descendants of the historic Grand River-area bands. These different groups were based in different parts of Michigan and appear to have acted independently, each with its own separate leadership, membership, and activities. These groups came together during the mid- to late-1990s, following the congressional recognition of the Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians in 1994. The leadership of the different groups expressed that seeking Federal recognition was their main purpose for coming together, and the decision to join into a single organization occurred after one of the groups independently submitted its Letter of Intent to the Department. Additionally, the decision to join into a single organization was followed by a period of active recruitment of other individual descendants of the treaty-era bands who had not previously been members of any of the component organizations or otherwise been interacting with other descendants as part of the Petitioner's claimed community.

In sum, although the claims of Petitioner #146 stem from descent from a group of historic bands, the Petitioner has not documented any activities since the treaty era that reflect a continuously existing distinct community. Rather, the evidence shows that the Petitioner came together beginning in 1995 from several independent groups. The absence of a distinct community among the Petitioner's ancestors in earlier evaluation periods is reflected in the continued lack of many characteristics of a distinct community among the current membership. Evidence since 1995 shows that there is a very small group of members, often those in leadership positions, who are active as members, but the overwhelming majority of members are not present and do not participate in Petitioner-sponsored events and activities.

The evidence submitted by Petitioner #146, and evidence Department staff obtained through its verification and evaluation research, is insufficient to demonstrate, under the reasonable likelihood of the validity of the facts standard, that Petitioner #146 meets the mandatory criterion for Federal acknowledgment, 83.7(b), either as is or as modified by 83.8.

In accordance with the regulations, the failure to meet any one of the seven criteria requires a determination that a petitioning group is not an Indian Tribe within the meaning of Federal law. *See* 25 CFR 83.6(d) and 25 CFR 83.10(m). Therefore, the Department proposes to decline to acknowledge Petitioner #146 as an Indian Tribe.

According to the AS–IA ''Office of Federal Acknowledgment; Guidance and Direction Regarding Internal Procedures'' of May 23, 2008:

> If during the evaluation of a petition on active consideration it becomes apparent that the petitioner fails on one criterion, or more, under the reasonable likelihood of the validity of the facts standard, OFA may prepare a proposed finding or final determination not to acknowledge the group on the failed criterion or criteria alone, setting forth the evidence, reasoning, and

analyses that form the basis for the proposed decision. *See* 73 FR 30148.

The burden of providing sufficient evidence under the criteria in the regulations rests with the petitioner. *See* 25 CFR 83.5(c). Because Petitioner #146 has not met criterion 83.7(b), it is not necessary for the Department to make conclusions regarding the other six mandatory criteria at this time.

The PF is based on the evidence currently in the record. Additional evidence may be submitted during the comment period that follows publication of this finding. If new evidence provided during the comment period results in a reversal of this conclusion, the AS–IA will issue an amended PF evaluating all seven criteria. *See* 73 FR 30148.

Public Comment Period

Publication of this notice of the PF in the **Federal Register** initiates a 180-day comment period during which the Petitioner and interested and informed parties may submit arguments and evidence to support or rebut the PF. Comments on the PF should be addressed to both the Petitioner and the Federal Government as required by 25 CFR 83.10(i) and as instructed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice. Parties who make comments on the PF must also provide a copy of their comments to the Petitioner, please see the Petitioner's address in the **SUPPLEMENTARY INFORMATION** section. The regulations, 25 CFR 83.10(k), provide the Petitioner a minimum of 60 days to respond to any submissions on the PF received from interested and informed parties during the comment period. After expiration of the comment and response periods described above, the Department will consult with the Petitioner and interested parties to determine an equitable timeframe for consideration of written arguments and evidence. The Department will notify the Petitioner and interested parties of the date such consideration begins. After consideration of the written arguments and evidence rebutting or supporting the PF and the Petitioner's response to the comments of interested and informed parties, the AS–IA will either issue an amended PF or make a final determination regarding the Petitioner's status. The Department will publish a summary of this determination in the **Federal Register**.

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 information from public review, we cannot guarantee that we will be able to do so.

Authority

The Assistant Secretary—Indian Affairs is recused from this matter, and the Principal Deputy AS–IA is issuing this Proposed Finding pursuant to the authority delegated. *See* 209 DM 8.4(A); 110 DM 8.2.

Wizipan Garriott,

Principal Deputy Assistant Secretary—Indian Affairs, Exercising by delegation the authority of the Assistant Secretary—Indian Affairs.

[FR Doc. 2023–03945 Filed 2–24–23; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNMP00000 L13100000.PP0000 234L1109AF]

Notice of Public Meeting, Southern New Mexico Resource Advisory Council, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976, as amended, and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management's (BLM) Southern New Mexico Resource Advisory Council (RAC) will meet as indicated below.

DATES: The RAC is scheduled to host an in-person meeting, with a virtual participation option, on Wednesday, March 29, 2023, from 8 a.m. to 4 p.m. Mountain Daylight Time at the BLM Las Cruces District Office. All RAC meetings are open to the public.

ADDRESSES: BLM Las Cruces Office, 1800 Marquess Street, Las Cruces, New Mexico 88005. A virtual participation option is available on the Zoom Webinar platform. To register, go to *https://blm.zoomgov.com/webinar/register/WN_CEuTHKX4RW2rVYFmrcjlEg.*

FOR FURTHER INFORMATION CONTACT: William Wight, BLM Las Cruces District Office, 1800 Marquess Street, Las Cruces, New Mexico 88005; (575) 525–4300; *wwight@blm.gov* Individuals in the United States who are deaf, blind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States can use relay services offered within their respective country to make international calls to the accessibility point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The chartered 12-member Southern New Mexico RAC advises the Secretary of the Interior, through the BLM New Mexico State Director, about planning and management of public land resources located within the jurisdictional boundaries of the RAC.

Planned meeting agenda items include member training; nomination for a Chair and Vice-Chair; review of Federal Land Recreation Enhancement Act fee proposals for the U.S. Forest Service's Lincoln, Gila, and Cibola National Forest Grasslands; updates from the BLM Socorro Field Office along with the Pecos and Las Cruces District Offices; and a 30-minute public comment period. A final agenda will be posted two weeks in advance of the meeting on the RAC web page at *www.blm.gov/get-involved/resource-advisory-council/near-you/new-mexico/southern-rac.*

Public Comment Procedures: The BLM welcomes comments from all interested parties. There will be a half-hour public comment period during the March 29th meeting beginning at 3 p.m. for any interested members of the public who wish to address the Southern New Mexico RAC. Advanced written comments pertaining to this meeting may be submitted in advance to the individual listed in the **FOR FURTHER INFORMATION** section of this notice. Please include ''RAC Comment'' in your submission. Depending on the number of persons wishing to speak, the time for individual comments may be limited. Before including an address, phone number, email address, or other personal identifying information in any comment, please be aware that all comments—including personal identifying information—may be made publicly available at any time. While requests can be made to withhold personal identifying information from public review, BLM cannot guarantee it will be able to do so.

Meeting Accessibility/Special Accommodations: For sign language interpreter services, assistive listening devices, or other reasonable accommodations, please contact William Wight, BLM Las Cruces District Office, at (575) 525–4300, or *wwight@blm.gov* at least seven business days before the meeting to ensure there is sufficient time to process the request. The Department of the Interior manages

accommodation requests on a case-by-case basis.

Detailed meeting minutes for the Southern New Mexico RAC are maintained in the Las Cruces District Office, located at 1800 Marquess Street, Las Cruces, New Mexico 88005. Meeting minutes will be available for public inspection and reproduction during regular business hours within 90 days following the meeting. Minutes will also be posted on the RAC web page at *https://www.blm.gov/get-involved/resource-advisory-council/near-you/new-mexico/southern-rac.*

Authority: 43 CFR 1784.4–1.

James Stovall,

BLM Pecos District Manager.

[FR Doc. 2023–03936 Filed 2–24–23; 8:45 am]

BILLING CODE 4331–23–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[234.LLID910000.L18200000.XZ0000.241A0 MO #4500167688]

Notice of Public Meeting of the Idaho Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management's (BLM) Idaho Resource Advisory Council (RAC) will meet as indicated below.

DATES: The Idaho RAC will host a meeting on Friday, March 17, 2023, from 9 a.m. to 4 p.m. Mountain Time. Public notice of any changes to this schedule will be posted on the Idaho RAC web page (see **ADDRESSES**) 15 days in advance of the meeting.

ADDRESSES: The Idaho RAC meeting will be held virtually on the Zoom platform and registration information will be available on the RAC's web page 15 days in advance of the meeting at *https://www.blm.gov/get-involved/resource-advisory-council/near-you/idaho.*

FOR FURTHER INFORMATION CONTACT: Idaho RAC Coordinator MJ Byrne, telephone: (208) 373–4006, email: *mbyrne@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The Idaho RAC serves in an advisory capacity to BLM officials concerning issues relating to land use planning and management of public land resources located within the State of Idaho. The Idaho RAC is chartered and the 15 members are appointed by the Secretary of the Interior. Their diverse perspectives are represented in commodity, non-commodity, and local interests.

Agenda items for the meeting will include recommendations for consideration to the Idaho RAC on the Lava Ridge Wind Project Draft Environmental Impact Statement and any Subcommittee findings. Final agendas will be posted on the RAC web page listed in the **ADDRESSES** section of this notice.

The meeting is open to the public. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the BLM (see **FOR FURTHER INFORMATION CONTACT**). A public comment period will be offered at 1 p.m. Depending on the number of persons wishing to speak and the time available, the amount of time for oral comments may be limited. Written public comments may be sent to the BLM Idaho State Office listed in the **ADDRESSES** section of this notice. All comments received at least 1 week prior to the meeting will be provided to the Idaho RAC. Please include ''RAC comment'' in your submission.

Before including your address, phone number, email address, or other personal identifying information in your comments, please 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 comments to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Detailed summary minutes for the Idaho RAC are maintained in the BLM Idaho State Office and will be available for public inspection and reproduction during regular business hours within 30 days of the meetings. Previous minutes and agendas are also available on the Idaho RAC web page listed earlier.

(Authority: 43 CFR 1784.4–2.)

Karen Kelleher,

Idaho State Director.

[FR Doc. 2023–03937 Filed 2–24–23; 8:45 am]

BILLING CODE 4331–19–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2022–0064]

Gulf of Mexico Outer Continental Shelf Oil and Gas Lease Sale 259

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Final notice of sale.

SUMMARY: On Wednesday, March 29, 2023, the Bureau of Ocean Energy Management (BOEM) will open and publicly announce bids received for blocks offered in the Gulf of Mexico (GOM) Regionwide Outer Continental Shelf (OCS) Oil and Gas Lease Sale 259 (GOM Lease Sale 259), in accordance with the Outer Continental Shelf Lands Act (OCSLA), as amended, and its implementing regulations. The Inflation Reduction Act of 2022 requires BOEM to hold GOM Lease Sale 259 by March 31, 2023. The GOM Lease Sale 259 Final Notice of Sale (NOS) package contains information essential to potential bidders and comprises this notice, Information to Lessees, and Lease Stipulations.

DATES: BOEM will hold GOM Lease Sale 259 at 9:00 a.m. on Wednesday, March 29, 2023. All times referred to in this document are Central time, unless otherwise specified.

Bid submission deadline: BOEM must receive all sealed bids prior to the Bid Submission Deadline of 10:00 a.m. on Tuesday, March 28, 2023, the day before the lease sale. For more information on bid submission, see section VII of this document, ''Bidding Instructions.''

ADDRESSES: Bids will be accepted by MAIL ONLY through any parcel delivery service (*e.g.,* FedEx, UPS, U.S. Postal Service, DHL), prior to the bid submission deadline, at 1201 Elmwood Park Boulevard, New Orleans, Louisiana, 70123. Public bid reading for GOM Lease Sale 259 will be held at 1201 Elmwood Park Boulevard, New Orleans, Louisiana. The venue will not be open to the general public, media, or industry during bid opening or reading. Bid opening will be available for public viewing on BOEM's website at *http://www.boem.gov/Sale-259/* via live-streaming video beginning at 9:00 a.m. on the date of the sale. The results will be posted on BOEM's website upon

completion of bid opening and reading. Interested parties may download the Final NOS package from BOEM's website at *http://www.boem.gov/Sale-259/.* Copies of the sale maps can be obtained by contacting the BOEM GOM Region: Gulf of Mexico Region Public Information Office, Bureau of Ocean Energy Management, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, (504) 736–2519 or (800) 200–GULF.

FOR FURTHER INFORMATION CONTACT: Gregory Purvis, Program Analyst, The New Orleans Office Lease Sale Coordinator at *BOEMGOMRLeaseSales@boem.gov* or 504–736–1729.

SUPPLEMENTARY INFORMATION:

Authority: This notice of sale is published pursuant to 43 U.S.C. 1331 *et seq.* (Outer Continental Shelf Lands Act, as amended) and 30 CFR 556.308(a).

Table of Contents

I. Lease Sale Area

Blocks Offered for Leasing: BOEM will offer for bid in this lease sale all of the available unleased acreage in the GOM OCS as identified on the map, ''Final Notice of Sale, Gulf of Mexico OCS Oil and Gas Lease Sale 259, March, 2023, Final Sale Area'' (*http://www.boem.gov/Sale-259/*) except those blocks listed below in ''Blocks Not Offered for Leasing.''

Blocks Not Offered for Leasing: BOEM will exclude the following whole and partial blocks from this sale. The BOEM Official Protraction Diagrams (OPDs) and Supplemental OPDs are available online at *https://www.boem.gov/Maps-and-GIS-Data/.*

• Whole and Partial Blocks withdrawn from leasing by Presidential Withdrawal in the September 8, 2020, *Memorandum on the Withdrawal of Certain Areas of the United States Outer Continental Shelf from Leasing Disposition:*

GOM protraction areas	Block
Pensacola (Leasing Map NH 16–05).	Whole Blocks: 751–754, 793–798, 837–842, 881–886, 925–930, 969–975.
Destin Dome (Leasing Map NH 16–08).	Whole Blocks: 1–7, 45–51, 89–96, 133–140, 177–184, 221–228, 265–273, 309–317, 353–361, 397–405, 441–450, 485–494, 529–538, 573–582, 617–627, 661–671, 705–715, 749–759, 793–804, 837–848, 881–892, 925–936, 969–981.
DeSoto Canyon (Leasing Map NH 16–11).	Whole Blocks: 1–15, 45–59, 92–102. Partial Blocks: 16, 60, 61, 89–91, 103–105, 135–147.
Henderson (Leasing Map NG 16–05).	Partial Blocks: 114, 158, 202, 246, 290, 334, 335, 378, 379, 422, 423.

• Whole and Partial Blocks within the boundary of the Flower Garden Banks National Marine Sanctuary (East and West Flower Garden Banks and the Stetson Bank) as of the July 14, 2008, *Memorandum on Modification of the Withdrawal of Areas of United States Outer Continental Shelf from Leasing Disposition:*

GOM protraction areas	Block
High Island, East Addition, South Extension (Leasing Map TX7C).	Whole Block: A–398. Partial Blocks: A–366, A–367, A–374, A–375, A–383, A–384, A–385, A–388, A–389, A–397, A–399, A–401.
High Island, South Addition (Leasing Map TX7B).	Partial Blocks: A–502, A–513.
Garden Banks (Leasing Map NG 15–02).	Partial Blocks: 134, 135.

• Whole and Partial Blocks that are adjacent to or beyond the U.S. Exclusive Economic Zone in the area known as the northern portion of the Eastern Gap:

GOM protraction areas	Block
Lund South (Leasing Map NG 16–07).	Whole Blocks: 128, 129, 169–173, 208–217, 248–261, 293–305, 349.
Henderson (Leasing Map NG 16–05).	Whole Blocks: 466, 508–510, 551–554, 594–599, 637–643, 679–687, 722–731, 764–775, 807–819, 849–862, 891–905, 933–949, 975–992. Partial Blocks: 335, 379, 423, 467, 511, 555, 556, 600, 644, 688, 732, 776, 777, 820, 821, 863, 864, 906, 907, 950, 993, 994.
Florida Plain (Leasing Map NG 16–08).	Whole Blocks: 5–24, 46–67, 89–110, 133–154, 177–197, 221–240, 265–283, 309–327, 363–370.

• Depth-restricted, segregated block portion(s). The current block meeting this criterion is: Block 299, Main Pass Area, South and East Addition (as shown on Louisiana Leasing Map LA10A), containing 1,125 acres from the surface of the earth down to a subsea depth of 1,900 feet with respect to the following described portions: SW¼NE¼; NW¼SE¼NE¼; W½NE¼SE¼NE¼; S½S½NW¼NE¼; S½SW¼NE¼NE¼; S½SW¼SE¼NE¼NE¼; N½SW¼SE¼NE¼; SW¼SW¼SE¼NE¼; NW¼SE¼SE¼ NE¼; N½NW¼SW¼SE¼SE¼NE¼; N½SE¼SW¼SE¼NE¼; N½S½SE¼SW¼SE¼NE¼;

S½NE¼NW¼; S½S½N½NE¼NW¼; N½SE¼NW¼; S½SE¼NW¼NW¼; NE¼SE¼ NW¼NW¼; E½NE¼SW¼NW¼; N½SE¼SE¼NW¼; NE¼SW¼SE¼NW¼; N½NW¼SW¼SE¼NW¼; SE¼SE¼SE¼NW¼; E½SW¼SE¼SE¼NW¼; N½NW¼NE¼SW¼NW¼; N½S½NW¼NE¼SW¼NW¼; N½N½NE¼NE¼NE¼SW¼; N½N½N½NW¼NW¼SE¼; N½N½NW¼NE¼NW¼SE¼

- Whole and Partial Blocks that are South of Baldwin County, Alabama:

GOM protraction areas	Blocks
Mobile (Leasing Map NH16–04)	826–830, 869–874, 913–918, 957–962, 1001–1006.
Viosca Knoll (Leasing Map NH 16–07).	33–35.

- Whole and Partial Blocks that were otherwise proposed to be subject to the Topographic Features Stipulation:

GOM protraction area	Blocks
East Breaks (Leasing Map NG 15–01).	121–124, 165–168, 173, 217.
East Cameron Area (Leasing Map LA2).	361–363, 377–379.
Eugene Island Area (Leasing Map LA4).	335, 355–356, 381–383, 390–391, 397.
Ewing Bank (Leasing Map NH 15–12).	903, 932–933, 944–945, 947, 975–977.
Garden Banks (Leasing Map NG 15–02).	26–31, 33, 61–63, 70–77, 81–85, 95–98, 102–110, 119–121, 126–128, 133–136, 138–146, 148–155, 177–180, 192–198, 237–239.
Green Canyon (Leasing Map NG 15–03).	4–7, 49–50, 90.
High Island Area, East Addition (Leasing Map TX7A).	A311–312, A 327–A 332, A 340, A 346– A403, A446–A448, A463–A465, A486–A488, A501–A503, A512–A514, A527–A529, A534–A535, A573, A578–A580, A589–A591, A596.
Mississippi Canyon (Leasing Map NH 16–10).	316.
Mustang Island Area (Leasing Map TX3).	A3–4, A9, A16, A54, A61–A62, A86–A87, A95, A117–A118, A136–A137.
North Padre Island Area (Leasing Map TX2).	PN A30–A31, A40–A41, A72, A83–A84.
South Marsh Island Area, North Addition (Leasing Map LA3D).	161–163, 169–173, 176–180, 185–188, 193–197, 200–204.
Ship Shoal Area (Leasing Map LA5).	325–329, 334–339, 348–353, 356–359.
South Timbalier Area (Leasing Map LA6).	314–317.
Vermilion Area (Leasing Map LA3)	284–286, 297–300, 303–306, 317–320, 361–363, 369–372, 382–396, 403–412.
West Cameron Area (Leasing Map LA1).	569–570, 589–592, 611–614, 633–638, 645–646, 648–663.
West Delta Area (Leasing Map LA8).	147–148.

- Whole and Partial Blocks that were otherwise proposed to be subject to the Live Bottom (Pinnacle Trend) Stipulation:

GOM protraction area	Blocks
Main Pass Area, South and East Addition (Leasing Map LA10A).	190, 194, 198, 219–226, 244–266, 276–290.
Viosca Knoll (Leasing Map NH 16–07).	473–476, 521–522, 564–566, 610, 654, 692–698, 734, 778.

- Whole and Partial Blocks identified as either draft or final Wind Energy Areas A–N:

GOM protraction area	Blocks
Brazos Area (Leasing Map TX5)	430, 457–459, 466–468, 572–575, 580–584, 609–614, A22, A28–A29, A3, A30–A35, A42–A43.

GOM protraction area	Blocks
Brazos Area, South Addition (Leasing Map TX5B).	A102–A105, A46–A48, A55–A58, A60–A61, A73–A74.
East Cameron Area (Leasing Map LA2).	96–106, 113–124.
Galveston Area (Leasing Map TX6)	237, 258–259, 265–268, 286–291, 293–299, 317–327, 350–356, 386–387, 427–429, 460–462, 464–465, A1–A9, A10–A38, A40–A49, A52–A55, A61–A77, A84–A86, A91–A94, A97–A99, A103–A105, A110–A113.
Galveston Area, South Addition (Leasing Map TX6A).	A114–A119, A123–A124, A138–A139, A140–A148, A169–A174, A203.
High Island Area (Leasing Map TX7).	235–236, 260–261, 263–264, 292, A2–A4, A11–A15, A27–A31, A62–A64, A66–A68, A70–A90, A92–A99, A100–A111, A113–A116, A118–A142, A144–A152, A156–A163, A165–A166.
High Island Area, East Addition (Leasing Map TX7A).	A170–A174, A177–A182, A187–A193, A195–A199, A202–A209, A211–A213, A216–217, A220–A228, A233–A241, A250–A251.
High Island Area, South Addition (Leasing Map TX7B).	A404–A405, A408–A413, A420–A425, A428–A431, A434–A439, A454–A457, A480–A481.
Matagorda Island Area (Leasing Map TX4).	639–642, 646–649, 673–678, A1, A3, A4.
Mustang Island Area (Leasing Map TX3).	803–804, 810–812, 826–828, 832–834, 847–849, 853–854.
South Padre Island Area, East Addition (Leasing Map TX1A).	1078, 1097–1098, 1117–1119, A35–A36, A46–A52, A59–A64.
West Cameron Area (Leasing Map LA1).	188–190, 195–196, 205–213, 224–230, 241–245, 256.
West Cameron Area, West Addition (Leasing Map LA1A).	302–303, 314–318, 328–334, 343–352, 359–360, 362–364, 372–379, 393–396, 398–400.

• Whole and Partial BOEM-designated Significant Sediment Resource Area Blocks:

GOM protraction area	Blocks
Bay Marchand Area (Leasing Map LA6C).	2–5.
Breton Sound Area (Leasing Map LA10B).	24, 25, 39, 41–44, 53–56.
Chandeleur Area (Leasing Map LA11).	1, 4, 5, 8, 16, 28, 30–34.
Eugene Island Area (Leasing Map LA4).	10, 18–35, 37–96, 111, 112.
Galveston Area (Leasing Map TX6)	265, 290, 291, 293, 294, 295, 322.
Galveston Area, South Addition (Leasing Map TX6A).	1A, 2A, 3A, 4A, 5A.
Grand Isle Area (Leasing Map LA7)	15, 25.
High Island Area (Leasing Map TX7).	19–21, 35–39, 45–49, 60–65, 69–76, 83–91, 111–119, 131–137, 158–164, 171–175, 196–205, 230–234, 261–264, 292, A6–A10, A16–A22, A37–A42, A60–A65.
High Island Area, East Addition (Leasing Map TX7A).	6, 10, 38–42, 45, 46, 60–65, 74–76, 83, 84, 85.
Mobile (Leasing Map NH 16–04)	765–767, 778, 779, 809–824, 826–830, 853–874, 897–918, 942, 946, 947, 954–962, 991, 999–1006.
Main Pass Area (Leasing Map LA10).	6, 39–44, 58–60, 86–90, 92–120, 125–129, 139.
Main Pass, South and East Addition (Leasing Map LA10A).	161, 162, 180, 181.
South Pelto Area (Leasing Map LA6B).	1–20, 23–25.
Sabine Pass Area (LA) (Leasing Map LA12).	8–16.
South Marsh Island Area, North Addition (Leasing Map LA3D).	207–237, 241–249, 259–261, 267, 268.
Ship Shoal Area (Leasing Map LA5).	24–26, 37, 38, 63–75, 84–100, 107–114, 119, 120.
South Timbalier Area (Leasing Map LA6).	9–11, 16–18, 34, 51, 52, 54, 55, 66, 67, 72.
Sabine Pass Area (TX) (Leasing Map TX8).	9, 17, 18, 40, 44.
Viosca Knoll (Leasing Map NH 16–07).	23, 34–38, 67, 78–82, 111, 155.
Vermilion Area (Leasing Map LA3)	11, 30, 49, 51–54, 68–77, 86–96, 108–111.
West Cameron Area (Leasing Map LA1).	20–22, 41–45, 56–60, 78–83, 90–95, 113–118, 128–134, 146–150, 153–157, 160, 161, 162, 168–172, 181.
West Cameron Area, West Addition (Leasing Map LA1A).	154–157, 160–162, 287.

GOM protraction area	Blocks
West Delta Area (Leasing Map LA8).	20–31, 32, 43–50, 56–61.

The final list of blocks available for bid is posted on BOEM's website at *http://www.boem.gov/sale-259* under the Final NOS tab.

II. Statutes and Regulations

The Inflation Reduction Act directs BOEM to hold GOM Lease Sale 259 by March 31, 2023 (Pub. L. 117–169). Each lease is issued pursuant to OCSLA, 43 U.S.C. 1331 *et seq.,* as amended, and is subject to OCSLA implementing regulations promulgated pursuant thereto in 30 CFR part 556, and other applicable statutes and regulations in existence upon the effective date of the lease, as well as those applicable statutes enacted and regulations promulgated thereafter, except to the extent that the after-enacted statutes and regulations explicitly conflict with an express provision of the lease. Each lease is subject to amendments to statutes and regulations, including but not limited to OCSLA, that do not explicitly conflict with an express provision of the lease. The lessee expressly bears the risk that such new or amended statutes and regulations (*i.e.,* those that do not explicitly conflict with an express provision of the lease) may increase or decrease the lessee's obligations under the lease. BOEM reserves the right to reject any and all bids received, regardless of the amount offered (see 30 CFR 556.516).

III. Lease Terms and Economic Conditions

OCS Lease Form

BOEM will use Form BOEM–2005 (February 2017) to convey leases resulting from this sale. This lease form can be viewed on BOEM's website at *http://www.boem.gov/BOEM-2005.* The lease form will be amended to include specific terms, conditions, and stipulations applicable to the individual lease. The final terms, conditions, and stipulations applicable to this sale are below.

Primary Terms

Primary terms are summarized in the following table:

Water depth (meters)	Primary term
0 to <400	The primary term is 5 years; the lessee may earn an additional 3 years (i.e., for an 8-year extended primary term) if a well is spudded targeting hydrocarbons below 25,000 feet True Vertical Depth Subsea (TVDSS) during the first 5 years of the lease.
400 to <800	The primary term is 5 years; the lessee will earn an additional 3 years (i.e., for an 8-year extended primary term) if a well is spudded during the first 5 years of the lease.
800+	10 years.

(1) The primary term for a lease in water depths less than 400 meters issued as a result of this sale is 5 years. If the lessee spuds a well targeting hydrocarbons below 25,000 feet TVDSS within the first 5 years of the lease, then the lessee may earn an additional 3 years, resulting in an 8-year primary term. The lessee will earn the 8-year primary term when the well is drilled to a target below 25,000 feet TVDSS; or, the lessee may earn the 8-year primary term in cases where the well targets, but does not reach, a depth below 25,000 feet TVDSS due to mechanical or safety reasons that are beyond the lessee's control, and that are supported by sufficient evidence from the lessee. To earn the 8-year primary term, the lessee is required to submit a letter to the BOEM GOM Regional Supervisor, Office of Leasing and Plans, as soon as practicable, but no more than 30 days after completion of the drilling operation, providing the well number, spud date, information demonstrating a target below 25,000 feet TVDSS and whether that target was reached, and if applicable, any safety or mechanical reasons encountered that prevented the well from reaching a depth below 25,000 feet TVDSS. In the letter, the lessee must request confirmation from BOEM that the lessee earned the 8-year primary term. The BOEM GOM Regional Supervisor for Leasing and Plans will confirm in writing, within 30 days of receiving the lessee's letter, whether the lessee has earned the extended primary term and accordingly update BOEM's records. The extended primary term is not effective unless and until the lessee receives confirmation from BOEM. A lessee that has earned the 8-year primary term by spudding a well with a hydrocarbon target below 25,000 feet TVDSS during the standard 5-year primary term of the lease will not be granted a suspension for that same period under the regulations at 30 CFR 250.175 because the lease is not at risk of expiring.

(2) The primary term for a lease in water depths ranging from 400 to less than 800 meters issued as a result of this sale is 5 years. If the lessee spuds a well within the 5-year primary term of the lease, the lessee may earn an additional 3 years, resulting in an 8-year primary term. To earn the 8-year primary term, the lessee is required to submit a letter to the BOEM GOM Regional Supervisor, Office of Leasing and Plans, as soon as practicable, but no more than 30 days after spudding a well, providing the well number and spud date, and requesting confirmation from BOEM that the lessee earned the 8-year extended primary term. Within 30 days of receipt of the request, the BOEM GOM Regional Supervisor for Leasing and Plans will provide written confirmation of whether the lessee has earned the extended primary term and accordingly update BOEM's records. The extended primary term is not effective unless and until the lessee receives confirmation from BOEM.

(3) The primary term for a lease in water depths 800 meters or deeper issued as a result of this sale is 10 years.

Minimum Bonus Bid Amounts

BOEM will not accept a bonus bid unless it provides for a cash bonus in an amount equal to or exceeding the specified minimum bid, as described below.

- $25 per acre or fraction thereof for blocks in water depths less than 400 meters; and
- $100 per acre or fraction thereof for blocks in water depths 400 meters or deeper.

Rental Rates

Annual rental rates per acre or fraction thereof are summarized in the following table:

Water depth (meters)	Years 1–5	Year 6	Year 7	Year 8+
0 to <200	$10	$20	$30	$40
200 to <400	16	32	48	64
400+	16	22	22	22

Escalating Rental Rates for Leases With an 8-Year Primary Term in Water Depths Less Than 400 Meters

Any lessee with a lease in less than 400 meters water depth who earns an 8-year primary term will pay an escalating rental rate as shown above. The rental rates after the fifth year for blocks in less than 400 meters water depth will become fixed and no longer escalate if another well is spudded targeting hydrocarbons below 25,000 feet TVDSS after the fifth year of the lease, and BOEM concurs that such a well has been spudded. In this case, the rental rate will become fixed at the rental rate in effect during the lease year in which the additional well was spudded.

Royalty Rate

- 18¾ percent for all leases.

Minimum Royalty Rate

- $10 per acre or fraction thereof per year for blocks in water depths less than 200 meters; and
- $16 per acre or fraction thereof per year for blocks in water depths 200 meters or deeper.

Royalty Suspension Provisions

The issuance of leases with Royalty Suspension Volumes (RSVs) or other forms of royalty relief is authorized under existing Departmental regulations at 30 CFR part 560, which BOEM administers. The specific details relating to eligibility and implementation of the various royalty relief programs, including those involving the use of RSVs, are found in the Departmental regulations at 30 CFR part 203, which the Bureau of Safety and Environmental Enforcement administers. In this sale, the only royalty relief program being offered involves RSVs for the drilling of ultra-deep wells in water depths of less than 400 meters, as described in the following section.

Royalty Suspension Volumes on Gas Production From Ultra-Deep Wells

Pursuant to 30 CFR part 203, certain leases issued as a result of this sale may be eligible for RSV incentives on gas produced from ultra-deep wells. Under this program, wells on leases in less than 400 meters water depth and completed to a drilling depth of 20,000 feet TVDSS or deeper receive an RSV of 35 billion cubic feet on the production of natural gas. This RSV incentive is subject to applicable price thresholds set forth in the regulations at 30 CFR part 203. These regulations implement the requirements of the Energy Policy Act of 2005 (Pub. L. 109–58, 119 Stat. 594 (2005)).

IV. Lease Stipulations

One or more of the stipulations below may be applied to leases issued as a result of this sale. The applicable blocks for each stipulation are identified on the map ''Final Notice of Sale, Gulf of Mexico OCS Oil and Gas Lease Sale 259, March 2023, Stipulations and Deferred Blocks'' included in the Final NOS package. The full text of the following stipulations is contained in the ''Lease Stipulations'' section of the Final NOS package. BOEM has posted the final list of blocks available for bid and the applicable stipulations that apply to those blocks on its website at *http://www.boem.gov/Sale-259* under the Final NOS tab.

(1) Military Areas
(2) Evacuation
(3) Coordination
(4) Protected Species
(5) United Nations Convention on the Law of the Sea Royalty Payment
(6) Agreement between the United States of America and the United Mexican States Concerning Transboundary Hydrocarbon Reservoirs in the Gulf of Mexico
(7) Restrictions due to Rights-of-Use and Easement for Floating Production Facilities
(8) Royalties on All Produced Gas

V. Information to Lessees

Information to Lessees (ITLs) provide detailed information on certain issues pertaining to specific oil and gas lease sales. The full text of the ITLs for this sale is contained in the ''Information to Lessees'' section of the Final NOS package and covers the following topics.

(1) Navigation Safety
(2) Ordnance Disposal Areas
(3) Existing and Proposed Artificial Reefs/Rigs-to-Reefs
(4) Lightering Zones
(5) Indicated Hydrocarbons List
(6) Military Areas
(7) Bureau of Safety and Environmental Enforcement Inspection and Enforcement of Certain U.S. Coast Guard Regulations
(8) Significant Outer Continental Shelf Sediment Resource Areas
(9) Notice of Arrival on the Outer Continental Shelf
(10) Bidder/Lessee Notice of Obligations Related to Criminal/Civil Charges and Offenses, Suspension, or Debarment; Disqualification Due to a Conviction under the Clean Air Act or the Clean Water Act
(11) Protected Species
(12) Expansion of the Flower Garden Banks National Marine Sanctuary
(13) Communication Towers
(14) Deepwater Port Applications for Offshore Oil and Liquefied Natural Gas Facilities
(15) Ocean Dredged Material Disposal Sites
(16) Rights-of-Use and Easement
(17) Industrial Waste Disposal Areas
(18) Gulf Islands National Seashore
(19) Air Quality Permit/Plan Approvals
(20) Provisions Pertaining to Certain Transactions by Foreign Persons Involving Real Estate in the United States
(21) Inflation Reduction Act of 2022

VI. Maps

The maps pertaining to this lease sale can be viewed on BOEM's website at *http://www.boem.gov/Sale-259.* The following maps also are included in the Final NOS package:

Sale Area Map

The sale area is shown on the map entitled, ''Final Notice of Sale, Gulf of Mexico OCS Oil and Gas Lease Sale 259, March 2023, Final Sale Area.''

Lease Terms and Economic Conditions Map

The lease terms and economic conditions associated with leases of

certain blocks are shown on the map entitled, ''Final Notice of Sale, Gulf of Mexico Oil and Gas Lease Sale 259, March 2023, Lease Terms and Economic Conditions.''

Stipulations and Deferred Blocks Map

The lease stipulations and the blocks to which they apply are shown on the map entitled, ''Final Notice of Sale, Gulf of Mexico OCS Oil and Gas Lease Sale 259, March 2023, Stipulations and Deferred Blocks.''

VII. Bidding Instructions

Bids may be submitted BY MAIL ONLY through any parcel delivery service (*e.g.,* FedEx, UPS, USPS, DHL) at the address below in the ''Mailed Bids'' section. Bidders should be aware that BOEM has eliminated in-person bidding for GOM Lease Sale 259. Instructions on how to submit a bid, secure payment of the advance bonus bid deposit (if applicable), and the information to be included with the bid are as follows:

Bid Form

For each block bid upon, a separate sealed bid must be submitted in a sealed envelope (as described below) and include the following items:

- Total amount of the bid in whole dollars only;
- Sale number;
- Sale date;
- Each bidder's exact name;
- Each bidder's proportionate interest, stated as a percentage, using a maximum of five decimal places (*e.g.,* 33.33333 percent);
- Typed name and title, and signature of each bidder's authorized officer. Electronic signatures are acceptable. The typed name, title, and signature must agree exactly with the name and title on file in the BOEM Gulf of Mexico OCS Region Adjudication Section;
- Each bidder's BOEM qualification number;
- Map name and number or OPD name and number;
- Block number; and
- Statement acknowledging that the bidder(s) understands that this bid legally binds the bidder(s) to comply with all applicable regulations, including the requirement to post a deposit in the amount of one-fifth of the bonus bid amount for any tract bid upon and make payment of the balance of the bonus bid and first year's rental upon BOEM's acceptance of high bids.

The information required for each bid is specified in the document ''Bid Form'' that is available in the Final NOS package, which can be found at *http://www.boem.gov/Sale-259/*. A blank bid form is provided in the Final NOS package for convenience and can be copied and completed with the necessary information described above.

Bid Envelope

Each bid must be submitted in a separate sealed envelope labeled as follows:

- ''Sealed Bid for GOM Lease Sale 259, not to be opened until 9 a.m. Wednesday, March 29, 2023'';
- Map name and number or OPD name and number;
- Block number for block bid upon;
- Acreage, if the bid is for a block that is split between the Central and Eastern Planning Areas;
- The exact name and qualification number of the submitting bidder only.

The Final NOS package includes a sample bid envelope for reference.

Mailed Bids

Please address the envelope containing the sealed bid envelope(s) as follows: Attention: Leasing and Financial Responsibility Section, BOEM New Orleans Office, 1201 Elmwood Park Boulevard MS–266A, New Orleans, Louisiana 70123–2394, Contains Sealed Bids for GOM Lease Sale 259, Please Deliver to Mr. Greg Purvis, 2nd Floor, Immediately.

Please Note: Bidders are advised to inform BOEM by email at *BOEMGOMRLeaseSales@boem.gov* immediately after placing bid(s) in the mail. This provides advance notice to BOEM regarding pending bids prior to the bid submission deadline. In the email, please state the tracking number of the bid package, the number of bids being submitted, and the email address of the person who should receive the bid receipt for signature. If BOEM receives bids later than the bid submission deadline, the BOEM GOM Regional Director (RD) will return those bids unopened to bidders. Please see Section XI, ''Delay of Sale,'' regarding BOEM's discretion to extend the Bid Submission Deadline in the case of an unexpected event (*e.g.,* flooding) and how bidders can obtain more information on such extensions.

Advance Bonus Bid Deposit Guarantee

Bidders that are not currently an OCS oil and gas lease record title holder or designated operator, or those that have ever defaulted on a one-fifth bonus bid deposit, must guarantee (secure) the payment of the one-fifth bonus bid deposit, by Electronic Funds Transfer (EFT) or otherwise, prior to bid submission using one of the following four methods:

- Provide a third-party guarantee;
- Amend a development stage area-wide bond via bond rider;
- Provide a letter of credit; or
- Provide a lump sum payment in advance via EFT.

Please provide, at the time of bid submittal, a confirmation or tracking number for the payment, the name of the company submitting the payment as it appears on the payment, and the date the payment was submitted so BOEM can confirm payment with the Office of Natural Resources Revenue (ONRR). Submitting payment to the bidders' financial institution at least 5 business days prior to bid submittal helps ensure that the Office of Foreign Assets Control and the U.S. Department of the Treasury (U.S. Treasury) have the needed time to screen and process payments so they are posted to ONRR prior to placing the bid. ONRR cannot confirm payment until the monies have been moved into settlement status by the U.S. Treasury. Bids will not be accepted if BOEM cannot confirm payment with ONRR.

If providing a third-party guarantee, amending a development stage area-wide bond via bond rider, or providing a letter of credit to secure your one-fifth bonus bid deposit, bidders are urged to file these documents with BOEM well in advance of submitting the bid, to allow processing time and for bidders to take any necessary curative actions prior to bid submission. For more information on EFT procedures, see Section X, ''The Lease Sale.''

Affirmative Action

Prior to bidding, each bidder should file the Equal Opportunity Affirmative Action Representation Form BOEM–2032 (February 2020, available on BOEM's website at *http://www.boem.gov/BOEM-2032/*) and Equal Opportunity Compliance Report Certification Form BOEM–2033 (February 2020, available on BOEM's website at *http://www.boem.gov/BOEM-2033/*) with the BOEM GOM Adjudication Section. This certification is required by 41 CFR part 60 and Executive Order (E.O.) 11246, issued September 24, 1965, as amended by E.O. 11375, issued October 13, 1967, and by E.O. 13672, issued July 21, 2014. Both forms must be on file for the bidder(s) in the GOM Adjudication Section prior to the execution of any lease contract.

Geophysical Data and Information Statement (GDIS)

The GDIS is composed of three parts:

(1) A ''Statement'' page that includes the company representatives' information and separate lists of blocks bid on that used proprietary data and those blocks bid upon that did not use proprietary data;

(2) A ''Table'' listing the required data about each proprietary survey used (see below); and

(3) ''Maps,'' which contain the live trace maps for each proprietary survey that is identified in the GDIS statement and table.

Every bidder submitting a bid on a block in GOM Lease Sale 259 or participating as a joint bidder in such a bid must submit at the time of bid submission all three parts of the GDIS. A bidder must submit the GDIS *even if a joint bidder or bidders on a specific block also have submitted a GDIS.* Any speculative data that has been reprocessed externally or ''in-house'' is considered proprietary due to the proprietary processing and is no longer considered to be speculative.

The bidder and joint bidder must submit the GDIS in a separate and sealed envelope and must identify all proprietary data; reprocessed speculative data, and/or any Controlled Source Electromagnetic surveys, Amplitude Versus Offset (AVO) data, gravity data, and/or magnetic data; or other information used as part of the decision to bid or participate in a bid on the block. The bidder and joint bidder must also include a live trace map (*e.g.,* .pdf and ArcGIS shapefile) for each proprietary survey identified in the GDIS illustrating the actual areal extent of the proprietary geophysical data in the survey (see the ''Example of Preferred Format'' that is included in the Final NOS package for additional information). The shape file must not include cultural resources information; only the live trace map of the survey itself.

The GDIS statement must include the name, phone number, and full address for a contact person and an alternate who are both knowledgeable about the geophysical information and data listed and who are available for 30 days after the sale date. The GDIS statement must also include a list of all blocks bid upon, including those blocks where no proprietary or reprocessed geophysical data and/or proprietary information was used, as a basis for the bidder's decision to bid or to participate as a joint bidder in the bid. All bidders must submit the GDIS statement even if no proprietary geophysical data or information was used in its bid preparation for the block.

An example of the preferred format of the table is included in the Final NOS package, and a blank digital version of the preferred table can be accessed on the GOM Lease Sale 259 website at *http://www.boem.gov/Sale-259/.* The GDIS table should have columns that clearly state the following:

- The sale number;
- The bidder company's name;
- The joint bidder's company's name (if applicable);
- The company providing proprietary data to BOEM;
- The block area and block number bid upon;
- The owner of the original data set (*i.e.,* who initially acquired the data);
- The industry's original name of the survey (*e.g.,* E Octopus);
- The BOEM permit number for the survey;
- Whether the data set is a fast-track version;
- Whether the data is speculative or proprietary;
- The data type (*e.g.,* 2–D, 3–D, or 4–D; pre-stack or post-stack; time or depth);
- The migration algorithm (*e.g.,* Kirchhoff migration, wave equation migration, reverse migration, reverse time migration) of the data and areal extent of bidder survey (*i.e.,* number of line miles for 2–D or number of blocks for 3–D);
- The live proprietary survey coverage (2–D miles 3–D blocks);
- The computer storage size, to the nearest gigabyte, of each seismic data and velocity volume used to evaluate the lease block;
- Who reprocessed the data;
- Date the final reprocessing was completed (month and year);
- If the data was previously sent to BOEM, list the sale number and date of the sale for which it was used;
- Whether proprietary or speculative AVO/AVA (PROP/SPEC) was used;
- Date AVO or AVA was sent to BOEM if sent prior to the sale;
- Whether AVO/AVA is time or depth (PSTM or PSDM);
- Which angled stacks were used (*e.g.,* NEAR, MID, FAR, ULTRAFAR);
- Whether the company used Gathers to evaluate the block in question; and
- Whether the company used Vector Offset Output (VOO) or Vector Image Partitions (VIP) to evaluate the block in question.

BOEM will use the computer storage size information to estimate the reproduction costs for each data set, if applicable. BOEM will determine the availability of reimbursement of production costs consistent with 30 CFR 551.13.

BOEM reserves the right to inquire about alternate data sets, to perform quality checks, and to compare the listed and alternative data sets to determine which data set most closely meets the needs of the fair market value determination process. See the ''Example of Preferred Format'' that is included in the Final NOS package.

The GDIS maps are live trace maps (*e.g.,* .pdf and ArcGIS shapefiles) that bidders should submit for each proprietary survey identified in the GDIS table. The maps should illustrate the actual areal extent of the proprietary geophysical data in the survey (see the ''Example of Preferred Format'' that is included in the Final NOS package for additional information). As previously stated, the shapefile must not include cultural resources information, only the live trace map of the survey itself.

Pursuant to 30 CFR 551.12 and 556.501, as a condition of the sale, the BOEM GOM Regional Director requests that all bidders and joint bidders submit the proprietary data identified on their GDIS within 30 days after the lease sale (unless notified after the lease sale that BOEM has withdrawn the request). This request only pertains to proprietary data that is not commercially available. Commercially available data should not be submitted to BOEM unless specifically requested by BOEM. No reimbursement will be provided for unsolicited data sent to BOEM. The BOEM GOM RD will notify bidders and joint bidders of any withdrawal of the request, for all or some of the proprietary data identified on the GDIS, within 15 calendar days of the lease sale. Where the BOEM GOM RD has notified bidders and joint bidders that the request for such proprietary data has been withdrawn, reimbursement will not be provided. Pursuant to 30 CFR part 551 and 30 CFR 556.501, as a condition of this sale, all bidders that are required to submit data must ensure that the data are received by BOEM no later than the 30th day following the lease sale, or the next business day if the submission deadline falls on a weekend or Federal holiday.

The data must be submitted to BOEM at the following address: Bureau of Ocean Energy Management, Resource Studies, GM 881A, 1201 Elmwood Park Blvd., New Orleans, Louisiana 70123–2304.

BOEM recommends that bidders mark the submission's external envelope as ''Deliver Immediately to DASPU.'' BOEM also recommends that bidders submit the data in an internal envelope, or otherwise marked, with the following designation: ''Geophysical Data and Information Statement for Oil and Gas Lease Sale 259'', Company Name, GOM Company Qualification Number, and ''Proprietary Data.''

In the event a person supplies any type of data to BOEM, that person must meet the following requirements to qualify for reimbursement:

(1) Must be registered with the System for Award Management (SAM), formerly

known as the Central Contractor Registration (CCR). CCR usernames will not work in SAM. A new SAM user account is needed to register or update an entity's records. The website for registering is *gsa.gov/iaesystems.*

(2) Must be enrolled in the U.S. Treasury's Invoice Processing Platform (IPP) for electronic invoicing; to enroll go to *https://www.ipp.gov/.* Access then will be granted to use the IPP for submitting requests for payment. When submitting a request for payment, the assigned Purchase Order Number must be included.

(3) Must have a current On-line Representations and Certifications Application at *gsa.gov/iaesystems.*

Please Note: Digital copies and duplicate hardcopies should be submitted for the GDIS Statement, Table and Maps. The GDIS Statement should be sent in as a digital PDF. The GDIS Information Table must be submitted digitally as an Excel spreadsheet. The Proprietary Maps should be sent in as PDF files and the live trace outline of each proprietary survey should also be submitted as a shapefile. Please flatten all layered PDF files, since layered PDFs can have many objects. Layered PDFs can cause problems opening or printing the file correctly. Bidders may submit the digital files on a CD, DVD, or any USB external drive (formatted for Windows). If bidders have any questions, please contact Ms. Dee Smith at (504) 736–2706, or Ms. Teree Campbell at (504) 736–3231.

Bidders should refer to Section X, ''The Lease Sale,'' regarding a bidder's failure to comply with the requirements of the NOS, including any failure to submit information required in the Final NOS package.

Telephone Numbers/Addresses of Bidders

BOEM requests that bidders provide this information in the suggested format prior to or at the time of bid submission. The suggested format is included in the Final NOS package. The form must not be enclosed inside the sealed bid envelope.

Additional Documentation

BOEM may require bidders to submit other documents in accordance with 30 CFR 556.107, 556.401, 556.501, and 556.513.

VIII. Bidding Rules and Restrictions

Restricted Joint Bidders

On October 18, 2022, BOEM published the most recent List of Restricted Joint Bidders in the **Federal Register** at 87 FR 65248. Potential bidders are advised to refer to the **Federal Register** prior to bidding for the most current List of Restricted Joint Bidders in place at the time of the lease sale. Please refer to the joint bidding provisions at 30 CFR 556.511–556.515.

Authorized Signatures

All signatories executing documents on behalf of the bidder(s) must execute the same in conformance with the BOEM qualification records. Bidders are advised that BOEM considers the signed bid to be a legally binding obligation on the part of the bidder(s) to comply with all applicable regulations, including that requiring payment of one-fifth of the bonus bid on all high bids. A statement to this effect is included on each bid form (see the document ''Bid Form'' that is included in the Final NOS package).

Unlawful Combination or Intimidation

BOEM warns bidders against violation of 18 U.S.C. 1860, which prohibits unlawful combination or intimidation of bidders.

Bid Withdrawal

Bids may be withdrawn only by written request delivered to BOEM prior to the bid submission deadline via any parcel delivery service. Withdrawals will not be accepted in person or via email. The withdrawal request must be on company letterhead and must contain the bidder's name, its BOEM qualification number, the map name/number, and the block number(s) of the bid(s) to be withdrawn. The withdrawal request must be executed by one or more of the representatives named in the BOEM qualification records. The name and title of the authorized signatory must be typed under the signature block on the withdrawal request. The BOEM GOM RD, or the RD's designee, will indicate approval by signing and dating the withdrawal request.

Bid Rounding

Minimum bonus bid calculations, including rounding, for all blocks are shown in the document ''List of Blocks Available for Leasing'' that is included in the Final NOS package. The bonus bid amount must be stated in whole dollars. If the acreage of a block contains a decimal figure, then prior to calculating the minimum bonus bid, BOEM will round up to the next whole acre. The appropriate minimum rate per acre will be applied to the whole (rounded up) acreage. The bonus bid amount must be greater than or equal to the minimum bonus bid, as calculated and stated in the Final NOS package.

IX. Forms

The Final NOS package includes instructions, samples, and/or the preferred format for the items listed below. BOEM strongly encourages bidders to use the recommended formats. If bidders use another format, they are responsible for including all the information specified for each item in the Final NOS package.

(1) Bid Form
(2) Sample Completed Bid
(3) Sample Bid Envelope
(4) Sample Bid Mailing Envelope
(5) Telephone Numbers/Addresses of Bidders Form
(6) GDIS Form
(7) GDIS Envelope Form

X. The Lease Sale

Bid Opening and Reading

Sealed bids received in response to the Final NOS will be opened at the place, date, and hour specified under the **DATES** and **ADDRESSES** sections of the Final NOS. The venue will not be open to the public. Instead, the bid opening will be available for the public to view on BOEM's website at *www.boem.gov* via live streaming. The opening of the bids is for the sole purpose of publicly announcing and recording the bids received; no bids will be accepted or rejected at that time.

Bonus Bid Deposit for Apparent High Bids

Each bidder submitting an apparent high bid must submit a bonus bid deposit to ONRR equal to one-fifth of the bonus bid amount for each such bid. A copy of the notification of the high bidder's one-fifth bonus bid amount can be obtained on the BOEM website at *http://www.boem.gov/Sale-259/* under the heading ''Notification of EFT 1/5 Bonus Liability'' after 1:00 p.m. on the day of the sale. All payments must be electronically deposited into an interest-bearing account in the U.S. Treasury by 1:00 p.m. Eastern Time the day following the bid reading (no exceptions). Account information is provided in the ''Instructions for Making Electronic Funds Transfer Bonus Payments'' found on the BOEM website identified above.

Submitting payment to your financial institution as soon as possible on the day of bid reading, but no later than 7:00 p.m. Eastern Time on the day of bid reading, will help ensure that deposits have time to process through the U.S. Treasury and post to ONRR. ONRR cannot confirm payment until the monies have been moved into settlement status by the U.S. Treasury.

BOEM requires bidders to use EFT procedures for payment of one-fifth bonus bid deposits for GOM Lease Sale 259, following the detailed instructions contained on the ONRR Payment Information web page at *https://www.onrr.gov/ReportPay/payments.htm.* Acceptance of a deposit does not constitute, and will not be construed as, acceptance of any bid on behalf of the United States.

Withdrawal of Blocks

The United States reserves the right to withdraw any block from this lease sale prior to issuance of a written acceptance of a bid for the block.

Acceptance, Rejection, or Return of Bids

The United States reserves the right to reject any and all bids, regardless of the amount offered. Furthermore, no bid will be accepted, and no lease for any block will be awarded to any bidder, unless:

(1) The bidder has complied with all applicable regulations and requirements of the Final NOS, including those set forth in the documents contained in the Final NOS package;

(2) The bid is the highest valid bid; and

(3) The amount of the bid has been determined to be adequate by the authorized officer.

Any bid submitted that does not conform to the requirements of the Final NOS and Final NOS package, OCSLA, or other applicable statutes or regulations will be rejected and returned to the bidder. The U.S. Department of Justice and the Federal Trade Commission will review the results of the lease sale for any antitrust issues prior to the acceptance of bids and issuance of leases.

Bid Adequacy Review Procedures for GOM Lease Sale 259

To ensure that the U.S. Government receives fair market value for the conveyance of leases from this sale, BOEM will evaluate high bids in accordance with the bid adequacy procedures that are effective on the date of the sale. The bid adequacy procedures are available on BOEM's website at *http://www.boem.gov/Oil-and-Gas-Energy-Program/Leasing/Regional-Leasing/Gulf-of-Mexico-Region/Bid-Adequacy-Procedures.aspx.*

Lease Award

Leases issued as a result of GOM Lease Sale 259 are expressly limited to oil and gas exploration and development. As noted in section 19 of the lease form, all rights in the leased area not expressly granted to the Lessee by the Act, the regulations, or this lease are hereby reserved to the Lessor.

BOEM requires each bidder that is awarded a lease to complete the following:

(1) Execute all copies of the lease (Form BOEM–2005 [February 2017], as amended);

(2) Pay by EFT the balance of the bonus bid amount and the first year's rental for each lease issued in accordance with the requirements of 30 CFR 1218.155 and 556.520(a); and

(3) Satisfy the bonding requirements of 30 CFR part 556, subpart I, as amended. ONRR requests that bidders use only one transaction for payment of the balance of the bonus bid amount and the first year's rental. Once ONRR receives such payment, the bidder awarded the lease may not request a refund of the balance of the bonus bid amount or first year's rental payment.

XI. Delay of Sale

The BOEM GOM RD has the discretion to change any date, time, and/or location specified in the Final NOS package in the case of an event that the BOEM GOM RD deems could interfere with a fair and orderly lease sale process. Such events could include, but are not limited to, natural disasters (*e.g.,* earthquakes, hurricanes, floods), wars, riots, acts of terrorism, fires, strikes, civil disorder, or other events of a similar nature. In case of such events, bidders should call (504) 736–0557, or access the BOEM website at *http://www.boem.gov,* for information regarding any changes.

Elizabeth Klein,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2023–03973 Filed 2–24–23; 8:45 am]

BILLING CODE 4340–98–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2023–0022]

Gulf of Mexico, Outer Continental Shelf, Oil and Gas Lease Sale 259

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of availability of a Record of Decision.

SUMMARY: BOEM announces the availability of the Record of Decision (ROD) for Gulf of Mexico (GOM) Outer Continental Shelf (OCS) Oil and Gas Lease Sale 259 (GOM Lease Sale 259). This ROD identifies the selected alternative for GOM Lease Sale 259, which is analyzed in the *Gulf of Mexico OCS Lease Sales 259 and 261: Final Supplemental Environmental Impact Statement* (GOM Lease Sales 259 and 261 Supplemental EIS).

ADDRESSES: The ROD and associated information are available on BOEM's website at *https://www.boem.gov/GoM-Sales-259-and-261-SEIS.*

FOR FURTHER INFORMATION CONTACT: Ms. Helen Rucker, Chief, Environmental Assessment Section, Office of Environment, by telephone at 504–736–2421, or by email at *helen.rucker@boem.gov.*

SUPPLEMENTARY INFORMATION: BOEM is required to hold GOM Lease Sale 259 on or before March 31, 2023, pursuant to the Inflation Reduction Act of 2022 (IRA, Pub. L. 117–169), signed into law on August 16, 2022. While Section 50264(d) of the IRA requires BOEM to hold GOM Lease Sale 259, the IRA does not disturb the bulk of BOEM's normal leasing process, including the resolution of particular questions regarding the scope of the lease sale and the terms of the resulting leases. GOM Lease Sale 259 will provide qualified bidders the opportunity to bid on unleased blocks in the Gulf of Mexico OCS in order to explore for, develop, and produce oil and natural gas. BOEM evaluated five alternatives in the GOM Lease Sales 259 and 261 Supplemental EIS. While BOEM has no discretion in whether to hold GOM Lease Sale 259, BOEM issued the GOM Lease Sales 259 and 261 Supplemental EIS in accordance with its normal leasing process to the fullest extent practicable, and to inform the decisionmaker on impacts from a representative lease sale, mitigations, and other action alternatives.

After careful consideration, the Department of the Interior (DOI) has selected a subset of the blocks analyzed as Alternative D in the GOM Lease Sales 259 and 261 Supplemental EIS. That is, to hold oil and gas Lease Sale 259 as a GOM lease sale, with the exclusion of whole and partial blocks that were otherwise proposed to be subject to the Topographic Features Stipulation, the Live Bottom (Pinnacle Trend) Stipulation, and the Blocks South of Baldwin County, Alabama, Stipulation. Additional blocks have also been excluded to help reduce identified space-use conflicts or competing interests in the Gulf of Mexico while BOEM studies whether these areas are compatible for use by more than one infrastructure type.

Therefore, as selected by DOI, Lease Sale 259 is a GOM regionwide lease sale encompassing all three planning areas, *i.e.,* the Western Planning Area, Central Planning Area, and a small portion of

the Eastern Planning Area, with the following exclusions: (1) whole and portions of blocks withdrawn from leasing by Presidential withdrawal in the September 8, 2020, *Memorandum on the Withdrawal of Certain Areas of the United States Outer Continental Shelf from Leasing Disposition;* (2) blocks that are adjacent to or beyond the United States Exclusive Economic Zone in the area known as the northern portion of the Eastern Gap; (3) whole and partial blocks within the boundary of the Flower Garden Banks National Marine Sanctuary as of the July 14, 2008, *Memorandum on Modification of the Withdrawal of Areas of the United States Outer Continental Shelf from Leasing Disposition;* (4) whole and partial blocks that would otherwise have been subject to the Topographic Features Stipulation; (5) whole and partial blocks that would otherwise have been subject to the Live Bottom (Pinnacle Trend) Stipulation; (6) whole and partial blocks that otherwise would have been subject to the Blocks South of Baldwin County, Alabama, Stipulation; (7) draft and final identified Wind Energy Areas; (8) designated Significant Sediment Resource Area blocks; and (9) Depth-restricted, segregated block portions (Block 299, Main Pass Area, South and East Addition). The excluded blocks are identified by their block number in the Final Notice of Sale for Lease Sale 259. The lease sale area encompasses approximately 13,600 OCS blocks covering approximately 73.3 million acres. The unleased OCS blocks that BOEM will offer for lease are listed in the document entitled ''Lease Sale Area,'' which is included in the Final Notice of Sale package for GOM Lease Sale 259.

As part of the decision to hold GOM Lease Sale 259, all practicable means to avoid or minimize environmental harm at the lease sale stage are being adopted. In addition, post-lease activities (*e.g.,* exploration and development plans), which may be expected as a result of GOM Lease Sale 259, will undergo additional environmental review and may include additional project-specific mitigation measures applied as conditions of individual plan approvals. The various mitigation measures adopted for the lease sale, and those that may be applied during post-lease reviews, are summarized below.

Lease Stipulations—Because the OCS blocks that otherwise were proposed to be subject to the Topographic Features Stipulation; Live Bottom (Pinnacle Trend) Stipulation; and Blocks South of Baldwin County, Alabama, Stipulation have all been removed from leasing under the chosen alternative, these stipulations will not be applied to leases. Eight lease stipulations have been adopted as lease terms where applicable, and they will be enforceable as part of the leases issued. The GOM Lease Sale 259 and 261 Supplemental EIS describes these lease stipulations, which are included in the Final Notice of Sale Package. These lease stipulations include the following: Military Areas; Evacuation; Coordination; Protected Species; United Nations Convention on the Law of the Sea Royalty Payment; Agreement between the United States of America and the United Mexican States Concerning Transboundary Hydrocarbon Reservoirs in the Gulf of Mexico; Restrictions Due to Rights-of-Use and Easements for Floating Production Facilities; and Royalties on All Produced Gas.

Post-Lease Measures—Appendix B of the *Gulf of Mexico OCS Oil and Gas Lease Sales: 2017–2022; Gulf of Mexico Lease Sales 249, 250, 251, 252, 253, 254, 256, 257, 259, and 261—Final Multisale Environmental Impact Statement* provides a list and description of standard post-lease conditions of approval that BOEM or the Bureau of Safety and Environmental Enforcement may require as a result of their plan and permit review processes for the Gulf of Mexico OCS region.

The decision to hold GOM Lease Sale 259 meets the purpose of and need for the proposed action, as identified in the GOM Lease Sales 259 and 261 Supplemental EIS and provides for orderly resource development with protection of human, marine, and coastal environments while also ensuring that the public receives a fair market value for these resources and that free-market competition is maintained.

Authority: 42 U.S.C. 4321 *et seq.* (National Environmental Policy Act) and 40 CFR parts 1505 and 1506.

Elizabeth Klein,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2023–03972 Filed 2–24–23; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR83550000, 234R5065C6, RX.59389832.1009676]

Quarterly Status Report of Water Service, Repayment, and Other Water-Related Contract Actions

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of contract actions.

SUMMARY: Notice is hereby given of contractual actions that have been proposed to the Bureau of Reclamation (Reclamation) and are new, discontinued, or completed since the last publication of this notice. This notice is one of a variety of means used to inform the public about proposed contractual actions for capital recovery and management of project resources and facilities consistent with section 9(f) of the Reclamation Project Act of 1939. Additional announcements of individual contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Michelle Kelly, Reclamation Law Administration Division, Bureau of Reclamation, P.O. Box 25007, Denver, Colorado 80225–0007; *mkelly@usbr.gov;* telephone 303–445–2888.

SUPPLEMENTARY INFORMATION: Consistent with section 9(f) of the Reclamation Project Act of 1939, and the rules and regulations published in 52 FR 11954, April 13, 1987 (43 CFR 426.22), Reclamation will publish notice of proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act. Pursuant to the ''Final Revised Public Participation Procedures'' for water resource-related contract negotiations, published in 47 FR 7763, February 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation

regions. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary of the Interior, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.

3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act, as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his or her designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to, (i) the significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. At a minimum, the regional director will furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Definitions of Abbreviations Used in the Reports.

ARRA American Recovery and Reinvestment Act of 2009
BCP Boulder Canyon Project
Reclamation Bureau of Reclamation
CAP Central Arizona Project
CUP Central Utah Project
CVP Central Valley Project
CRSP Colorado River Storage Project
XM Extraordinary Maintenance
EXM Emergency Extraordinary Maintenance
FR Federal Register
IDD Irrigation and Drainage District
ID Irrigation District
M&I Municipal and Industrial
O&M Operation and Maintenance
OM&R Operation, Maintenance, and Replacement
P–SMBP Pick-Sloan Missouri Basin Program
RRA Reclamation Reform Act of 1982
SOD Safety of Dams
SRPA Small Reclamation Projects Act of 1956
USACE U.S. Army Corps of Engineers
WD Water District
WIIN Act Water Infrastructure Improvements for the Nation Act

Missouri Basin—Interior Region 5: Bureau of Reclamation, P.O. Box 36900, Federal Building, 2021 4th Avenue North, Billings, Montana 59101, telephone 406–247–7752.

1. Irrigation, M&I, and miscellaneous water users; Colorado, Kansas, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming: Water service contracts for the sale, conveyance, storage, and exchange of surplus project water and non-project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for a term of up to 1 year, or up to 1,000 acre-feet of water annually for a term of up to 40 years.

2. Water user entities responsible for payment of O&M costs for Reclamation projects in Colorado, Kansas, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming: Contracts for XM and replacement funded pursuant to title IX, subtitle G of Public Law 111–11.

3. Green Mountain Reservoir, Colorado-Big Thompson Project, Colorado: Water service contracts for irrigation and M&I; contracts for the sale of water from the marketable yield to water users within the Colorado River Basin of western Colorado.

4. Fryingpan-Arkansas Project, Colorado: Consideration of excess capacity contracting in the Fryingpan-Arkansas Project.

5. Colorado-Big Thompson Project, Colorado: Consideration of excess capacity contracting in the Colorado-Big Thompson Project.

6. Milk River Project, Montana: Proposed amendments to contracts to reflect current land ownership.

7. Title transfer agreements; Colorado, Kansas, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming: Potential title transfer agreements pursuant to the John D. Dingell, Jr. Conservation, Management, and Recreation Act of March 12, 2019 (Pub. L. 116–9).

8. Garrison Diversion Conservancy District; Garrison Diversion Unit, P–SMBP; North Dakota: Intent to modify long-term water service contract to add additional irrigated acres.

9. Garrison Diversion Conservancy District; Garrison Diversion Unit, P–SMBP; North Dakota: Consideration of contract amendments to provide up to an additional 145 cubic-feet-per-second of water for rural and M&I purposes.

10. Buford-Trenton ID; Buford-Trenton Project, P–SMBP; North Dakota: Consideration to amend long-term irrigation power repayment contract and project-use power contract to include additional acres.

11. Southeastern Colorado Water Conservancy District, Fryingpan-Arkansas Project, Colorado: Consideration of a repayment contract for the North Outlet Works—South Outlet Works Interconnect at Pueblo Reservoir.

12. Pitkin County and City of Aurora, Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado: Consideration of excess capacity contract at Ruedi Reservoir.

13. Fresno Dam, Milk River Project, Montana: Consideration of contract(s) for repayment of SOD costs.

14. Canyon Ferry Water Users Association; Canyon Ferry Unit, P–SMBP; Montana: Consideration of a new long-term contract for an irrigation water supply.

15. Lugert-Altus ID, W.C. Austin Project, Oklahoma: Consideration for amendment to contract No. Ilr-1375.

16. Tom Green County Water Control and Improvement District No. 1, San Angelo Project, Texas: Consideration of a potential contract(s) for use of excess capacity by individual landowner(s) for irrigation purposes.

17. Kansas Bostwick ID No. 2; Bostwick Division, P–SMBP; Kansas: Consideration of a contract for repayment of SOD costs.

18. Bostwick ID in Nebraska; Bostwick Division, P–SMBP; Nebraska: Consideration of a contract for repayment of SOD costs.

19. Glen Elder ID; Glen Elder Unit, P–SMBP; Kansas: Consideration of an amendment to change the amount of

annual water supply in contract No. 199E630032.

20. City of Casper; Kendrick Project, Wyoming: Consideration for renewal of long-term water service contract No. 2–07–70–W0534.

21. Greenfields ID, Sun River Project, Montana: Consideration of a lease of power privilege.

22. Water user entities responsible for payment of reimbursable costs for Reclamation projects in Colorado, Kansas, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming: Contracts to be executed pursuant to title IX of the Infrastructure Investment and Jobs Act of November 15, 2021 (Pub. L. 117–58), and/or contracts for XM pursuant to title IX, subtitle G of Omnibus Public Land Management Act of March 30, 2009 (Pub. L. 111–11). For more information, please see the Reclamation press release at *https://www.usbr.gov/newsroom/#/news-release/4205.*

23. Arkansas Valley Conduit, Fryingpan-Arkansas Project, Colorado: Consideration of a repayment contract for the Arkansas Valley Conduit.

24. 71 Ranch, L.P.; Canyon Ferry Unit, P–SMBP; Montana: Consideration of a new long-term contract for an irrigation water supply.

25. Board of Water Works of Pueblo; Fryingpan-Arkansas Project, Colorado: Consideration of an amendment to assign contract No. 039E6C0117 for transportation of water.

Completed contract action:

1. (9) Garrison Diversion Conservancy District; Garrison Diversion Unit, P–SMBP; North Dakota: Consideration for conversion of irrigation water service contract No. 129E620001 to a repayment contract. Contract executed on January 23, 2023.

Upper Colorado Basin—Interior Region 7: Bureau of Reclamation, 125 South State Street, Room 8100, Salt Lake City, Utah 84138–1102, telephone 801–524–3864.

1. Individual irrigators, M&I, and miscellaneous water users; Initial Units, CRSP; Utah, Wyoming, Colorado, and New Mexico: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. Contracts with various water user entities responsible for payment of O&M costs for Reclamation projects in Arizona, Colorado, New Mexico, Texas, Utah, and Wyoming: Contracts for extraordinary maintenance and replacement funded pursuant to title IX, subtitle G of Public Law 111–11 to be executed as project progresses.

3. Middle Rio Grande Project, New Mexico: Reclamation will continue annual leasing of water from various San Juan-Chama Project contractors in 2023 to stabilize flows in a critical reach of the Rio Grande to meet the needs of irrigators and preserve habitat for the silvery minnow. Reclamation leased approximately 7,308 acre-feet of water from San Juan-Chama Project contractors in 2022.

4. South Cache Water Users Association, Hyrum Project, Utah: Problems with the spillway at Hyrum Dam requires the construction of a new spillway under the SOD Act, as amended. A repayment contract is necessary to recover 15 percent of the construction costs in accordance with the SOD Act.

5. Pojoaque Valley ID, San Juan-Chama Project, New Mexico: An amendment to the repayment contract to reflect the changed allocations of the Aamodt Litigation Settlement Act (title VI of the Claims Resolution Act of 2010, Pub. L. 111–291, December 8, 2010, and article 7 of the Settlement Agreement dated April 19, 2012) is currently under review by the Pojoaque Valley ID board. The draft contract is currently under review with the Pojoaque Valley ID board.

6. State of Wyoming, Seedskadee Project; Wyoming. The Wyoming Water Development Commission is interested in purchasing an additional 219,000 acre-feet of M&I water from Fontenelle Reservoir. Reclamation and the State of Wyoming are pursuing entering into a Contributed Funds Act agreement which allows the State to advance funds to Reclamation associated with activities involved in contracting for remaining available M&I water as specified in section 4310 of Public Law 115–270.

7. Ute Indian Tribe of the Uinta and Ouray Reservation, CUP, Utah: The Ute Indian Tribe of the Uinta and Ouray Reservation has requested the use of excess capacity in the Strawberry Aqueduct and Collection System, as authorized in the CUP Completion Act legislation.

8. Ute Indian Tribe of the Uinta and Ouray Reservation; Flaming Gorge Unit, CRSP; Utah: As part of discussions on settlement of a potential compact, the Ute Indian Tribe of the Uinta and Ouray Reservation has indicated interest in storage of its potential water right in Flaming Gorge Reservoir.

9. State of Utah; Flaming Gorge Unit, CRSP; Utah: The State of Utah has requested contracts that will allow the full development and use of the CUP Ultimate Phase water right of 158,000 acre-feet of depletion, which was previously assigned to the State of Utah. A contract for 72,641 acre-feet was executed March 20, 2019. A contract for the remaining 86,249 acre-feet has been negotiated and is awaiting completion of NEPA activities.

10. Weber Basin Water Conservancy District, Weber Basin Project, Utah: The District has requested permission to install a low-flow hydro-electric generation plant at Causey Reservoir to take advantage of winter releases. This will likely be accomplished through a supplemental O&M contract.

11. Ute Mountain Ute Tribe, Animas-La Plata Project, Colorado: Ute Mountain Ute Tribe has requested a water delivery contract for 16,525 acre-feet of M&I water; contract terms to be consistent with the Colorado Ute Settlement Act Amendments of 2000 (title III of Pub. L. 106–554).

12. Navajo-Gallup Water Supply Project, New Mexico: Reclamation continues negotiations on an OM&R transfer contract with the Navajo Tribal Utility Authority pursuant to Public Law 111–11, section 10602(f) which transfers responsibilities to carry out the OM&R of transferred works of the Project; ensures the continuation of the intended benefits of the Project; distribution of water; and sets forth the allocation and payment of annual OM&R costs of the Project.

13. Animas-La Plata Project, Colorado-New Mexico: (a) Navajo Nation title transfer agreement for the Navajo Nation Municipal Pipeline for facilities and land outside the corporate boundaries of the City of Farmington, New Mexico; contract terms to be consistent with the Colorado Ute Settlement Act Amendments of 2000 (title III of Pub. L. 106–554) and the Northwestern New Mexico Rural Water Projects Act (title X of Pub. L. 111–11); (b) City of Farmington, New Mexico, title transfer agreement for the Navajo Nation Municipal Pipeline for facilities and land inside the corporate boundaries of the City of Farmington, New Mexico, contract terms to be consistent with the Colorado Ute Settlement Act Amendments of 2000 (title III of Pub. L. 106–554) and the Northwestern New Mexico Rural Water Projects Act (title X of Pub. L. 111–11); and (c) Operations agreement among the United States, Navajo Nation, and City of Farmington for the Navajo Nation Municipal Pipeline pursuant to Public Law 111–11, section 10605(b)(1) that sets forth any terms and conditions that secures an operations protocol for the M&I water supply.

14. City of Page, Arizona; Glen Canyon Unit, CRSP; Arizona: Request for a long-term contract for 975 acre-feet of water for municipal purposes.

15. Middle Rio Grande Water Conservancy District, Middle Rio Grande Project, New Mexico: Repayment contract for SOD work at El Vado Dam. This work is anticipated to begin in 2023 and involves repairs to the steel faceplate and spillways.

16. Title transfer agreements; Arizona, Colorado, New Mexico, Texas, Utah, and Wyoming: Potential title transfers agreements pursuant to the John D. Dingell, Jr. Conservation, Management, and Recreation Act of March 12, 2019 (Pub. L. 116–9).

17. Taos Pueblo, San Juan-Chama Project, New Mexico: Reclamation is in negotiations with the Taos Pueblo to lease up-to 2,200 acre-feet of the Pueblo's Project water to stabilize flows in a critical reach of the Rio Grande to meet the needs of the endangered silvery minnow. This contract is in accordance with approved basis of negotiation dated April 20, 2021. Reclamation will seek a 15-year contract term beginning in 2023 through 2037. The Taos Pueblo are currently reviewing the final contract.

18. Mancos Water Conservancy District, Mancos Project, Colorado: Amendment (No. 2) to repayment contract No. 10–WC–40–394 to incorporate the provisions provided in Public Law 116–260, to review and approve costs associated with the completion of the rehabilitation project and credit the District for all amounts paid by the District for engineering work and improvements directly associated with the rehabilitation project, whether before, on, or after the date of enactment of Public Law 116–260.

19. Uncompahgre Water Users Association and Gunnison County Electric Association (together, Taylor River Hydro, LLC), Uncompahgre Project, Colorado: Lease of power privilege contract for development of hydropower at Taylor Park Dam. This contract will provide the terms and conditions for leasing the Federal premises for leasing the Federal premises for third-party hydropower development.

20. Weber River Water Users Association, Weber River, Utah: The Association is pursuing a conversion contract under the Miscellaneous Purposes Act of 1920 to convert all or part of its water from irrigation to miscellaneous purposes.

21. Uintah Water Conservancy District; Jensen Unit, CUP; Utah: The District has requested to initiate the process to construct the Burns Bench Pumping Plant, as part of the CUP—Jensen Unit. This action will require various contracts and agreements which include a Contributed Funds Act agreement for the District to provide funding to Reclamation and an implementation agreement for construction and O&M of the Burns Bench Pumping Plant.

22. Moon Lake Water Users Association, Moon Lake Project, Utah: The Association is interested in installing a small hydro-electric generation plant on the outlet works Moon Lake Dam. This will likely be accomplished through a supplemental O&M agreement.

23. Albuquerque Bernalillo County Water Utility Authority, San Juan-Chama Project, New Mexico: The Albuquerque Bernalillo County Water Utility Authority and Reclamation have entered negotiations for a contract to lease 10,000 acre-feet of storage space in Abiquiu Reservoir to store San Juan-Chama Project water. This will be a 15-year contract beginning 2023 through 2037.

24. Eden Valley IDD, Eden Project, Wyoming: The Eden Valley IDD proposes to raise the level of Big Sandy Dam to fully perfect its water rights. An agreement will be necessary to obtain the authorization to modify Federal facilities.

25. Pueblo of Ohkay Owingeh, San Juan-Chama Project, New Mexico: Lease for 2,000 acre-feet of the Pueblo's San Juan-Chama Project water to stabilize flows in a critical reach of the Rio Grande to meet the needs of the endangered silvery minnow. This contract will be for a term of 15 years.

26. Albuquerque Bernalillo County Water Utility Authority, San Juan-Chama Project, New Mexico: Contract for Reclamation to lease 5,000 acre-feet of the Authority's San Juan-Chama Project water to stabilize flows in the critical reaches of the Rio Grande to meet the needs of the endangered silvery minnow. This contract will be for a term of 3 years.

27. Grand Valley Water Users Association and Orchard Mesa ID, Grand Valley Project, Colorado: Lease of Power Privilege contract for development of hydropower on the Power Canal (Vinelands Power Plant) near the existing Grand Valley Power Plant which has been decommissioned. This contract provides the terms and conditions for leasing the Federal premises for 3rd party hydropower development.

28. Public Service Company of New Mexico, Navajo-Gallup Water Supply Project, New Mexico: Reclamation continues negotiations for a carriage contract with Public Service Company of New Mexico pursuant to Public Law 111–11, section 10602(h) which provides conveyance and storage of non-project water through Project facilities and sets forth payment of OM&R costs assignable to the Company for the use of Project facilities.

29. Enchant Energy Corporation, Navajo-Gallup Water Supply Project, New Mexico (Project): Reclamation continues negotiations for a carriage contract with Enchant Energy Corporation pursuant to Public Law 111–11, section 10602(h) which provides conveyance and storage of non-project water through Project facilities and sets forth payment of OM&R costs assignable to Enchant Energy for the use of Project facilities.

30. Albuquerque Bernalillo County Water Utility Authority, San Juan-Chama Project, New Mexico: Reclamation has held technical meetings with the Water Authority regarding retention of prior and paramount water in Abiquiu Reservoir on behalf of the six Middle Rio Grande Pueblos. El Vado Reservoir, which normally retains the Pueblo's prior and paramount water, is under construction and will likely not be ready to store water again until 2024.

31. Jicarilla Apache Nation, Navajo Project, New Mexico: Water service agreement between the Jicarilla Apache Nation and SIMCOE for delivery of 1,500 acre-feet of M&I water from the Jicarilla's Settlement Water from the Navajo Reservoir Supply. This agreement will have a term through December 31, 2026.

32. San Juan Water Commission, Public Service Company of New Mexico, and the La Plata Conservancy District; Animas-La Plata Project; New Mexico: Contract for the delivery of 500 acre-feet of M&I water from the Navajo Reservoir supply as supplemented via exchange of Animas-La Plata Project water at the confluence of the San Juan and Animas Rivers. This agreement will have a term through December 31, 2032.

33. Grand Valley Water Users Association, Grand Valley Project, Colorado: Development of an XM contract pursuant to title IX, subtitle G of Public Law 111–11, to provide funds to the Association for the XM required for the Project.

34. Orchard City ID, Fruitgrowers Project, Colorado: Development of a Contributed Funds Agreement for work at Fruitgrowers Reservoir.

35. The Wyoming Water Development Commission; Seedskadee Project, Wyoming: The Commission has requested to acquire additional water in Fontenelle Reservoir. Reclamation is

engaging in technical meetings with the Commission to explore the potential terms of a repayment contract, including the quantity of water available.

36. Water user entities responsible for payment of reimbursable costs for Reclamation projects in Colorado and Utah: Contracts to be executed pursuant to title IX of the Infrastructure Investment and Jobs Act of November 15, 2021 (Pub. L. 117–58), and/or contracts for XM pursuant to title IX, subtitle G of Omnibus Public Land Management Act of March 30, 2009 (Pub. L. 111–11). For more information, please see the Reclamation press release at *https://www.usbr.gov/newsroom/#/news-release/4205.*

37. Strawberry Valley Water Users Association, Strawberry Valley Project, Utah: The Association is pursuing a conversion contract under the Miscellaneous Purposes Act of 1920 to convert all or part of its water from irrigation to miscellaneous purposes.

Completed contract action:

1. (36) San Juan Water Commission and LOGOS Resources II, LLC; Animas-La Plata Project; New Mexico: Contract for the delivery of 1,500 acre-feet of M&I water from the Navajo Reservoir supply as supplemented via exchange of Animas-La Plata Project water at the confluence of the San Juan and Animas Rivers. This agreement will have a term through December 31, 2031. Contract executed on September 21, 2022.

Lower Colorado Basin—Interior Region 8: Bureau of Reclamation, P.O. Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006–1470, telephone 702–293–8192.

1. Milton and Jean Phillips, BCP, Arizona: Develop a Colorado River water delivery contract for 60 acre-feet of Colorado River water per year as recommended by the Arizona Department of Water Resources.

2. Ogram Boys Enterprises, Inc., BCP, Arizona: Revise Exhibit A of the contract to change the contract service area and points of diversion/delivery.

3. Gold Dome Mining Corporation and Wellton-Mohawk IDD, Gila Project, Arizona: Terminate contract No. 0–07–30–W0250 pursuant to articles 11(d) and 11(e).

4. Estates of Anna R. Roy and Edward P. Roy, Gila Project, Arizona: Terminate contract No. 6–07–30–W0124 pursuant to Article 9(c).

5. ChaCha, LLC, Arizona, BCP: Assignment of the water delivery contract for transfer of ownership of the land within ChaCha LLC's contract service area.

6. Desert Lawn Memorial Park Associates, Inc., and SAIA Family LP, BCP, Arizona: Review and approve a proposed partial assignment of contract No. 14–06–300–2587 as recommended by the Arizona Department of Water Resources and transfer of Arizona fourth priority Colorado River water in the amount of 315 acre-feet per year from 360 acre-feet per year on 70 acres of land acquired from Desert Lawn Memorial Park Associates, Inc.

7. Armon Curtis, BCP, Arizona: Amendment and partial assignment of the water delivery contract for transfer of ownership of the Armon Curtis Deeded land and exclude lands owned by the United States.

8. Gary and Barbara Pasquinelli and Pasquinelli, Gary J Trust/90, BCP, Arizona: Amendment and assignment of the water delivery contract for transfer of ownership to Pasquinelli, Gary J Trust/90.

9. Present Perfected Right 30 (Stephenson), BCP, California: Offer contracts for delivery of Colorado River water to holders of miscellaneous present perfected rights as described in the 2006 Consolidated Decree in *Arizona* v. *California,* 547 U.S. 150.

10. Wilbur G. and Carrol D. Schroeder, BCP, California: Terminate contract No. 6–07–30–W0137 for delivery of Colorado River water under Present Perfected Right No. 38 as described in the 2006 Consolidated Decree in *Arizona* v. *California,* 547 U.S. 150.

11. Sunmor Properties, Inc., BCP, California: Terminate contract No. 6–07–30–W0139 for delivery of Colorado River water under Present Perfected Right No. 38 as described in the 2006 Consolidated Decree in *Arizona* v. *California,* 547 U.S. 150.

12. Ronnie and Linda Herndon, BCP, California: Terminate contract No. 6–07–30–W0138 for delivery of Colorado River water under Present Perfected Right No. 38 as described in the 2006 Consolidated Decree in *Arizona* v. *California,* 547 U.S. 150.

13. Jack D. Brown, BCP, California: Terminate contract No. 7–07–30–W0149 for delivery of Colorado River water under Present Perfected Right No. 38 as described in the 2006 Consolidated Decree in *Arizona* v. *California,* 547 U.S. 150.

14. Palms River Resort, Inc., BCP, California: Offer a contract to the current landowner for delivery of Colorado River water under Present Perfected Right No. 38 as described in the 2006 Consolidated Decree in *Arizona* v. *California,* 547 U.S. 150.

15. City of Needles, BCP, California: Approve a new point of diversion under contract No. 05–XX–30–W0445, as amended, dated March 16, 2007, and contract No. 2–07–30–W0280, as amended, dated July 3, 2002, and revise the necessary exhibits of the above-referenced contracts to add an additional point of diversion.

16. GSC Farm, LLC, and the Town of Queen Creek, Arizona; BCP; Arizona: Enter into a proposed partial assignment and transfer of Arizona fourth-priority Colorado River water in the amount of 2,033.01 acre-feet per year from GSC to Queen Creek, amend GSC's Colorado River water delivery contract No. 13–XX–30–W0571 to decrease their Colorado River water entitlement from 2,913.3 to 69.93 acre-feet per year, enter into Colorado River water delivery contract No. 20–XX–30–W0689 with Queen Creek for 2,033.01 acre-feet per year of Arizona fourth-priority Colorado River water entitlement, and enter into a wheeling agreement between the United States and Queen Creek for the wheeling of non-project water to be transported through the CAP for the use or benefit of Queen Creek.

17. Mohave Water Conservation District and the City of Bullhead City, Arizona; BCP; Arizona: Enter into a proposed contract No. 9–07–30–W0012, assignment of Arizona fourth-priority Colorado River water entitlement in the amount of 1,800 acre-feet per year from the District to Bullhead City and amend Bullhead City's Colorado River water delivery contract No. 2–07–30–W0273 to increase their Colorado River water entitlement from 15,210 to 17,010 acre-feet per year and increase the Bullhead City contract service area to include the District's land that previously received Colorado River water pursuant to contract No. 9–07–30–W0012.

18. Gila Monster Farms Partnership, LLC; BCP; Arizona: Proposed partial assignment of contract No. 6–07–30–W0337 providing for the transfer of ownership of 480 acres within the contract service area to Tama Land Pacific, LLC, and transfer of associated Colorado River water in the appropriate quantity and priority associated with the land purchased. Amend Gila Monster Farms Partnership, LLC Colorado River water delivery contract No. 6–07–30–W0337 to decrease its Colorado River water entitlement commensurate with the partial assignment.

19. Western Water, LLC and Cibola Valley IDD, BCP, Arizona: Approve an amendment of Western's contract service area under their contract No. 16–XX–30–W0619, as amended (Western Contract), to include the previously excluded parcels of land; namely, the eastern halves of Assessor Parcel Nos. 301–08–003C and 301–08–003D. The inclusion of these lands within the Western Contract service area will make

these lands eligible to receive Arizona fourth-priority Colorado River water from Western. Western has an Arizona fourth-priority Colorado River water entitlement under the Western Contract for an annual diversion of 536.48 acre-feet of Colorado River water for irrigation use within the Western Contract service area. Additionally, Reclamation will amend the District's contract service area under their contract to exclude Western lands. The exclusion of the Western lands from the District's contract service area will make the Western lands ineligible to receive Arizona fourth-, fifth-, and/or sixth-priority water from the District. The District's boundary will remain the same.

20. Gold Standard Mines Corp., BCP, Arizona: Termination of contract No. 3–07–30–W0038 for delivery of Colorado River water for use in Arizona.

21. Milton and Jean Phillips, BCP, Arizona: Develop a Colorado River water delivery contract for 42 acre-feet of Colorado River water per year, in accordance with Present Perfected Right No. 19 as described in the 2006 Consolidated Decree in *Arizona* v. *California,* 547 U.S. 150.

22. Water user entities responsible for payment of reimbursable costs for Reclamation projects in Arizona and California: Contracts to be executed pursuant to title IX of the Infrastructure Investment and Jobs Act of November 15, 2021 (Pub. L. 117–58), and/or contracts for XM pursuant to title IX, subtitle G of Omnibus Public Land Management Act of March 30, 2009 (Pub. L. 111–11). For more information, please see the Reclamation press release at *https://www.usbr.gov/newsroom/#/news-release/4205.*

Completed contract actions:

1. (16) San Carlos Apache Tribe and the Town of Gilbert, CAP, Arizona: Execute a CAP water lease for the San Carlos Apache Tribe to lease 10,267 acre-feet of its CAP water to the Town of Gilbert during calendar year 2022 (Amendment No. 11). Contract executed on July 13, 2022.

2. (17) San Carlos Apache Tribe and Pascua Yaqui Tribe, CAP, Arizona: Execute a CAP water lease for the San Carlos Apache Tribe to lease 1,730 acre-feet of its CAP water to the Pascua Yaqui Tribe during calendar year 2022. Contract executed on July 13, 2022.

3. (18) San Carlos Apache Tribe and Freeport Minerals Corporation, CAP, Arizona: Execute a CAP water lease for the San Carlos Apache Tribe to lease 12,990 acre-feet of its CAP water to Freeport Minerals Corporation during calendar year 2022. Contract executed on July 13, 2022.

Columbia-Pacific Northwest—Interior Region 9: Bureau of Reclamation, 1150 North Curtis Road, Suite 100, Boise, Idaho 83706–1234, telephone 208–378–5344.

1. Irrigation, M&I, and Miscellaneous Water Users; Idaho, Oregon, Washington, Montana, and Wyoming: Temporary or interim irrigation and M&I water service, water storage, water right settlement, exchange, miscellaneous use, or water replacement contracts to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. Rogue River Basin Water Users, Rogue River Basin Project, Oregon: Water service contracts; $8 per acre-foot per annum.

3. Willamette Basin Water Users, Willamette Basin Project, Oregon: Water service contracts; $8 per acre-foot per annum.

4. Pioneer Ditch Company, Boise Project, Idaho; Clark and Edwards Canal and Irrigation Company, Enterprise Canal Company, Ltd., Lenroot Canal Company, Liberty Park Canal Company, Poplar ID, all in the Minidoka Project, Idaho; Juniper Flat District Improvement Company, Wapinitia Project, Oregon; and Whitestone Reclamation District, Chief Joseph Dam Project, Washington: Amendatory repayment and water service contracts; purpose is to conform to the RRA.

5. Conagra Foods Lamb Weston, Inc., Columbia Basin Project, Washington: Miscellaneous purposes water service contract providing for the delivery of up to 1,500 acre-feet of water from the Scooteney Wasteway for effluent management.

6. Burley and Minidoka IDs, Minidoka Project, Idaho: Supplemental and amendatory contracts to transfer the O&M of the Main South Side Canal Headworks to Burley ID and transfer the O&M of the Main North Side Canal Headworks to Minidoka ID.

7. Clean Water Services and Tualatin Valley ID, Tualatin Project, Oregon: Long-term water service contract that provides for the District to allow Clean Water Services to beneficially use up to 6,000 acre-feet annually of stored water for water quality improvement.

8. Stanfield ID, Umatilla Basin Project, Oregon: A short-term water service contract to provide for the use of conjunctive use water, if needed, for the purposes of pre-saturation and for such use in October to extend their irrigation season.

9. Falls ID, Michaud Flats Project, Idaho: Amendment to contract No. 14–06–100–851 to authorize the District to participate in State water rental pool.

10. Roza ID, Yakima Project, Washington: Contract for use of water in dead space of Kachess Reservoir and construction of a pumping plant.

11. Windy River LLC, Umatilla Project, Oregon: Contract pursuant to the Warren Act for use of project facilities.

12. Water user entities responsible for repayment of reimbursable project construction costs in Idaho, Washington, Oregon, Montana, and Wyoming: Contracts for conversion or prepayment executed pursuant to the WIIN Act.

13. Title transfer agreements; Idaho, Washington, Oregon, Montana, and Wyoming: Potential title transfers agreements pursuant to the John D. Dingell, Jr. Conservation, Management, and Recreation Act of March 12, 2019 (Pub. L. 116–9).

14. Irrigation water districts; Idaho, Washington, Oregon, Montana, and Wyoming: Temporary Warren Act contracts for terms of up to 5 years providing for use of excess capacity in Reclamation facilities for annual quantities exceeding 10,000 acre-feet.

15. Idaho, Washington, Oregon, Montana, and Wyoming: Aquifer Recharge Flexibility Act (Pub. L. 116–260) contracts that allow the use of excess capacity in Reclamation facilities for aquifer recharge of non-Reclamation project water.

16. Storage Division, Yakima Project, Washington: Contracts with 23 water user entities for the repayment of reimbursable shares of the costs of the SOD program modification for Kachess Dam.

17. Water user entities responsible for payment of reimbursable costs for Reclamation projects in Idaho, Washington, and parts of Montana, Oregon, and Wyoming: Contracts to be executed pursuant to title IX of the Infrastructure Investment and Jobs Act of November 15, 2021 (Pub. L. 117–58), and/or contracts for XM pursuant to title IX, subtitle G of Omnibus Public Land Management Act of March 30, 2009 (Pub. L. 111–11). For more information, please see the Reclamation press release at *https://www.usbr.gov/newsroom/#/news-release/4205*.

18. J.R. Simplot Company and Micron Technology, Inc.; Boise Project, Arrowrock Division; Idaho: Request to renew M&I water service contract pursuant to section 9(c)(2) of the Reclamation Project Act of 1939.

Completed contract actions:

1. (6) Three irrigation water user entities, Rogue River Basin Project, Oregon: Long-term contracts for

exchange of water service with three entities for the provision of up to 292 acre-feet of stored water from Applegate Reservoir (a USACE project) for irrigation use in exchange for the transfer of out-of-stream water rights from the Little Applegate River to instream flow rights with the State of Oregon for instream flow use. Two contract actions completed in 2013. The third offered contract was not signed, and no further activity is expected.

2. (20) Idaho Board of Water Resources, Boise Project, Idaho: Reclamation intends to negotiate an agreement with the Idaho Board of Water Resources to cost share construction of the raise of Anderson Ranch Dam, under the WIIN Act. Contract executed on November 19, 2021.

California-Great Basin—Interior Region 10: Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone 916–978–5250.

1. Irrigation water districts, individual irrigators, M&I and miscellaneous water users; California, Nevada, and Oregon: Short-term (up to 5 years)—Water service contracts for available project water for irrigation, M&I, or fish and wildlife purposes providing up to 10,000 acre-feet of water annually; Warren Act contracts for use of excess capacity in project facilities for quantities that could exceed 10,000 acre-feet annually; and contracts for similar service for up to 1,000 acre-feet annually.

2. State of California, Department of Water Resources, CVP, California: Temporary or short-term conveyance agreements for various purposes.

3. Sutter Extension WD, Delano-Earlimart ID, Pixley ID, the State of California Department of Water Resources, and the State of California Department of Fish and Wildlife; CVP; California: Pursuant to Public Law 102–575, agreements with non-Federal entities for the purpose of providing funding for Central Valley Project Improvement Act refuge water conveyance and/or facilities improvement construction to deliver water for certain Federal wildlife refuges, State wildlife areas, and private wetlands.

4. CVP Service Area, California: Temporary water acquisition agreements for purchase of 5,000 to 200,000 acre-feet of water for fish and wildlife purposes as authorized by Public Law 102–575 for terms of up to 5 years.

5. Horsefly, Klamath, Langell Valley, and Tulelake IDs; Klamath Project; Oregon: Repayment contracts for SOD work on Clear Lake Dam. These districts will share in repayment of costs, and each district will have a separate contract.

6. Irrigation water districts, individual irrigators, M&I, and miscellaneous water users; CVP; California: Execution of long-term Warren Act contracts (up to 40 years) with various entities for conveyance of non-project water in the CVP.

7. Tuolumne Utilities District (formerly Tuolumne Regional WD), CVP, California: Long-term water service contract for up to 6,000 acre-feet from New Melones Reservoir, and possibly a long-term contract for storage of non-project water in New Melones Reservoir.

8. Pershing County Water Conservation District, Pershing County, State of Nevada, and Lander County; Humboldt Project; Nevada: Title transfer of lands and features of the Humboldt Project.

9. San Luis WD, CVP, California: Proposed partial assignment of 4,449 acre-feet of the District's CVP supply to Santa Nella County WD for M&I use.

10. Irrigation contractors, Klamath Project, Oregon: Amendment of repayment contracts or negotiation of new contracts to allow for recovery of additional capital costs.

11. City of Santa Barbara, Cachuma Project, California: Execution of a long-term Warren Act contract with the City for conveyance of non-project water in Cachuma Project facilities.

12. Non-Federal Operating Entities and Contractors with O&M responsibilities for transferred works; California, Nevada, and Oregon: Contracts for XM and replacement funded pursuant to title IX, subtitle G of Public Law 111–11.

13. Cachuma Operation and Maintenance Board, Cachuma Project, California: Amendment to SOD contract No. 01–WC–20–2030 to provide for increased SOD costs associated with Bradbury Dam.

14. Westlands WD, CVP, California: Negotiation and execution of a long-term repayment contract to provide reimbursement of costs already incurred related to the prior construction of drainage facilities. This action is being undertaken in part to satisfy the Federal Government's obligation to provide drainage service to Westlands located within the San Luis Unit of the CVP.

15. San Luis WD, Meyers Farms Family Trust, and Reclamation; CVP; California: Revision of an existing contract among San Luis WD, Meyers Farms Family Trust, and Reclamation providing for an increase in the exchange of water from 6,316 to 10,526 acre-feet annually and an increase in the storage capacity of the bank to 60,000 acre-feet.

16. Contra Costa WD, CVP, California: Amendment to an existing O&M agreement to transfer O&M of the Contra Costa Rock Slough Fish Screen to the Contra Costa WD.

17. Irrigation water districts, individual irrigators, and M&I water users; CVP; California: Temporary water service contracts for terms not to exceed 1 year for up to 50,000 acre-feet of surplus supplies of CVP water resulting from an unusually large water supply, not otherwise storable for project purposes, or from infrequent and otherwise unmanaged flood flows of short duration.

18. Sacramento River Division, CVP, California: Administrative assignments of various Sacramento River Settlement Contracts.

19. PacifiCorp, Klamath Project, Oregon and California: Transfer of O&M of Link River Dam and associated facilities. Contract will allow for the continued O&M by PacifiCorp.

20. Tulelake ID, Klamath Project, Oregon and California: Transfer of O&M of Station 48 and gate on Drain No. 1, Lost River Diversion Channel.

21. U.S. Fish and Wildlife Service and Tulelake ID, Klamath Project, Oregon and California: Water service contract for deliveries to Lower Klamath National Wildlife Refuge, including transfer of O&M responsibilities for the P Canal system.

22. Tulelake ID, Klamath Project, Oregon and California: Amendment of repayment contract to eliminate reimbursement for P Canal O&M costs.

23. Placer County Water Agency and East Bay Municipal Utility District, CVP, California: Long-term Warren Act contracts for up to 47,000 acre-feet of water annually with the Agency for storage and conveyance in Folsom Reservoir and with the District for conveyance through Folsom South Canal.

24. Santa Barbara County Water Agency, Cachuma Project, California: Negotiation and execution of a long-term water service contract.

25. Cachuma Operations and Maintenance Board, Cachuma Project, California: Negotiation and execution of an O&M contract.

26. State of California, Department of Water Resources; CVP; California: Negotiation of a multi-year, long-term wheeling agreement with the State of California, Department of Water Resources providing for the conveyance and delivery of CVP water through the State of California's water project facilities to Byron-Bethany ID (Musco Family Olive Company), Del Puerto WD,

and the Department of Veterans Affairs, San Joaquin Valley National Cemetery.

27. Contra Costa WD, CVP, California: Title transfer of lands and features of the Contra Costa Canal System of the CVP.

28. Title transfer agreements; California, Nevada, and Oregon: Potential title transfers agreements pursuant to the John D. Dingell, Jr. Conservation, Management, and Recreation Act of March 12, 2019 (Pub. L. 116–9).

29. CVP, California: Operational agreements, exchange agreements, and contract amendments with non-Federal project entities as required for Federal participation in non-Federal storage projects pursuant to the WIIN Act.

30. Shasta County Water Agency, CVP, California: Proposed partial assignment of 400 acre-feet of the Shasta County Water Agency's CVP water supply to the Shasta Community Services District for M&I use.

31. Sacramento River Settlement Contractors, CVP, California: Temporary agreements for the purchase of conserved water for fish and wildlife purposes.

32. Solano County Water Agency, Solano Project, California: Renewal of water service and OM&R contracts.

33. Water user entities responsible for payment of reimbursable costs for Reclamation projects in California, Nevada, and Oregon: Contracts to be executed pursuant to title IX of the Infrastructure Investment and Jobs Act of November 15, 2021 (Pub. L. 117–58), and/or contracts for XM pursuant to title IX, subtitle G of Omnibus Public Land Management Act of March 30, 2009 (Pub. L. 111–11). For more information, please see the Reclamation press release at *https://www.usbr.gov/newsroom/#/news-release/4205.*

34. San Luis Canal Company, Central California ID, Firebaugh Canal WD, Columbia Canal Company (collectively San Joaquin River Exchange Contractors); CVP; California: Amend 1968 second amended contract for exchange of water.

35. Napa County Flood Control and Water Conservation District, Solano Project, California: Renewal of long-term water service contract for up to 1,500 acre-feet from Lake Berryessa.

36. San Juan WD, CVP, California: Long-term Warren Act contract for up to 25,000 acre-feet annually for conveyance through Folsom Reservoir and associated facilities.

37. California Department of Water Resources, CVP, California: Contributed Funds Agreement for SOD costs related to the B.F. Sisk SOD project.

Christopher Beardsley,

Director, Policy and Programs.

[FR Doc. 2023–03963 Filed 2–24–23; 8:45 am]

BILLING CODE 4332–90–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–679 and 731–TA–1585 (Final)]

Sodium Nitrite From India

Determination

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that an industry in the United States is materially injured by reason of imports of sodium nitrite from India, provided for in subheading 2834.10.10 of the Harmonized Tariff Schedule of the United States, that have been found by the U.S. Department of Commerce (''Commerce'') to be sold in the United States at less than fair value (''LTFV''), and to be subsidized by the government of India.[2]

Background

The Commission instituted these investigations effective January 13, 2022, following receipt of petitions filed with the Commission and Commerce by Chemtrade Chemicals US LLC, Parsippany, New Jersey. The Commission established a general schedule for the conduct of the final phase of its investigations of sodium nitrite from India and Russia following publication of a preliminary determination by Commerce that imports of sodium nitrite were subsidized by the government of Russia. Notice of the scheduling of the final phase of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 20, 2022 (87 FR 23567). In light of the restrictions on access to the Commission building due to the COVID–19 pandemic, the Commission conducted its hearing through written testimony and video conference on Tuesday, June 21, 2022. All persons who requested the opportunity were permitted to participate.

The investigation schedules became staggered when Commerce did not align its countervailing duty investigation on Russia with either of the corresponding antidumping duty investigations, did not postpone the final determination of its antidumping duty investigation on Russia, and aligned its countervailing duty investigation on sodium nitrite from India with its antidumping duty investigation regarding India. On August 15, 2022, the Commission issued a final affirmative determination in its countervailing duty investigation of sodium nitrite from Russia (87 FR 51141, August 19, 2022). On October 28, 2022, the Commission issued a final affirmative determination in its antidumping duty investigation of sodium nitrite from Russia (87 FR 66323, November 3, 2022). Following publication of final determinations by Commerce that imports of sodium nitrite from India were being sold at LTFV within the meaning of section 735(a) of the Act (19 U.S.C. 1673d(a)), and subsidized within the meaning of section 705(a) of the Act (19 U.S.C. 1671d(a)), notice of the supplemental scheduling of the final phase of the Commission's antidumping and countervailing duty investigations of sodium nitrite from India was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of January 19, 2023 (88 FR 3438).

The Commission made these determinations pursuant to §§ 705(b) and 735(b) of the Act (19 U.S.C. 1671d(b) and 19 U.S.C. 1673d(b)). It completed and filed its determinations in these investigations on February 20, 2023. The views of the Commission are contained in USITC Publication 5408 (February 2023), entitled *Sodium Nitrite from India: Investigation Nos. 701–TA–679 and 731–TA–1585 (Final).*

By order of the Commission.

Issued: February 21, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–03917 Filed 2–24–23; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] 88 FR 1042 and 88 FR 1052 (January 6, 2023).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1353]

Certain Pick-Up Truck Folding Bed Cover Systems And Components Thereof (III) Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on January 19, 2023, under section 337 of the Tariff Act of 1930, as amended, on behalf of Extang Corporation of Ann Arbor, Michigan; Laurmark Enterprises, Inc. of Ann Arbor, Michigan; and UnderCover, Inc. of Rogersville, Missouri. Supplements were filed on January 23, 2023, and February 9, 2023. The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain pick-up truck folding bed cover systems and components thereof by reason of the infringement of certain claims of U.S. Patent No. 7,188,888 (''the '888 patent''); U.S. Patent No. 7,484,788 (''the '788 patent''); U.S. Patent No. 8,061,758 (''the '758 patent''); U.S. Patent No. 7,537,264 (''the '264 patent''); U.S. Patent No. 8,182,021 (''the '021 patent''); U.S. Patent No. 8,690,224 (''the '224 patent''); and U.S. Patent No. 9,815,358 (''the '358 patent''). The complaint further alleges that an industry in the United States exists as required by the applicable Federal Statute.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a general exclusion order, or in the alternative a limited exclusion order, and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2022).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on February 17, 2023, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claim 11 of the '888 patent; claims 1–3 of the '788 patent; claims 2–4 of the '758 patent; claims 1, 5–11, 13–15, and 25 of the '264 patent; claims 1–35 of the '021 patent; claims 1–10 of the '224 patent; and claims 1–3 of the '358 patent; and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''multi-panel folding cover systems that rest either on sides of pick-up truck beds or on rails placed on the insides of pick-up trucks beds, including components of such systems such as clamps and rails used to attached folding bed covers to pick-up truck beds'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Extang Corporation, 5400 S. State Road, Ann Arbor, Michigan 48108

Laurmark Enterprises, Inc., d/b/a BAK Industries, 5400 Data Court, Ann Arbor, Michigan 48108

UnderCover, Inc., 59 Absolute Drive, Rogersville, Missouri 65742

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

4 Wheel Parts, 400 W. Artesia Blvd., Compton, CA 90220

American Trucks, 17700 College Blvd., Lenexa, KS 66219

Auto Dynasty, a/k/a Shun Fung Int'l Inc., 803 S. Sentous Ave., Suite C, City of Industry, CA 91748

AUTOSTARLAND Technology (US), Inc., 1660 Iowa Ave., Unit 200, Riverside, CA 92507

DNA Motoring, 801 Sentous Ave., City of Industry, CA 91748

Fanciest Pickup Accessories, 1660 Iowa Ave., Unit 200, Riverside, CA 92507

Future Trucks, a/k/a Future Trading Company, LLC, 4510 W 34th Street, Houston, TX 77092

Ikon Motorsports, Inc., 15305 Stafford St., City of Industry, CA 91744

Jiaxing Kscar Auto Accessories Co., Ltd., a/k/a KSC Auto, Floor 3, Bldg 7, 285 Duguang Hwy., Dushangang Town, Pinghu City, Zhejiang, China, 314207

Kiko Kikito, Room 312 Building 2, Wuyue Plaza, Anyang Street, Ruian City, Wenzhou, Zhejiang, 325200, China

Lyon Cover Auto, a/k/a Truck Tonneau Covers, F09–14 Wan Yan Zhong Chuang Cheng, 9 Yangyu Road, Pingyang County, Binhai New, District, Wenzhou City, Zhejiang Province, 325400, China

Mamoru Cover, a/k/a Ningbo Surpass Auto Parts Co., Ltd., NO.65 Chongshou Ave., Chongshou Industry Zone, Cixi, Ningbo City, Zhejiang, 315334 China

MOSTPLUS Auto, Room 2105 WZ2389 Rend Centre, 29–31 Cheung Lee Street, Chai Wan, Hong Kong, 32500, China

Newpowa America, Inc., 3633 Inland Empire Blvd., Suite 600, Ontario, CA 91764

New Home Materials, Inc., 1815 Rustin Avenue, Suite H, Riverside, CA 92507

OEDRO, 18220 80th Place South, Kent, WA 98032

Pickup Zone, a/k/a Dai Qun Feng, 1660 Iowa Ave., Unit 200, Riverside, CA 92507

RDJ Trucks, LLC, 2005 Mountain Creek Church Road, Talmo, GA 30575

Smittybilt, Inc., 400 W. Artesia Blvd., Compton, CA 90220

Trek Power, Inc., 1683 Sierra Madre Circle, Placentia, CA 92870

Wenzhou Tianmao Automobile Parts Co., Ltd., No. 14 Wanyang Zhongchuang, No. 9 Yangyu Road, Binhai New Area, Wenzhou, Zhejiang, China, 325410

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge,

U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainants of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: February 21, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–03904 Filed 2–24–23; 8:45 am]

BILLING CODE 7020–02–P

OFFICE OF MANAGEMENT AND BUDGET

Discount Rates for Cost-Effectiveness Analysis of Federal Programs

AGENCY: Office of Management and Budget.

ACTION: Revisions to Appendix C of OMB Circular No. A–94.

SUMMARY: The Office of Management and Budget (OMB) revised Circular No. A–94 in 1992. With that action, OMB specified certain discount rates to be updated annually when the interest rate and inflation assumptions used to prepare the Budget of the United States Government were changed. These updated discount rates are found in Appendix C of the Circular and are to be used for cost-effectiveness analysis, including lease-purchase analysis, as specified in the revised Circular. These rates do not apply to regulatory analysis.

The revised Circular can be accessed at *https://www.whitehouse.gov/wp-content/uploads/2023/02/Appendix-C.pdf.*

DATES: The revised discount rates will be in effect through December 2023.

FOR FURTHER INFORMATION CONTACT: Jamie Taber, Office of Economic Policy, Office of Management and Budget, 202–395–2515, *a94@omb.eop.gov.*

Zachary Liscow,

Associate Director for Economic Policy, Office of Management and Budget.

[FR Doc. 2023–03920 Filed 2–24–23; 8:45 am]

BILLING CODE 3110–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 23–010]

New Conflict of Interest and Conflict of Commitment Policy for Recipients of NASA Financial Assistance Awards

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comment; extension of comment period.

SUMMARY: To address undue foreign influence in NASA-supported research and ensure responsible stewardship of taxpayer dollars, NASA has developed a new conflict of interest (COI) and conflict of commitment (COC) disclosure policy and an associated term and condition applicable to entities implementing NASA financial assistance awards that will be implemented in NASA's Grant and Cooperative Agreement Manual (GCAM). Therefore, the Agency is soliciting public comment on this new policy. This notice extends the public comment due date.

DATES: The comment period for the notice published January 30, 2023, at 88 FR 5930, is extended. Comments should be received on or before March 31, 2023.

ADDRESSES: Please address comments to Christopher Murguia, Senior Analyst, National Aeronautics and Space Administration Headquarters, 300 E Street SW, Rm. 5L32, Washington, DC 20546; telephone 202–909–5918; or email *christopher.e.murguia@nasa.gov*. We encourage respondents to submit comments via email to ensure timely receipt. We cannot guarantee that mailed comments will be received before the comment closing date. Please include ''COI/COC Policy'' in the subject line of email messages.

FOR FURTHER INFORMATION CONTACT: Christopher Murguia, email: *christopher.e.murguia@nasa.gov*; telephone 202–909–5918.

SUPPLEMENTARY INFORMATION: In response to U.S. Government Accountability Office (GAO) recommendations in the report GAO–21–130, *Federal Research: Agencies Need to Enhance Policies to Address Foreign Influence,* NASA is taking steps to address undue foreign influence in research and ensure responsible stewardship of taxpayer dollars. NASA is implementing new policy that requires financial assistance award recipients to (1) maintain written and enforced policies that require covered individuals to disclose COI and COC to the recipient entity; (2) eliminate or, where appropriate, manage or reduce the disclosed conflict; and (3) disclose to NASA any conflict that cannot be eliminated, managed, or reduced. NASA's policy also describes how the Agency will address disclosures and the enforcement actions the Agency may take if a covered individual knowingly fails to disclose required information. The policy is accompanied by a term and condition requiring award recipients to comply with the COI and COC disclosure requirements that will be placed into all NASA financial assistance awards after the policy is implemented.

Specifically, the policy will be implemented as a revision to the GCAM section 3.3, Conflicts of Interest Policy, and the term and condition will be implemented as an addition to NASA's standard grant and cooperative agreement terms and conditions template located in the GCAM, Appendix D, Award Terms and Conditions. The full text of the policy and term and condition is provided below and the GCAM can be accessed at *https://www.nasa.gov/sites/default/files/atoms/files/grant_and_cooperative_agreement_manual_-_oct._2022_0.pdf.*

The GCAM, section 3.3, Conflicts of Interest Policy, will be revised in its entirety as follows:

1. For the purposes of section 3.3, the following definitions apply:

a. The term ''conflict of interest,'' or ''COI,'' means a situation in which an individual, or the individual's spouse or dependent children, has a significant financial interest or financial relationship, whether with a domestic or foreign entity, that could directly and significantly affect the design, conduct, reporting, or funding of research or other award-related activities. Examples of potential COI include, but are not

limited to, holding an executive position, director position, or equity over a certain dollar amount in a company that stands to benefit from award-related activities, receiving financial compensation in the form of consulting payments or payment for services from a company that stands to benefit from award-related activities, or intellectual property rights or royalties from such rights whose value may be affected by the outcome of award-related activities.

b. The term ''conflict of commitment,'' or ''COC,'' means a non-financial conflict of interest in which an individual accepts or incurs conflicting obligations, whether domestic or foreign, between or among multiple employers or other entities. COC includes conflicting commitments of time and effort, including obligations to dedicate time in excess of institutional or funding agency policies or commitments. COC also includes obligations to improperly share information with, or to withhold information from, an employer or NASA, as well as other conflicting obligations that threaten research security and integrity. Examples of potential COC include, but are not limited to, current or pending employment; positions, appointments, or affiliations such as titled academic, professional, or institutional appointments, whether remuneration is received and whether full-time, part-time, or voluntary (including adjunct, visiting, or honorary positions); and participation in or applications to foreign government-sponsored talent recruitment or similar programs.

c. The term ''covered individual'' means an individual who (a) contributes in a substantive, meaningful way to the scientific development or execution of a project proposed to be carried out with an award from a Federal research agency and (b) is designated as a covered individual by the Federal research agency concerned. NASA designates as covered individuals any principal investigator (PI), project director (PD), co-principal investigator (Co-PI), co-project director (Co-PD), and/or any other person listed as a team member in Section VI, Team Members, of the Cover Page for Proposal Submitted to the National Aeronautics and Space Administration (form NRESS–300).

2. All NASA grant and cooperative agreement recipients shall maintain a written and enforced policy addressing actual, apparent, and potential COI and COC, both foreign and domestic. A prime or pass-through award recipient shall be responsible for ensuring that its subrecipients, if any, follow the requirements of this section.

a. Each recipient entity's policy shall designate an official(s) to solicit and review COI and COC disclosures from each covered individual who is planning to participate in, or is participating in, a NASA-funded award. The designated official(s) shall review all covered individuals' disclosures; determine whether an actual, apparent, or potential COI or COC exists; and, if so, determine the actions that have been and shall be taken to eliminate or, where appropriate, manage or reduce the conflict. Examples of conditions or restrictions that a recipient or subrecipient might impose to manage, reduce, or eliminate a conflict include, but are not limited to:

i. Public disclosure of the COI or COC;

ii. Monitoring of research by independent evaluators;

iii. Modification of the research plan;

iv. Change of personnel or personnel responsibilities, or disqualification of personnel from participation in all or a portion of the NASA-funded activity;

v. Divestiture of significant financial interests that create the COI or COC (*e.g.,* sale of an equity interest); or

vi. Severance of relationships that create the COI or COC.

b. The entity's policy shall ensure that covered individuals have provided all required disclosures to the entity at the time a proposal is submitted to NASA. It shall also require that covered individuals update those disclosures on an annual basis or as soon as any new actual, apparent, or potential COI or COC arises. The policy shall include adequate enforcement mechanisms and provide for sanctions where appropriate.

3. Consistent with title 2 of the Code of Federal Regulation (CFR) 200.112, Conflict of interest, an entity applying for or currently receiving NASA grant or cooperative agreement funding shall disclose to NASA in writing any actual, apparent, or potential COI or COC if such conflict cannot be eliminated or appropriately managed or reduced in accordance with the entity's policy. In addition, such entity shall disclose to NASA in writing any actual, apparent, or potential COI or COC involving any foreign governments, their instrumentalities, or any other entities owned, funded, or otherwise controlled by a foreign government, as well as any measures the entity has taken to eliminate or, where appropriate, manage or reduce the COI or COC.

a. An entity currently implementing a NASA grant or cooperative agreement shall disclose via email the actual, apparent, or potential conflict to the cognizant NASA Grant Officer and Technical Officer listed on their award. If an award recipient needs to correct inaccurate or incomplete COI or COC disclosures, they shall inform the cognizant NASA Grant Officer and Technical Officer listed on their award via email as soon as possible.

b. An entity applying for a NASA grant or cooperative agreement shall clearly and explicitly disclose the conflict in its proposal. If an applicant needs to correct inaccurate or incomplete COI or COC disclosures in a submitted proposal, they shall inform the NASA technical point of contact listed in the relevant Notice of Funding Opportunity via email as soon as possible.

4. When an entity discloses to NASA a COI or COC that cannot be eliminated, managed, or reduced, the cognizant Grant Officer (if the conflict pertains to an active award) or program official (if the conflict pertains to a proposal that is under consideration), or one of their delegates, will report the conflict to OGC as follows:

a. For disclosures pertaining to active awards, the Grant Officer will report the conflict to the NASA Shared Services Center's (NSSC) Office of the General Counsel (OGC) and copy the award's Technical Officer. The NSSC OGC will then inform HQ OGC of the reported conflict. In consultation with OGC, the Grant Officer must assess whether the circumstances disqualify an entity or individual from holding the award and adhere to the policy in paragraph (i) below if enforcement or other actions are necessary.

i. If a Grant Officer must take enforcement or other actions after conducting the review described above, then they will do so in accordance with the remedies for noncompliance and termination provisions in 2 CFR 200.339 through 200.343. Remedies for noncompliance include but are not limited to, temporarily withholding payment, disallowing all or part of the cost of an award activity, wholly or partly suspending or terminating the award, initiating referrals for consideration of suspension or debarment proceedings, and withholding further Federal awards.

ii. A Grant Officer intending to take enforcement or other action per paragraph (i) above will notify each entity subject to such action about the specific reason for the action and will adhere to the requirements in GCAM section 7.13, Appealing a Suspended or Terminated Award, as necessary.

b. For disclosures pertaining to proposals under consideration, the program official must report the conflict

to the appropriate OGC. In consultation with OGC, the program official will assess whether the circumstances disqualify an entity or individual from participating in the competition for award and reject the proposal if necessary.

i. A program official intending to take enforcement action per paragraph (b) above will notify each entity subject to such action about the specific reason for the action and will adhere to the requirements in GCAM section 7.13, Appealing a Suspended or Terminated Award, as necessary.

c. When an entity discloses to NASA that it has a foreign government COI or COC, as directed above, the cognizant Grant Officer (if the conflict pertains to an active award) or program official (if the conflict pertains to a proposal that is under consideration), or one of their delegates, must assess and determine whether the circumstances should disqualify the entity from continuing to hold the award or participating in the competition for award. This determination is to be made by the relevant Grant Officer or program official in consultation with OGC and the NASA Office of International and Interagency Relations (OIIR), as appropriate. If NASA determines that an applicant or recipient will be disqualified from participating in a competition for award or continuing to hold an award due to a foreign government conflict, then NASA will offer the applicant or recipient an opportunity to address the conflict or affiliation prior to removing a proposal from consideration or taking action on an award.

d. If fraud, misrepresentation, or related misconduct is suspected in relation to any disclosure submitted to NASA, then the Grant Officer or program official also will refer the matter to the NASA Office of Inspector General (OIG) and the OGC Acquisition Integrity Program.

5. Enforcement.

a. If a covered individual knowingly fails to disclose required information, NASA may take one or more of the following enforcement or other actions:

i. Reject a proposal,

ii. Suspend or terminate an award,

iii. Temporarily or permanently discontinue any or all funding for the covered individual or entity,

iv. Refer recipients for consideration of suspension or debarment proceedings;

v. Refer the failure to disclose to the NASA OIG for further investigation or to Federal law enforcement authorities to determine whether any criminal or civil laws were violated;

vi. Report the entity in the Contractor Performance Assessment Reporting System (CPARS) to alert other Federal agencies to the noncompliance;

vii. Take one or more of the actions described in 2 CFR 200.339, Remedies for noncompliance; or

viii. Take such other actions against the covered individual or entity as authorized under applicable law or regulations.

b. If an enforcement or other action is necessary, NASA will adhere to the regulations in 2 CFR 200.340, Termination; 200.341, Notification of termination requirement; and 200.342, Opportunities to object, hearings, and appeals.

The GCAM, Appendix D, Award Terms and Conditions, will be revised to include the following:

D39. Disclosure Requirements

(a) All NASA grant and cooperative agreement recipients shall comply with the conflict of interest and conflict of commitment disclosure requirements in section 3.3, Conflicts of Interest Policy, of the NASA *Grant and Cooperative Agreement Manual* (GCAM).

Nanette Smith,

Team Lead, NASA Directives and Regulations.

[FR Doc. 2023–03909 Filed 2–24–23; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–23–0003; NARA–2023–020]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice of certain Federal agency requests for records disposition authority (records schedules). We publish notice in the **Federal Register** and on *regulations.gov* for records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on such records schedules.

DATES: We must receive responses on the schedules listed in this notice by April 14, 2023.

ADDRESSES: To view a records schedule in this notice, or submit a comment on one, use the following address: *https://www.regulations.gov/docket/NARA-23=0003/document.* This is a direct link to the schedules posted in the docket for this notice on *regulations.gov.* You may submit comments by the following method:

- *Federal eRulemaking Portal: https://www.regulations.gov.* On the website, enter either of the numbers cited at the top of this notice into the search field. This will bring you to the docket for this notice, in which we have posted the records schedules open for comment. Each schedule has a 'comment' button so you can comment on that specific schedule. For more information on *regulations.gov* and on submitting comments, see their FAQs at *https://www.regulations.gov/faq.*

If you are unable to comment via *regulations.gov*, you may email us at *request.schedule@nara.gov* for instructions on submitting your comment. You must cite the control number of the schedule you wish to comment on. You can find the control number for each schedule in parentheses at the end of each schedule's entry in the list at the end of this notice.

FOR FURTHER INFORMATION CONTACT: Kimberly Richardson, Strategy and Performance Division, by email at *regulation_comments@nara.gov* or at 301–837–2902. For information about records schedules, contact Records Management Operations by email at *request.schedule@nara.gov* or by phone at 301–837–1799.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

We are publishing notice of records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on these records schedules, as required by 44 U.S.C. 3303a(a), and list the schedules at the end of this notice by agency and subdivision requesting disposition authority.

In addition, this notice lists the organizational unit(s) accumulating the records or states that the schedule has agency-wide applicability. It also provides the control number assigned to each schedule, which you will need if you submit comments on that schedule.

We have uploaded the records schedules and accompanying appraisal memoranda to the *regulations.gov* docket for this notice as ''other'' documents. Each records schedule contains a full description of the records at the file unit level as well as their proposed disposition. The appraisal

memorandum for the schedule includes information about the records.

We will post comments, including any personal information and attachments, to the public docket unchanged. Because comments are public, you are responsible for ensuring that you do not include any confidential or other information that you or a third party may not wish to be publicly posted. If you want to submit a comment with confidential information or cannot otherwise use the regulations.gov portal, you may contact *request.schedule@nara.gov* for instructions on submitting your comment.

We will consider all comments submitted by the posted deadline and consult as needed with the Federal agency seeking the disposition authority. After considering comments, we may or may not make changes to the proposed records schedule. The schedule is then sent for final approval by the Archivist of the United States. After the schedule is approved, we will post on *regulations.gov* a ''Consolidated Reply'' summarizing the comments, responding to them, and noting any changes we made to the proposed schedule. You may elect at regulations.gov to receive updates on the docket, including an alert when we post the Consolidated Reply, whether or not you submit a comment. If you have a question, you can submit it as a comment, and can also submit any concerns or comments you would have to a possible response to the question. We will address these items in consolidated replies along with any other comments submitted on that schedule.

We will post schedules on our website in the Records Control Schedule (RCS) Repository, at *https://www.archives.gov/records-mgmt/rcs,* after the Archivist approves them. The RCS contains all schedules approved since 1973.

Background

Each year, Federal agencies create billions of records. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval. Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives or to destroy, after a specified period, records lacking continuing administrative, legal, research, or other value. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

Agencies may not destroy Federal records without the approval of the Archivist of the United States. The Archivist grants this approval only after thorough consideration of the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value. Public review and comment on these records schedules is part of the Archivist's consideration process.

Schedules Pending

1. Department of Homeland Security, U.S. Customs and Border Protection, Incident Activated and Fixed Facility Surveillance Audio Video Recordings (DAA–0568–2021–0002).

2. Department of State, Bureau of Democracy, Human Rights and Labor, Consolidated Schedule (DAA–0059–2019–0013).

3. Department of the Treasury, Internal Revenue Service, Letter and Information Network User Fee System (DAA–0058–2022–0006).

4. Federal Communications Commission, Office of Administrative Law Judges, OALJ Records (DAA–0173–2021–0013).

5. National Aeronautics and Space Administration, Agency-wide, Scientific and Technical Information (STI) Publications and Supporting Materials (DAA–0255–2022–0005).

6. Securities and Exchange Commission, Division of Trading and Markets, Self-Regulatory Organization Rule Filings (DAA–0266–2023–0001).

7. U.S. Agency For International Development, Office of Inspector General, Office of Inspector General Records (DAA–0286–2022–0006).

Laurence Brewer,

Chief Records Officer for the U.S. Government.

[FR Doc. 2023–03932 Filed 2–24–23; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[NRC–2023–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of February 27, March 6, 13, 20, 27, April 3, 2023. The schedule for Commission meetings is subject to change on short notice. The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

PLACE: The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

STATUS: Public and closed.

Members of the public may request to receive the information in these notices electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at *Wendy.Moore@nrc.gov* or *Tyesha.Bush@nrc.gov.*

MATTERS TO BE CONSIDERED:

Week of February 27, 2023

There are no meetings scheduled for the week of February 27, 2023.

Week of March 6, 2023—Tentative

Tuesday, March 7, 2023

10:00 a.m. Briefing on NRC International Activities (Closed Ex. 1 and 9)

Week of March 13, 2023—Tentative

There are no meetings scheduled for the week of March 13, 2023.

Week of March 20, 2023—Tentative

There are no meetings scheduled for the week of March 20, 2023.

Week of March 27, 2023—Tentative

Thursday, March 30, 2023

9:00 a.m. Briefing on Nuclear Regulatory Research Program (Public Meeting) (Contact: Nicholas Difrancesco: 301–415–1115)

Additional Information: The meeting will be held in the Commissioners'

Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—*https://video.nrc.gov/.*

Week of April 3, 2023—Tentative

There are no meetings scheduled for the week of April 3, 2023.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at *Wesley.Held@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: February 22, 2023.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2023–03996 Filed 2–22–23; 4:15 pm]

BILLING CODE 7590–01–P

POSTAL SERVICE

International Product Change—Priority Mail Express International, Priority Mail International, First-Class Package International Service & Commercial ePacket Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a Priority Mail Express International, Priority Mail International, First-Class Package International Service & Commercial ePacket contract to the list of Negotiated Service Agreements in the Competitive Product List in the Mail Classification Schedule.

DATES: *Date of notice:* February 27, 2023.

FOR FURTHER INFORMATION CONTACT: Christopher C. Meyerson, (202) 268–7820.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on February 17, 2023, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express International, Priority Mail International, First-Class Package International Service & Commercial ePacket Contract 13 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2023–112 and CP2023–115.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2023–03954 Filed 2–24–23; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, March 2, 2023.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Authority: 5 U.S.C. 552b.

Dated: February 23, 2023.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2023–04079 Filed 2–23–23; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96954; File No. SR–CboeBZX–2023–011]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

February 21, 2023.

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 February 14, 2023, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''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

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[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

The Exchange proposes to amend its Fee Schedule to: (i) add a Tape A Incentive Tier, (ii) modify Add/Remove Volume Tier 1, (iii) eliminate fee code ZA and replace it with new fee codes ZV, ZB, and ZY, and (iv) add the new fees code ZV, ZB and ZY to Lead Market Markers (''LMMs'') Add Tiers 2, 3, and 4, respectively.[3]

The Exchange first notes that it operates in a highly competitive market in which market participants, including issuers of securities, LMMs, and other liquidity providers, can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Exchange Act, to which market participants may direct their order flow. Based on publicly available information,[4] no single registered equities exchange has more than 15% of the market share. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. The Exchange in particular operates a ''Maker-Taker'' model whereby it pays rebates to members that add liquidity and assesses fees to those that remove liquidity. The Exchange's Fee Schedule sets forth the standard rebates and rates applied per share for orders that provide and remove liquidity, respectively. The Exchange proposes to amend its Fee Schedule, as described below.

Tape A Incentive Tier

For order in securities priced at or above $1.00, the Exchange currently provides a standard rebate of $0.00160 per share for displayed orders that add liquidity in Tape A securities, which yield fee code V[5]. The Exchange proposes to amend footnote 12 of the Fee Schedule to adopt a Tape A Incentive Tier, which would be available for qualifying orders that yield fee code V. Particularly, under the proposed Tape A Incentive Tier, Members may receive an additional $0.0002 per share rebate where they have a: Step-Up ADAV[6] from January 2023 greater than or equal to 5,000,000; a Tape A ADAV greater than or equal to 0.30% of the Tape A TCV;[7] and an ADV[8] greater than or equal to 0.50% of the TCV. The proposed changes are designed to encourage Members to increase their displayed liquidity in Tape A securities on the Exchange, thereby contributing to a deeper and more liquid market, which benefits all market participants and provides greater execution opportunities on the Exchange.

Add/Remove Volume Tier 1

Under footnote 1 of the Fee Schedule, the Exchange currently offers various Add/Remove Volume Tiers. In particular, the Exchange offers six displayed add volume tiers that each provide an enhanced rebate for Members' qualifying orders yielding fee codes B,[9] V, or Y,[10] where a Member reaches certain add volume-based criteria. Currently Tier 1 is as follows:

- Tier 1 provides a rebate of $0.0020 per share to qualifying orders (*i.e.,* orders yielding fee codes B, V, or Y) where the Member has an ADAV as a percentage of TCV equal to or greater than 0.15%, or the Member has an ADAV equal to or greater than 15,000,000.

The Exchange proposes to amend the criteria of Tier 1. Specifically, the Exchange proposes to amend Tier 1 as follows:

- Proposed Tier 1 will provide a rebate of $0.0020 per share to qualifying orders (*i.e.,* orders yielding fee codes B, V, or Y) where the Member has an ADAV as a percentage of TCV equal to or greater than 0.05%, or the Member has an ADAV equal to or greater than 5,000,000.

Fee Codes ZV, ZB, ZY

Currently, fee code ZA is appended to retail orders that add liquidity and receive a rebate of $0.00320 per share. The Exchange proposes to eliminate fee code ZA and replace it with fee codes ZV, ZB and ZY. Particularly, the Exchange proposes to separate fee code ZA into three separate fee codes, each representing a different Tape for retail orders that add liquidity. The Exchange proposes to adopt fee code ZV for Tape A retail orders that add liquidity; fee code ZB for Tape B retail orders that add liquidity; and fee code ZY for Tape C retail orders that add liquidity. Retail orders appended with ZV, ZB, and ZY will continue to receive a rebate of $0.00320 per share. The Exchange notes that it currently maintains separate fee codes based on Tapes for other types of orders as well.[11]

Finally, the Exchange proposes to include orders yielding fee codes ZV, ZB, and ZY as part of its LMM Program. Under the Exchange's LMM Program, the Exchange offers daily incentives for LMMs in securities listed on the Exchange for which the LMM meets certain Minimum Performance Standards.[12] Such daily incentives are determined based on the number of Cboe-listed securities for which the LMM meets such Minimum Performance Standards and the average auction volume across such securities. Generally, the more LMM Securities[13] for which the LMM meets the Minimum Performance Standards and the higher the auction volume across those securities, the greater the total daily payment to the LMM. Currently, the Exchange offers four LMM Add Volume Tiers under footnote 14(D) of the Fee

[3] The Exchange initially filed the proposed fee changes on February 1, 2023 (SR–CboeBZX–2023–005). On February 7, 2023, the Exchange withdrew that filing and submitted SR–CboeBZX–2023–009. On February 14, 2023, the Exchange withdrew that filing and submitting this proposal.

[4] See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (January 27, 2023), available at *https://markets.cboe.com/us//market_statistics/.*

[5] Orders yielding Fee Code ''V'' are displayed orders adding liquidity to BZX (Tape A).

[6] ''Step-Up ADAV'' means ADAV in the relevant baseline month subtracted from current ADAV. ADAV means average daily added volume calculated as the numbers of share added per day and is calculated on a monthly basis.

[7] ''TCV'' means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

[8] ''ADV'' means average daily volume calculated as the number of shares added or removed, combined, per day. ADV is calculated on a monthly basis.

[9] Orders yielding Fee Code ''B'' are displayed orders adding liquidity to BZX (Tape B). For order in securities priced at or above $1.00, orders yielding Fee Code B will receive a standard rebate of $0.00160 per share.

[10] Orders yielding Fee Code ''Y'' are displayed orders adding liquidity to BZX (Tape C). For order in securities priced at or above $1.00, orders yielding Fee Code C will receive a standard rebate of $0.00160 per share.

[11] See *e.g.,* Cboe BZX U.S. Equities Exchange Fee Schedule, Fee Codes HV, HB, and HY which fee codes represent non-displayed orders that add liquidity to BZX for Tapes A, B, and C respectively.

[12] As defined in Rule 11.8(e)(1)(E), the term ''Minimum Performance Standards'' means a set of standards applicable to an LMM that may be determined from time to time by the Exchange. Such standards will vary between LMM Securities depending on the price, liquidity, and volatility of the LMM Security in which the LMM is registered. The performance measurements will include: (A) Percent of time at the NBBO; (B) percent of executions better than the NBBO; (C) average displayed size; and (D) average quoted spread. For additional detail, see Original LMM Filing.

[13] As defined in Rule 11.8(e)(1)(D), the term ''LMM Security'' means a Listed Security that has an LMM. As defined in Rule 11.8(e)(1)(B), the term ''Listed Security'' means any ETP or any Primary Equity Security or Closed-End Fund listed on the Exchange pursuant to Rule 14.8 or 14.9.

Schedule, which provides an additional rebate for applicable LMM orders. The Exchange proposes to update applicable fee codes for LMM Add Volume Tiers 2, 3, and 4, to include new fee codes ZV, ZB, and ZY, respectively. Specifically, the Exchange proposes to: amend LMM Add Volume Tier 2 (which provides an enhanced rebate for adding displayed liquidity in Tape A securities) to apply to orders yielding fee code ZV (in addition to fee codes V and HV [14]); amend LMM Add Volume Tier 3 (which provides and enhanced rebate for adding displayed liquidity in Tape B securities) to apply to orders yielding fee code ZB (in addition to fee codes B and HB [15]); and for LMM Add Volume Tier 4 (which provides and enhanced rebate for adding displayed liquidity in Tape C securities) to apply to orders yielding fee code ZY (in addition to fee codes Y and HY [16]).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[17] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [18] requirements that the rules of an exchange be 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [19] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[20] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.

The Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed rule changes reflect a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members. The Exchange notes that relative volume-based incentives and discounts have been widely adopted by exchanges, including the Exchange, and are reasonable, equitable and non-discriminatory because they are open to all members on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value to an exchange's market quality and (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns. Additionally, as noted above, the Exchange operates in highly competitive market. The Exchange is only one of several equity venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. It is also only one of several maker-taker exchanges. Competing equity exchanges offer similar tiered pricing structures, including schedules of rebates and fees that apply based upon members achieving certain volume and/or growth thresholds, as well as assess similar fees or rebates for similar types of orders, to that of the Exchange. These competing pricing schedules, moreover, are presently comparable to those that the Exchange provides, including the pricing of comparable criteria and/or fees and rebates.

The Exchange believes the proposed addition of the Tape A Incentive Tier, as well as the proposed modifications to Add/Remove Volume Tier 1, are reasonable, fair and equitable, and not unfairly discriminatory because the tiers provide additional opportunities for all Members to meet the tier criteria and receive the corresponding enhanced rebate for each tier if such criteria is met. Furthermore, the Exchange believes that the proposed new Tape A Incentive Tier and modified Add/Remove Volume Tier 1 are reasonable as they serve to incentivize Members to increase their liquidity adding, displayed volume, which benefit all market participants by incentivizing continuous liquidity and thus, deeper, more liquid markets as well as increased execution opportunities. The Exchange notes that it is adding a new incentive tier applicable to Tape A securities but not other securities because it already has Tape B Incentive (and Quoting) Tiers to similarly incentive liquidity in Tape B securities. The Exchange has no obligation to have incentive tiers for any securities, and the Exchange believes other rebate programs currently and as proposed to be offered for adding liquidity to Tape C securities provides sufficient incentive to add liquidity in those securities. Particularly, the proposed incentives to provide displayed liquidity are designed to incentivize continuous displayed liquidity, which signals other market participants to take the additional execution opportunities provided by such liquidity. This overall increase in activity deepens the Exchange's liquidity pool, offers additional cost savings, supports the quality of price discovery, promotes market transparency and improves market quality for all investors.

In addition to this, the Exchange believes that the proposal represents an equitable allocation of rebates and is not unfairly discriminatory because all Members will continue to be eligible for the Add/Remove Volume Tier 1, as amended, as well as for the new Tape A Incentive Tier, and would receive the proposed rebate if such criteria is met. The Exchange notes the proposed criteria for Add/Remove Volume Tier 1 is less stringent than the current criteria, and thus will be easier for Members to meet.

Without having a view of activity on other markets and off-exchange venues, the Exchange has no way of knowing whether these proposed changes would definitely result in any Members qualifying for the proposed Tape A Incentive Tier and modified Add/Remove Volume Tier 1. While the Exchange has no way of predicting with certainty how the proposed changes will impact Member activity, the Exchange anticipates six Members will be able to satisfy the criteria proposed under the new Tape A Incentive Tier and up to eight Members will be able to satisfy the modified criteria proposed under Add/Remove Volume Tier 1. The Exchange also notes that the proposed changes will not adversely impact any Member's ability to qualify for reduced fees or enhanced rebates offered under other tiers. Should a Member not meet the proposed new criteria, the Member will merely not receive that corresponding enhanced rebate.

Finally, the Exchange believes the proposed amendment to eliminate fee

[14] Orders yielding Fee Code ''HV'' are non-displayed orders adding liquidity to BZX (Tape A).

[15] Orders yielding Fee Code ''HB'' are non-displayed orders adding liquidity to BZX (Tape B).

[16] Orders yielding Fee Code ''HY'' are non-displayed orders adding liquidity to BZX (Tape C).

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] *Id.*

[20] 15 U.S.C. 78f(b)(4).

code ZA and replace it with new fee codes ZV, ZB and ZY is reasonable, as the Exchange is simply recategorizing retail orders that add liquidity and yield fee code ZA by distinguishing each order based on Tapes. The Exchange notes that it currently maintains separate fee codes based on Tapes for other types of orders as well.[21] Further, the Exchange believe that adding the new fees code ZV, ZB and ZY to LMM Add Tiers 2, 3, and 4, respectively, is reasonable because such fee codes correspond to the criteria for each relevant LMM Add Tier. Specifically, LMM Add Tier 2 relates to orders adding liquidity in Tape A Securities, and proposed fee code ZV applies to retail orders adding liquidity in Tape A Securities; LMM Add Tier 3 relates to orders adding liquidity in Tape B Securities, and proposed fee code ZB applies to retail orders adding liquidity in Tape B Securities; and LMM Add Tier 4 relates to orders adding liquidity in Tape C Securities, and proposed fee code ZY applies to retail orders adding liquidity in Tape C Securities. Finally, the Exchange believes the proposal to recategorize retail orders adding liquidity and adding such fee codes to LMM Add Tiers is also equitable and not unfairly discriminatory because it applies to all Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed Tape A Incentive Tier and modified Add/Remove Volume Tier 1 do not impose a burden on intramarket competition that is not in furtherance of the Act in that each tier will be eligible to all Members equally, as all Members have the opportunity to submit orders in an attempt to satisfy the proposed criteria and receive the enhanced rebates associated with each tier. Furthermore, the Exchange believes that the criteria under proposed Tape A Incentive Tier and modified Add/Remove Volume Tier 1 will continue to incentivize Members to submit additional liquidity to the Exchange and to increase their order flow on the Exchange generally, thereby contributing to a deeper and more liquid market. A deeper and more liquid market may promote price discovery and market quality on the Exchange to the benefit of all market participants and enhance the attractiveness of the Exchange as a trading venue, which the Exchange believes, in turn, would continue to encourage market participants to direct additional order flow to the Exchange. Greater liquidity benefits all Members by providing more trading opportunities and encourages Members to send additional orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants.

The Exchange believes its proposal to eliminate fee code ZA and separate it into three fee codes (ZV, ZB, and ZY) will have no impact on competition, as it merely is a recategorization of a current fee code under the existing Fee Schedule. Further, the proposal to add such fee codes ZV, ZB, and ZY to LMM Add Tiers 2, 3, and 4, respectively, applies to all Members. Particularly, the proposed changes apply to all Members equally in that all Members continue to be eligible for the LMM Add Volume Tiers (and have the same opportunity to become an LMM Member), have a reasonable opportunity to meet the tiers' criteria and will all receive the corresponding additional rebates if such criteria are met.

The Exchange believes the proposed Tape A Incentive Tier, modified Add/Remove Volume Tier 1, and fee code changes do not impose a burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed changes represent a significant departure from pricing currently offered by the Exchange or pricing offered by other equities exchanges. Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including other equities exchanges, off-exchange venues, and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 15% of the market share.[22] Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [23] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission*, the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.'. . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . .''.[24]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [25] and paragraph (f) of Rule 19b–4 [26] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule

[21] *Supra* note 10.

[22] *Supra* note 3.

[23] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[24] *NetCoalition* v. *SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[25] 15 U.S.C. 78s(b)(3)(A).

[26] 17 CFR 240.19b–4(f).

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–CboeBZX–2023–011 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–CboeBZX–2023–011. 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 a.m. and 3 p.m. Copies of such 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–CboeBZX–2023–011 and should be submitted on or before March 20, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–03907 Filed 2–24–23; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

SBA Council on Underserved Communities Meeting

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: The SBA is issuing this notice to announce the location, date, time, and agenda for the fourth meeting of the SBA Council on Underserved Communities. The meeting will be in person for Council members and streamed live to the public.

DATES: The meeting will be held on Tuesday, March 7th, 2023, from 10 a.m. to 1 p.m. Eastern Time.

ADDRESSES: The Council on Underserved Communities will meet at SBA Headquarters at 409 3rd St. SW, Washington, DC 20024 and will be live streamed on Zoom for the public. Registration Link Here: *https://www.zoomgov.com/webinar/register/WN_O1IyptJyTwmH5b9w2bDbgw.*

FOR FURTHER INFORMATION CONTACT: The meeting will be live streamed to the public, and anyone wishing to submit questions to the SBA Council on Underserved Communities can do so by submitting them via email to *underservedcouncil@sba.gov,* Additionally, if you need accommodations because of a disability or require additional information, please contact Tomas Kloosterman, SBA, Office of the Administrator, 409 Third Street SW, Washington, DC 20416, 202–843–0475 or *Tomas.Kloosterman@sba.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., appendix 2), SBA announces the meeting of the SBA Council on Underserved Communities (the ''Council''). The Council is tasked with providing advice, ideas and opinions on SBA programs and services and issues of interest to small businesses in underserved communities. For more information, please visit *http://www.sba.gov/cuc.*

The purpose of the meeting is to provide the Council with information on SBA's efforts to support small businesses in underserved communities, as well as provide an opportunity for the Council to discuss its goals for the coming months. The Council will provide insights based on information they have heard from their communities and discuss areas of interest for further research and recommendation development.

Dated: February 21, 2023.

Andrienne Johnson,

SBA Committee Management Officer.

[FR Doc. 2023–03962 Filed 2–24–23; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2017–0084]

Petition for Extension of Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that by letter dated December 28, 2022, Norfolk Southern Corporation (NS) petitioned the Federal Railroad Administration (FRA) for an extension of a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 214 (Railroad Workplace Safety). The relevant FRA Docket Number is FRA–2017–0084.

Specifically, NS requests to extend its relief from § 214.336(c), *On-track safety procedures for certain roadway work groups and adjacent tracks,* as it pertains to procedures for adjacent controlled track movements at 25 miles per hour (mph) or less.

NS indicates this request is specific to a unique working group, the R–3 Dual Rail Gang (R–3 Gang), and the relief would only apply to this group. This group is a system-level production gang comprised of 78 employees and 40 roadway maintenance machines with the capability to remove both rails while simultaneously installing both new rails. NS seeks relief from the requirement of using the gauge position of the rail as the point for the plane that is not to be broken on the occupied track. Instead, NS seeks to use the removed rails of the occupied track as an envelope for on-ground work performed exclusively between these rails for the employees working in the R–3 Gang. NS asserts the R–3 Gang's work can be performed safely. Additionally, NS seeks relief from the requirement that on-ground work be performed exclusively between the rails

[27] 17 CFR 200.30–3(a)(12).

(*i.e.,* not breaking the plane of the rails) of the occupied track. NS seeks to extend its relief to allow up to 4 on-ground employees (when working with one adjacent controlled track) and up to 8 on-ground employees (when working with two adjacent controlled tracks) of the R–3 Gang to break the plane of the outside rail to perform minor work.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by April 28, 2023 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy*. See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov*.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2023–03901 Filed 2–24–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2008–0029]

Petition for Extension of Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that by letter dated February 3, 2023,[1] Norfolk Southern Corporation (NS) petitioned the Federal Railroad Administration (FRA) for an extension of a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 231 (Railroad Safety Appliance Standards). The relevant FRA Docket Number is FRA–2008–0029.

Specifically, NS requests to extend its relief from § 231.1(k), *Uncoupling levers,* for its Rail Train service, which is non-revenue service operated by NS to deliver sections of continuously welded rail to rail gangs replacing rail throughout the NS system. NS seeks continued approval to operate all Rail Trains with uncoupling levers removed from both ends of the rail cars that are coupled to one another in this train service. These trains operate only on NS property in maintenance-of-way service. NS states that its process of uncoupling cars allows for safe uncoupling through utilization of NS Mechanical Department personnel under blue flag protection. Additionally, NS states that the relief will continue to help prevent unintentional train uncoupling during these operations and the resulting potential employee injuries and damage to rail structure and roadbed.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov*.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

[1] The existing relief in this docket expired on February 8, 2023. On February 8, 2023, FRA granted a conditional, 180-day extension of the relief, while FRA considers NS's February 3, 2023, extension request for permanent relief. *See https://www.regulations.gov/document/FRA-2008-0029-0016*.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Communications received by April 28, 2023 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy*. See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov*.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2023–03900 Filed 2–24–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

U.S. Maritime Transportation System National Advisory Committee; Notice of Public Meeting

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: The Maritime Administration (MARAD) announces a public meeting of the U.S. Maritime Transportation System National Advisory Committee (MTSNAC) to discuss advice and recommendations for the U.S. Department of Transportation on issues related to the marine transportation system.

DATES: The meeting will be held on Wednesday, March 22, 2023, from 9 a.m. to 4:30 p.m. and Thursday, March 23, 2023, from 9 a.m. to 4:30 p.m. ET.

Requests to attend the meeting virtually must be received no later than 5:00 p.m. ET on the prior week Monday, March 13, 2023, in order to facilitate

entry. Requests for accommodations due to a disability must be received by the day prior to the meeting Monday, March 21, 2023. The written copy of the remarks must be provided to DOT no later than by the prior week Monday, March 13, 2023. Requests to submit written materials to be reviewed during the meeting must also be received by the prior week Monday, March 13, 2023.

ADDRESSES: The meeting will be held virtually. Any committee related request should be sent to the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Chad Dorsey, Designated Federal Officer, at *MTSNAC@dot.gov* or at (202) 997–6205. Maritime Transportation System National Advisory Committee, 1200 New Jersey Avenue SE, W21–307, Washington, DC 20590. Please visit the MTSNAC website at *https://www.maritime.dot.gov/outreach/maritime-transportation-system-mts/maritime-transportation-system-national-advisory-0*.

SUPPLEMENTARY INFORMATION:

I. Background

The MTSNAC is a Federal advisory committee that advises the U.S. Secretary of Transportation through the Maritime Administrator on issues related to the marine transportation system. The MTSNAC was originally established in 1999 and mandated in 2007 by the Energy Independence and Security Act of 2007 (Pub. L. 110–140). The MTSNAC is codified at 46 U.S.C. 50402 and operates in accordance with the provisions of the Federal Advisory Committee Act.

II. Agenda

The agenda will include: (1) welcome, opening remarks, and introductions; (2) administrative items; (3) subcommittee break-out sessions; (4) updates to the Committee on the subcommittee work; (5) public comments; and (6) discussions relevant to formulate recommendations for improving the maritime transportation strategy. A final agenda will be posted on the MTSNAC internet website at *https://www.maritime.dot.gov/outreach/maritime-transportation-system-mts/maritime-transportation-system-national-advisory-0* at least one week in advance of the meeting.

III. Public Participation

The meeting will be open to the public. Members of the public who wish to attend virtually must RSVP to the person listed in the **FOR FURTHER INFORMATION CONTACT** section with your name and affiliation.

Services for individuals with disabilities. The public meeting is accessible to people with disabilities. The U.S. Department of Transportation is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Public comments. A public comment period will commence at approximately 12 p.m. ET on March 22, 2023, and again on March 23, 2023, at the same time. To provide time for as many people to speak as possible, speaking time for each individual will be limited to three minutes. Requests to speak during the public comment period of the meeting must be submitted in writing. Members of the public who would like to speak are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Commenters will be placed on the agenda in the order in which notifications are received. If time allows, additional comments will be permitted. Copies of oral comments must be submitted in writing at the meeting or preferably emailed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Additional written comments are welcome and must be filed as indicated below.

Written comments. Persons who wish to submit written comments for consideration by the Committee must send them to the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

(Authority: 49 CFR part 1.93(a); 5 U.S.C. 552b; 41 CFR parts 102–3; 5 U.S.C. app. Sections 1–16)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2023–03939 Filed 2–24–23; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2022–0074; Notice 2]

Baby Trend, Inc., Denial of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Denial of petition.

SUMMARY: Baby Trend, Inc., (BT), has determined that certain BT Hybrid 3-in-1 Combination Booster Seat child restraint systems (CRSs) do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 213, *Child Restraint Systems.* BT filed an original noncompliance report dated July 6, 2022. BT subsequently petitioned NHTSA on August 1, 2022, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces the denial of BT's petition.

FOR FURTHER INFORMATION CONTACT: Kelley Adams-Campos, Safety Compliance Engineer, NHTSA, Office of Vehicle Safety Compliance, *kelley.adamscampos@dot.gov,* (202) 366–7479.

SUPPLEMENTARY INFORMATION:

I. Overview

BT determined that certain BT Hybrid 3-in-1 Combination Booster Seat CRSs do not fully comply with paragraph S5.4.1.2(a) of FMVSS No. 213, *Child Restraint Systems* (49 CFR 571.213).

BT filed an original noncompliance report dated July 6, 2022, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* BT petitioned NHTSA on August 1, 2022, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

Notice of receipt of BT's petition was published with a 30-day public comment period, on September 9, 2022, in the **Federal Register** (87 FR 55465). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2022–0074.''

II. Child Restraint Systems Involved

Approximately 101,361 BT Hybrid 3-in-1 Combination Booster Seat CRSs, manufactured from December 6, 2021, to June 6, 2022,[1] are potentially involved:

III. Noncompliance

BT explains that the lower anchor webbing in the subject CRSs failed the minimum required breaking [2] strength when tested in accordance with S5.1 of FMVSS No. 209, referenced in FMVSS No. 213 S5.4.1.2(a). Specifically, the breaking strength of the lower anchor webbing of the Lower Anchors and Tethers for CHildren (LATCH [3]) system in the subject CRSs was 13,926 Newtons (N), 13,940 N, and 14,087 N when tested by NHTSA.

IV. Rule Requirements

Paragraph S5.4.1.2(a) of FMVSS No. 213 includes the requirements relevant to this petition. The webbing of belts provided with a child restraint system and used to attach the system to the vehicle must have a minimum breaking strength for new webbing of not less than 15,000 N, including the tether and lower anchorages of a child restraint anchorage system, when tested in accordance with S5.1 of FMVSS No. 209. ''New webbing'' means webbing that has not been exposed to abrasion, light or micro-organisms as specified elsewhere in FMVSS No. 213.

V. Summary of BT's Petition

The following views and arguments presented in this section, ''V. Summary of BT's Petition,'' are the views and arguments provided by BT. They do not reflect the views of the Agency. BT describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

Upon receiving an information request from NHTSA on June 6, 2022, regarding the subject noncompliance, BT states that production and distribution of the subject CRSs were halted, and BT began an investigation. BT states that, as part of its investigation, it conducted dynamic sled testing, webbing testing and examined internal processes to determine the root cause of the noncompliance. As a result of its investigation, BT found that the wrong webbing, with a failure threshold characterized as marginally below the breaking strength required in FMVSS No. 213 S5.4.1.2(a), was installed in a portion of the subject CRSs, but BT believes, through its analysis of existing and new test data, that the subject noncompliance is inconsequential to motor vehicle safety.

BT claims that FMVSS No. 213 dynamic sled testing ensures the structural integrity of the subject CRSs and that this is supported by NHTSA's November 2, 2020, Notice of Proposed Rulemaking [4] (NPRM) regarding FMVSS No. 213, where the Agency determined that no change in the severity of the FMVSS No. 213 crash pulse was warranted. In its petition, BT questions ''the utility of considering the webbing strength tests in isolation rather than the integrity of the LATCH system as required under FMVSS 213.'' BT believes the webbing strength tests specified in FMVSS No. 213 have utility in safety ''only in the context of maintaining strength of the webbing with wear and tear of the child restraint following years of use'' and asserts that the unabraded webbing strength test is not necessary to ensure the structural integrity of a CRS.

BT states that in addition to the dynamic sled testing required by FMVSS No. 213, it conducts dynamic sled testing, through Consumer's Union (CU), on child restraints produced by each of its factories. BT contends that if NHTSA previously found the dynamic sled testing at 48 kph to be sufficient to ensure the structural integrity of a CRS, BT's additional CU testing is also similarly sufficient.

The CU dynamic testing, as BT explains, has important differences from that required by FMVSS No. 213. First, the test is conducted at 56 kph whereas the FMVSS No. 213 test is conducted at 48 kph. Second, the bench used is derived from a vehicle seat, providing ''a boundary condition for LATCH attachment and seat cushion-to-CRS interaction.'' Finally, the CU test protocol includes a structure to represent the seat in front of the CRS seat position, which, BT claims, provides a ''clear tell-tale'' of failure in any way of the LATCH lower anchor belt in adequately restraining the CRS and its occupant.

BT also claims that the minimum LATCH lower anchor webbing strength requirements of FMVSS No. 213 are unrealistic, based on dynamic crash testing it conducted on the Hybrid 3-in-1 CRSs using the same incorrect webbing used on the noncompliant CRSs that are the subject of its petition, and without attaching the CRS' tether to the tether anchor. This testing, as BT explains, was conducted on the test bench proposed by NHTSA in the 2020 FMVSS No. 213 NPRM.[5] Other test apparatus and conditions used in its testing were those either specified in FMVSS No. 213, and/or the current NPRM, or ''widely accepted'' as due care tests. For the tests BT conducted in the frontal direction, sled test speeds ranging from 57.1 kph to 63.9 kph were used. See the Table [6] in BT's petition for the parameters used in its testing. BT states that it is confident that its frontal sled testing conducted at ''64 kph . . . encompasses all crashes including the most severe crashes'' and that ''at no time and in no test did the LATCH Lower Anchor webbing or belt system fail to perform its intended purpose of restraining the CRS.'' BT also found ''that at no time during any of these tests did the LATCH Lower Anchor webbing load exceed 5,000 Newtons and, more importantly, come even close to the 15,000 Newton minimum threshold'' required by FMVSS No. 213.

In its petition, BT shares a graphic [7] to illustrate its beliefs for the minimum strength of various components in the LATCH system and points to examples where, ''in the rare instances of failures of the LATCH system, the failures occurred in . . . the LATCH lower anchor on the vehicle.'' Thus, BT contends that the webbing is not the weak link in the LATCH lower anchor system, and that ''any deficiencies with the strength of the LATCH Lower Anchor webbing would have been revealed in the dynamic sled tests of FMVSS 213.''

BT states that there is no evidence of webbing failure in any CRS in the real world, that it has never received a complaint, nor has any knowledge, of a webbing failure on any of its products in the real world.

BT concludes by stating its belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety and its petition.

VI. NHTSA's Analysis

The burden of establishing the inconsequentiality of a failure to comply with a *performance requirement* in an FMVSS is substantial and difficult to meet. Accordingly, the Agency has not

[1] As reported in BT's July 6, 2022, Part 573 submission.

[2] In its petition, BT refers to breaking as tensile.

[3] ''LATCH'' refers to the child restraint anchorage system that FMVSS 225, ''Child restraint anchorage systems,'' requires to be installed in motor vehicles. Industry and advocates have developed the term ''LATCH'' to refer to Standard 225's child restraint anchorage system.

[4] Federal Motor Vehicle Safety Standards; Child Restraint Systems, Incorporation by Reference; 85 FR 69388 (November 2, 2020.)

[5] *Id.*

[6] Section 3 of BT's petition.

[7] Section 5 of BT's petition.

found many such noncompliances inconsequential.[8]

In determining inconsequentiality of a noncompliance, NHTSA focuses on the safety risk to individuals who experience the type of event against which a recall would otherwise protect.[9] In general, NHTSA does not consider the absence of complaints or injuries when determining if a noncompliance is inconsequential to safety. The absence of complaints does not mean vehicle occupants have not experienced a safety issue, nor does it mean that there will not be safety issues in the future.[10]

BT makes several claims and assertions in support of its petition, including its claim that the wrong webbing installed in the subject CRSs had a breaking strength ''marginally'' below that required by FMVSS No. 213. NHTSA does not agree, based on its own compliance test results, that the breaking strength values were marginal. Next, BT claims it to be ''NHTSA's current and well-justified position'' that the dynamic sled testing contained in FMVSS No. 213 ensures the structural integrity of the ''CRS system, including the LATCH lower anchor webbing in an unabraded condition.'' BT furthers this claim, opining that the Agency should also conclude that BT's CU testing it conducts ''is similarly sufficient to ensure structural integrity of a CRS'' based on ''important differences'' from FMVSS No. 213, *i.e.,* a test speed of 56 kph and a test bench derived from a vehicle seat. NHTSA does not find these claims to be relevant or persuasive. It appears that BT is misapplying the conclusion the Agency made in the 2020 FMVSS No. 213 NPRM (*supra*), *i.e.,* that there was no safety need to increase the sled acceleration pulse for the dynamic systems test in S6.1 of FMVSS No. 213. This conclusion was specific to the child restraint system dynamic test. This test is not the only performance test in FMVSS No. 213 and does not address the same conditions, nor serve the same purpose, as the webbing breaking strength test. NHTSA has multiple tests because a single test does not address the range of safety concerns with child restraints. The breaking strength requirements ensure that the performance of the webbing over the lifetime of a child restraint system is sufficient to provide the necessary protection, even after wear and tear that webbing can experience during the course of normal use.

BT asserts that the unabraded webbing strength test is not necessary to ensure the structural integrity of a CRS, and that the minimum LATCH lower anchor webbing strength requirements of FMVSS No. 213 are unrealistic. BT bases this assertion on dynamic crash testing it conducted on the Hybrid 3-in-1 CRSs using the same incorrect webbing used on the noncompliant CRSs subject of its petition. According to its petition, tests were conducted at 63.9 kph without attaching the tether to its corresponding anchor, asserting that under this condition ''the entire restraining load was borne by the LATCH webbing.''

BT also states, ''at no time and in no test did the LATCH Lower Anchor webbing or belt system fail to perform its intended purpose of restraining the CRS'' and that the loads on the subject webbing during any of the foregoing tests did not exceed 5,000 N. This argument challenges the stringency of the requirement in the standard, to which a petition for rulemaking, not an inconsequentiality petition, is the appropriate means.[11] Moreover, even if these foregoing arguments were relevant, NHTSA does not find them availing. As explained in NHTSA's 2006 Final Rule [12] adopting the new webbing breaking strength requirements, Standard 213's minimum requirements are not intended to only ensure that CRSs in new condition are safe, but also safe in the cases of foreseeable wear, such as in the breaking strength requirement to which this population of CRSs failed to comply. Requirements at the component level increase the likelihood that components, like webbing, maintain their integrity for the lifetime of the child restraint. Such comparable assurances are not provided by the dynamic system test in Standard 213, added in December 1979.[13] In 2002, the Agency found it inappropriate that minimum breaking strength requirements for new webbing in child restraint systems were absent from FMVSS No. 213 [14] and the 2005–2006 rulemaking ensued. This established NHTSA's long-standing position that webbing strength requirements are necessary for safety and, consistent with how we addressed past similar arguments [15] by CRS manufacturers who submitted webbing load force data generated in dynamic testing to demonstrate apparent safety margins in comparison to webbing breaking strength test results, BT has not compelled NHTSA to consider otherwise.

NHTSA is also not persuaded by BT's argument, as its petition further goes on in Section 5, that ''any deficiencies with the strength of the LATCH Lower Anchor webbing would have been revealed in the dynamic sled tests of FMVSS 213.'' As explained above, FMVSS No. 213 has multiple performance tests serving different purposes. It is not proper to apply or substitute the outcome from one test for another; to be compliant with FMVSS No. 213 all applicable requirements must be satisfied.[16] Thus, BT has not met its burden of persuasion.

Finally, neither BT's claim that there is no evidence of any CRS webbing failures, including on any of its products, in the real world, nor BT's lack of complaints are persuasive to the Agency. Notwithstanding that BT did not provide any evidence to support these claims, as stated at this notice's onset NHTSA does not consider the absence of complaints or injuries when determining if a noncompliance is inconsequential to safety.

VII. NHTSA's Decision

In consideration of the foregoing, NHTSA has decided that BT has not met its burden of persuasion that the subject FMVSS No. 213 noncompliance is inconsequential to motor vehicle safety.

[8] *Cf. Gen. Motors Corporation; Ruling on Petition for Determination of Inconsequential Noncompliance,* 69 FR 19897, 19899 (Apr. 14, 2004) (citing prior cases where noncompliance was expected to be imperceptible, or nearly so, to vehicle occupants or approaching drivers).

[9] *See Gen. Motors, LLC; Grant of Petition for Decision of Inconsequential Noncompliance,* 78 FR 35355 (June 12, 2013) (finding noncompliance had no effect on occupant safety because it had no effect on the proper operation of the occupant classification system and the correct deployment of an air bag); *Osram Sylvania Prods. Inc.; Grant of Petition for Decision of Inconsequential Noncompliance,* 78 FR 46000 (July 30, 2013) (finding occupant using noncompliant light source would not be exposed to significantly greater risk than occupant using similar compliant light source).

[10] *See Morgan 3 Wheeler Limited; Denial of Petition for Decision of Inconsequential Noncompliance,* 81 FR 21663, 21666 (Apr. 12, 2016); *see also United States* v. *Gen. Motors Corp.,* 565 F.2d 754, 759 (D.C. Cir. 1977) (finding defect poses an unreasonable risk when it ''results in hazards as potentially dangerous as sudden engine fire, and where there is no dispute that at least some such hazards, in this case fires, can definitely be expected to occur in the future'').

[11] *See Dorel Juvenile Group; Denial of Appeal of Decision on Inconsequential Noncompliance,* 75 FR 510, January 5, 2010.

[12] 71 FR 32855 (June 7, 2006).

[13] 44 FR 72131 (December 13, 1979).

[14] Evenflo Company, Inc., Grant of Application for Decision of Inconsequential Noncompliance, 67 FR 21798 (May 1, 2002).

[15] Combi USA, Inc., 78 FR 71028 (Nov. 27, 2013), Combi USA, Inc., 86 FR 47723 (Aug. 26, 2021).

[16] BT asserts that the noncompliance of the BT Hybrid 3-in-1 would have been ''revealed'' in the Office of Vehicle Safety Compliance's (OVSC) compliance program's dynamic testing. NHTSA notes that the Agency's dynamic testing of BT's Hybrid 3-in1 did not result in LATCH lower anchor webbing failures. *See https://static.nhtsa.gov/odi/ctr/9999/TRTR-647891-2022-001.pdf.*

Accordingly, BT's petition is hereby denied, and BT is consequently obligated to provide notification of and free remedy for that noncompliance under 49 U.S.C. 30118 and 30120.

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Anne L. Collins,

Associate Administrator for Enforcement.

[FR Doc. 2023–03926 Filed 2–24–23; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

Notice of OFAC Actions

On February 22, 2023, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

Individuals

1. ARREDONDO BELTRAN, Jose Santana, Culiacan, Sinaloa, Mexico; DOB 27 Jun 1977; POB Sinaloa, Mexico; nationality Mexico; Gender Male; C.U.R.P. AEBS770627HSLRLN05 (Mexico) (individual) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(a)(i) of Executive Order 14059 of December 15, 2021, ''Imposing Sanctions on Foreign Persons Involved in the Global Illicit Drug Trade,'' 86 FR 71549 (December 17, 2021) (E.O. 14059) for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

2. FLORES MADRID, Luis Gerardo, Mexico; DOB 09 Mar 1988; POB Sinaloa, Mexico; nationality Mexico; Gender Male; C.U.R.P. FOML880309HSLLDS09 (Mexico) (individual) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(a)(i) of E.O. 14059 for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

3. MACHADO TORRES, Ernesto, Mexico; DOB 15 Apr 1984; POB Sinaloa, Mexico; nationality Mexico; Gender Male; C.U.R.P. MATE840415HSLCRR00 (Mexico) (individual) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(a)(i) of E.O. 14059 for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

4. ZAMUDIO LERMA, Ludim, Boulevard Doctor Mora 1776, Colonia La Campina, Culiacan, Sinaloa, Mexico; DOB 19 Apr 1972; POB Sinaloa, Mexico; nationality Mexico; Gender Male; C.U.R.P. ZALL720419HSLMRD06 (Mexico) (individual) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(a)(i) of E.O. 14059 for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

5. ZAMUDIO IBARRA, Ludim, Calle Diego Rivera 374, Interior 3, Colonia Privada Los Cisnes, Desarrollo Urbano Tres Rios, Culiacan, Sinaloa, Mexico; DOB 03 Sep 1991; POB Sinaloa, Mexico; nationality Mexico; Gender Male; C.U.R.P. ZAIL910903HSLMBD06 (Mexico) (individual) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(a)(i) of E.O. 14059 for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

6. ZAMUDIO LERMA, Luis Alfonso, Calle Frida Kahlo 2464, Fraccionamiento Residencial Los Cisnes, Culiacan, Sinaloa, Mexico; Calle Diego Valadez 1321, Col. Chapultepec, Culiacan, Sinaloa, Mexico; DOB 09 Apr 1965; POB Sinaloa, Mexico; nationality Mexico; Gender Male; C.U.R.P. ZALL650409HSLMRS03 (Mexico) (individual) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(a)(i) of E.O. 14059 for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

Entities

1. ACEROS Y REFACCIONES DEL HUMAYA, S.A. DE C.V., Boulevard Doctor Enrique Cabrera 2000, Culiacan, Sinaloa, Mexico; Organization Established Date 21 Sep 2006; Folio Mercantil No. 41204 (Mexico) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(a)(i) of E.O. 14059 for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

2. FARMACIA LUDIM, Boulevard Doctor Enrique Cabrera, Tres Rios, Culiacan, Sinaloa, Mexico; Organization Type: Retail sale of pharmaceutical and medical goods, cosmetic and toilet articles in specialized stores [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(a)(i) of E.O. 14059 for having engaged in, or attempted to engage in, activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the international proliferation of illicit drugs or their means of production.

3. GRUPO ZAIT, S.A. DE C.V., Culiacan, Sinaloa, Mexico; Organization Established Date 22 Jul 2013; Folio Mercantil No. 82722 (Mexico) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or to have acted or purported to act for or on behalf of, directly or indirectly, Luis Alfonso ZAMUDIO LERMA, a person blocked pursuant to E.O. 14059.

4. INMOBILIARIA DEL RIO HUMAYA, S.A. DE C.V., Culiacan, Sinaloa, Mexico; Organization Established Date 20 Aug 2003; Folio Mercantil No. 73228 (Mexico) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or to have acted or purported to act for or on behalf of, directly or indirectly, Ludim ZAMUDIO LERMA, a person blocked pursuant to E.O. 14059.

5. OPERADORA DEL HUMAYA, S.A. DE C.V., Culiacan, Sinaloa, Mexico; Organization Established Date 16 Oct 2003; R.F.C. OHU0310161G2 (Mexico); Folio Mercantil No. 73385 (Mexico) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or to have acted or purported to act for or on behalf of, directly or indirectly, Ludim ZAMUDIO LERMA and Ludim ZAMUDIO IBARRA, persons blocked pursuant to E.O. 14059.

6. OPERADORA PARQUE ALAMEDAS, S. DE R.L. DE C.V., Culiacan, Sinaloa, Mexico; Organization Established Date 08 Nov 2006; Folio Mercantil No. 76172 (Mexico) [ILLICIT–DRUGS–EO14059].

Designated pursuant to section 1(b)(iii) of E.O. 14059 for being owned, controlled, or directed by, or to have acted or purported to act for or on behalf of, directly or indirectly, Ludim ZAMUDIO LERMA and Ludim ZAMUDIO IBARRA, persons blocked pursuant to E.O. 14059.

Dated: February 22, 2023.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2023–03948 Filed 2–24–23; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for the General Business Credit

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. Currently, the IRS is soliciting comments concerning Form 3800, General Business Credit.

DATES: Written comments should be received on or before April 28, 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 1545–0895 or Form 3800, General Business Credit.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to LaNita Van Dyke, at (202) 317–6009, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: General Business Credit.

OMB Number: 1545–0895.

Form Number: Form 3800.

Abstract: Internal Revenue Code section 38 permits taxpayers to reduce their income tax liability by the amount of their general business credit, which is an aggregation of their investment credit, work opportunity credit, welfare-to-work credit, alcohol fuel credit, research credit, low-income housing credit, disabled access credit, enhanced oil recovery credit, etc. Form 3800 is used to figure the correct credit.

Current Actions: We have made no changes to Form 3800 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, farms and individuals.

Estimated Number of Respondents: 65,000.

Estimated Time per Respondent: 33.38 hours.

Estimated Total Annual Burden Hours: 2,169,700.

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: February 21, 2023.

Molly J. Stasko,

Senior Tax Analyst.

[FR Doc. 2023–03903 Filed 2–24–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple Fiscal Service Information Collection Requests

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice of Information Collection; request for comment.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before March 29, 2023 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Melody Braswell by emailing *PRA@treasury.gov,* calling (202)–622–1035, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Bureau of the Fiscal Service (BFS)

1. Title: Direct Deposit, Go Direct, and Direct Express Sign-Up Forms.

OMB Number: 1530–0006.

Form Number: SF–1199A, FS Form 1200 (English/Spanish), FS Form 1200VADE, FS Form 1201L, FS Form 1201S.

Abstract: This series of forms is used by recipients to authorize the deposit of Federal payments into their accounts at financial institutions. The information on the forms routes the direct deposit payment to the correct account at the financial institution.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: Individuals or households, business or other not-for-profit, Federal Government.

Estimated Number of Respondents: 406,175.

Estimated Time per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 67,786.

2. Title: Application Forms for U.S. Department of the Treasury Stored Value Card (SVC) Program.

OMB Number: 1530–0013.

Form Number: FS Form 2887—Application Forms for U.S. Department of the Treasury Stored Value Card (SVC) Program; FS Form 2889—U.S. Department of The Treasury Stored Value Card Contractor Agreement; and FS Form 5752—Authorization To Disclose Information Related To Stored Value Account.

Abstract: This collection of forms is used to collect information from individuals requesting enrollment in the Treasury SVC program along with supplemental information for contractors choosing to participate in the program, to obtain authorization to initiate debit and credit entries to their bank or credit union accounts, and to facilitate collection of any delinquent amounts. Disclosure of the information requested on the forms is voluntary; however, failure to furnish the requested information may significantly delay or prevent participation in the Treasury SVC program.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: Individuals or households.

Estimated Number of Respondents: 102,030.

Estimated Time per Respondent: 10 minutes for FS Form 2887 and FS Form 2889; 1 minute for FS Form 5752.

Estimated Total Annual Burden Hours: 17,001.

3. Title: Management of Federal Agency Disbursements.

OMB Number: 1530–0016.

Form Number: None.

Abstract: This regulation requires that most Federal payments be made by Electronic Funds Transfer (EFT); sets forth waiver requirements; and provides for a low-cost Treasury-designated account to individuals at a financial institution that offers such accounts.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: Individuals or Households, Business or other for-profit institutions, Not-for-profit Institutions.

Estimated Number of Respondents: 1,300.

Estimated Time per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 325.

4. Title: Application Form for U.S. Department of the Treasury Accountable Official Stored Value Card (SVC) Program.

OMB Number: 1530–0020.

Form Number: FS Form 2888.

Abstract: This form is used to collect information from accountable officials requesting enrollment in the Treasury SVC program in their official capacity, to obtain authorization to initiate debit and credit entries to their bank or credit union accounts, and to facilitate collection of any delinquent amounts that may become due and yet to be paid as a result of the use of the cards.

This information is collected under the authority in: 31 U.S.C. 321, General Authority of the Secretary of the Treasury; Public Law 104–134, Debt Collection Improvement Act of 1996, as amended; Department of Defense Financial Management Regulation (DoDFMR) 7000.14–R, as amended; 5 U.S.C. 5514, Installment deduction for indebtedness to the United States; 31 U.S.C. 1322, Payments of unclaimed trust fund amounts and refund of amounts erroneously deposited; 31 U.S.C. 3720, Collection of payments; 31 U.S.C. 3720A, Reduction of tax refund by amount of debt; 31 U.S.C. 7701, Taxpayer identifying number; 37 U.S.C. 1007, Deductions from pay; 31 CFR part 210, Federal Government Participation in the Automated Clearing House; 31 CFR part 285, Debt Collection Authorities under the Debt Collection Improvement Act of 1996; and E.O. 9397 (SSN), as amended.

The information on this form may be disclosed as generally permitted under 5 U.S.C. 552(a)(b) of the Privacy Act of 1974, as amended. It may be disclosed outside of the U.S. Department of the Treasury to its Fiscal and Financial Agents and their contractors involved in providing SVC services, or to the Department of Defense (DoD) for the purpose of administering the Treasury SVC programs. In addition, other Federal, State, or local government agencies that have identified a need to know may obtain this information for the purpose(s) as identified by Fiscal Service's Routine Uses as published in the **Federal Register**.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: Individuals or households.

Estimated Number of Respondents: 7,500.

Estimated Time per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 1,250.

5. Title: Electronic Funds Transfer (EFT) Market Research Study.

OMB Number: 1530–0022.

Form Number: None.

Abstract: This is a generic clearance to conduct customer satisfaction surveys, focus groups, and interviews among recipients of federal benefit and vendor payments through EFT. The need for this market research continues to arise from a Congressional directive that accompanied legislation enacted in 1996, as part of the Debt Collection Improvement Act (Pub. L. 104–134), expanding the scope of check recipients required to use direct deposit to receive Federal benefit payments (see 31 U.S.C. 3332). Congress directed Treasury to ''study the socioeconomic and demographic characteristics of those who currently do not have Direct Deposit and determine how best to increase usage among all groups.'' 142 Cong. Rec. H4090 (daily ed. April 25, 1996).

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: Individuals or households, Federal Government.

Estimated Number of Respondents: 19,500.

Estimated Time per Respondent: 16 minutes.

Estimated Total Annual Burden Hours: 5,200.

6. Title: Request to Reissue United States Savings Bonds.

OMB Number: 1530–0025.

Form Number: FS Form 4000.

Abstract: The information is requested to support a request to reissue paper (definitive) Series EE, HH, and I United States Savings Bonds; Retirement Plan Bonds; and Individual Retirement Plan Bonds and to indicate the new registration required.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: Individuals or households.

Estimated Number of Respondents: 38,000.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 19,000.

7. Title: Description of United States Savings Bonds Series HH/H and Description of United States Bonds/Notes.

OMB Number: 1530–0037.

Form Number: FS Form 1980; and FS Form 2490.

Abstract: The information collected is necessary to obtain information describing an owner's holding of United States Securities.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: Individuals or households.

Estimated Number of Respondents: 950.

Estimated Time per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 95.

Authority: 44 U.S.C. 3501 *et seq.*

Melody Braswell,

Treasury PRA Clearance Officer.

[FR Doc. 2023–03953 Filed 2–24–23; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Privacy Act of 1974; System of Records

AGENCY: Department of the Treasury.

ACTION: Notice of modified systems of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of the Treasury (''Treasury'' or the ''Department'') proposes to modify a system of records notice relating to the Treasury system of records titled, ''Department of the Treasury Civil Rights Complaints, Compliance Reviews, and Fairness in Federal Programs Files.''

DATES: Submit comments on or before March 29, 2023. The modification will be applicable on February 27, 2023, unless Treasury receives comments and determines that changes to the system of records notice are necessary.

ADDRESSES: Comments may be submitted to the Federal eRulemaking Portal electronically at *http://www.regulations.gov.* Comments can also be sent to the Deputy Assistant Secretary for Privacy, Transparency, and Records, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220, Attention: Revisions to Privacy Act Systems of Records. All comments received, including attachments and other supporting documents, are part of the public record and subject to public disclosure. All comments received will be posted without change to *www.regulations.gov,* including any personal information provided. You should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: For general questions and questions regarding privacy issues, please contact: the Deputy Assistant Secretary for Privacy, Transparency, and Records (202–622–5710), Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Department of the Treasury (Treasury), proposes to modify a system of records notice, 81 FR 78266, relating to the Treasury system of records titled, ''Department of the Treasury, Civil Rights Complaints, Compliance Reviews, and Fairness in Federal Programs Files.''

Treasury is making changes to this system of records notice to delete one system location and system manager (to reflect Treasury realignment and consolidation of bureaus); to expand the scope of the ''Compliance Review Files'' referenced in the original notice (81 FR 78266) to cover information used to analyze the distribution of program resources under various Treasury programs and authorities such as the State Small Business Credit Initiative (SSBCI), including for fairness, equity, and opportunity; changing the name of the system and other changes to describe more specifically that records regarding compliance reviews to ensure fairness in Federal programs may include information collected or used by various Treasury bureaus or offices to analyze the distribution of federal resources, including to promote the allocation of Federal resources to advance fairness, equity, and opportunity; and to reflect the change in the name of the ''Treasury Office of Civil Rights and Diversity'' (OCRD) to the ''Office of Civil Rights and Equal Economic Opportunity'' (OCRE).

The expansion of the scope of Compliance Review Files covered by this system could have an impact on privacy. To reduce the impact on privacy, Treasury conducted a Privacy and Civil Liberties Impact Assessment with respect to its collection of certain sensitive data through the SSBCI program, which carefully considered the risks, benefits, and controls for collecting this information. Data collected through SSBCI reports is described in published SSBCI Capital Program Reporting Guidance, which underwent review by the Office of Management and Budget, including through the Paperwork Reduction Act process (OMB control number 1505–0227). Treasury has also published an Interim Final Rule describing the purpose and relevant authorities for the collection of certain demographic data. See 87 FR 13633 (Mar. 10, 2022). Treasury has provided a report of this system of records to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and OMB, pursuant to 5 U.S.C. 552a(r) and OMB Circular A–108, ''Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act,'' dated December 23, 2016.

Dated: 22 February 2023.

Ryan Law,

Deputy Assistant Secretary for Privacy, Transparency, and Records.

SYSTEM NAME AND NUMBER:

Department of the Treasury, .013, Civil Rights Complaints, Compliance Reviews, and Fairness in Federal Programs Files.

SECURITY CLASSIFICATION:

Unclassified

SYSTEM LOCATION:

These records are located in the Department of the Treasury's (Treasury) Office of Civil Rights and Equal Employment Opportunity (OCRE), the Office of the General Counsel, and any other office within a Treasury bureau or office where a complaint is filed, an action arises, data is collected, or a compliance review or analysis is conducted to advance fairness, equity and opportunity in Federal programs or to analyze the distribution of Federal resources, including to underserved communities.

The locations at which the system is maintained are:

(1) a. Departmental Offices (DO): 1500 Pennsylvania Ave. NW, Washington, DC 20220.

b. The Office of Inspector General (OIG): 740 15th Street NW, Washington, DC 20220.

c. Treasury Inspector General for Tax Administration (TIGTA): 1125 15th Street NW, Suite 700A, Washington, DC 20005.

d. Special Inspector General for the Troubled Asset Relief Program (SIGTARP), 1801 L Street NW, Washington, DC 20220.

(2) Alcohol and Tobacco Tax and Trade Bureau (TTB): 1310 G St. NW, Washington, DC 20220.

(3) Office of the Comptroller of the Currency (OCC): 400 7th Street SW, Washington, DC 20024.

(4) Bureau of Engraving and Printing (BEP): 14th & C Streets SW, Washington, DC 20228.

(5) Bureau of the Fiscal Service (FS): 401 14th Street SW, Washington, DC 20227.

(6) Internal Revenue Service (IRS): 1111 Constitution Avenue NW, Washington, DC 20224.

(7) United States Mint (MINT): 801 9th Street NW, Washington, DC 20220.

(8) Financial Crimes Enforcement Network (FinCEN), Vienna, VA 22182–0039.

SYSTEM MANAGER(S):

Department of the Treasury: Official prescribing policies and practices: Director, Office of Civil Rights and Equal Employment Opportunity.

The system managers for the Treasury components are:

(1) Treasury: OCRE, External Civil Rights Program Manager, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

(2) a. DO: Office of EEO, EEO Director, 1500 Pennsylvania Avenue NW, Washington, DC 20220; the manager of any DO Office where a complaint, compliance review, or a data collection or review to advance fairness, equity and opportunity in Federal programs or the analysis regarding the distribution of Federal resources originated.

b. OIG: EEO and Diversity Manager, 740 15th Street NW, Suite 500, Washington, DC 20220.

c. TIGTA: EEO Program Manager, 1125 15th Street NW, Suite 700A, Washington, DC 20005.

d. SIGTARP: EEO Program Manager, 1801 L Street NW, 3rd Floor, Washington, DC 20220.

(3) TTB: EEO Officer, 1310 G Street NW, Suite 300W, Washington, DC 20220.

(4) OCC: Director, Workplace Fairness and Equal Opportunity, 400 7th Street SW, Washington, DC 20024.

(5) BEP: Chief, Office of Equal Opportunity and Diversity Management, 14th and C Street SW, Room 639–17, Washington, DC 20228.

(6) FS: EEO Officer, PG Center, Building 2, Room 137, 3700 East-West Highway, Hyattsville, MD 20782.

(7) IRS: Chief, External Civil Rights Unit, 1111 Constitution Avenue NW, Suite 2219, Washington, DC 20224.

(8) U.S. Mint: Chief, Chief, Diversity Management and Civil Rights, 801 9th Street NW, 3rd Floor, Washington, DC 20220.

(9) FinCEN: Chief, Outreach and Workplace Solutions, 2070 Chain Bridge Road, Suite 200, Vienna, VA 22182.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title VI of the 1964 Civil Rights Act of 1964; sections 504 and 508 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; and Title IX of the Education Amendments Act of 1972; Executive Order 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government;* (Jan. 20, 2021) as well as Federal program statutes that may exist from time to time, as applicable.

PURPOSE(S) OF THE SYSTEM:

The complaint files and other records will be used to enforce and ensure compliance with and implementation of the legal authorities listed above. Treasury uses the information in this system to investigate complaints and to obtain compliance with civil rights laws and related regulations and executive orders.

Treasury uses the system to investigate complaints and in reviewing Treasury programs and activities to ensure compliance with the Federal laws which prohibit discrimination on the basis of race, color, national origin, sex, age, and disability. Treasury also uses the system to review Treasury programs and their participants to determine if these programs comply with relevant federal laws, regulations, and executive orders, including those related to discrimination. Treasury also uses demographic-related records for reporting purposes and for the purpose of understanding program outcomes. Treasury bureaus and offices also use the system to conduct analysis of the distribution of Federal resources, including to advance equity and opportunity, including to underserved communities. The system also contains annual or other periodically recorded statistical data submitted to and used by the OCRE and the bureaus or offices, as applicable, in monitoring the compliance status of recipients of Treasury financial assistance.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Covered individuals include persons who file complaints alleging discrimination or violation of their rights under the statutes identified above (Authority for Maintenance of the system) or individuals whose information was received from covered entities (*e.g.,* recipients of financial assistance or other funding from Treasury such as grantees and sub-grantees), whether individuals, governments, organizations, or institutions, or those investigated by OCRE as a result of allegations of discrimination or through compliance reviews conducted by OCRE. Covered individuals also include individuals whose information was received by a Treasury bureau or office, either directly or through covered entities, in the course of Federal program application, administration, or reporting, or otherwise collected by or reported to a Treasury bureau or office (subject to OCRE review, where applicable) when conducting a compliance review or analysis of the distribution of Federal resources to advance fairness, equity and opportunity. Covered individuals also include persons who submit correspondence to OCRE related to other compliance activities (*e.g.,* outreach and public education), and other correspondence unrelated to a complaint or review and requiring response by OCRE.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system encompasses a variety of records associated with complaints, compliance reviews, and correspondence. The complaint files and logs include complaint allegations, information gathered during complaint investigations, findings and results of investigations, and correspondence relating to investigations, as well as status information for all complaints.

Records may include demographic or other information the collection of which is required by law, regulation, or executive order which prohibits or protects against discrimination on the basis of race, color, national origin, sex, age, or disability.

Records may also include information, including demographic, financial, or financial transaction information used to analyze distributions of resources in current or past Federal programs.

Equivalent types of information are maintained for reviews and correspondence activities (namely information gathered, findings, results, correspondence, and status).

RECORD SOURCE CATEGORIES:

Information is provided by Treasury employees, complainants and covered individuals or entities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

These records may be used to disclose pertinent information to:

(1) To the United States Department of Justice (''DOJ''), for the purpose of representing or providing legal advice to the Department in a proceeding before a court, adjudicative body, or other administrative body before which the Department is authorized to appear, when such proceeding involves:

(a) The Department or any component thereof;

(b) Any employee of the Department in his or her official capacity;

(c) Any employee of the Department in his or her individual capacity where DOJ or the Department has agreed to represent the employee; or

(d) The United States, when the Department determines that litigation is likely to affect the Department or any of its components; and the use of such records by the DOJ is deemed by the DOJ or the Department to be relevant and necessary to the litigation provided

that the disclosure is compatible with the purpose for which records were collected.

(2) To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations;

(3) Provide information to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(4) Another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Federal Government is a party to the judicial or administrative proceeding when relevant and necessary.

(5) The National Archives and Records Administration (''NARA'') for use in its records management inspections and its role as an Archivist under the authority of 44 U.S.C. 2904 and 2906.

(6) Contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for Treasury, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to Treasury officers and employees.

(7) To appropriate agencies, entities, and person when (1) the Department of the Treasury suspects or has confirmed that there has been a breach of the system of records; (2) the Department of the Treasury has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department of the Treasury (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 the Department of the Treasury's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm;

(8) To another Federal agency or Federal entity, when the Department of the Treasury determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach;

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper records, file folders and/or electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

In the case of administrative complaints, records are indexed by the complainant's name. In the case of compliance reviews, records are indexed by the name of the recipient of financial assistance. Records pertaining to Federal programs and analyses of the distribution of Federal resources to advance fairness, equity and opportunity are indexed by program and/or by program participants.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Documents related to complaints and reviews are retained at OCRE or the relevant Treasury bureau or office for three years from the date the complaint is closed and then are archived at the National Archives and Records Administration for 15 years. Data and information collected to advance fairness, equity and opportunity in Federal programs or analyze the distribution of Federal resources are retained at the relevant Treasury bureau or office for 10 years, in accordance with N1–056–030–010 Item 1.b.2. Correspondence is retained for one year following the end of the fiscal year in which processed.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Treasury will ensure that the safeguards for this system conform with applicable law and policy governing the privacy and security of Federal records. These include but are not limited to the Privacy Act of 1974, and the Paperwork Reduction Act of 1995. Only authorized users have access to the records in the system. Specific access is structured around need and is determined by the person's role in the organization.

Printed materials are filed in secure cabinets in secure Federal buildings with access based on need.

RECORD ACCESS PROCEDURES:

See ''Notification Procedure'' below.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' below.

NOTIFICATION PROCEDURES:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendices A–M. Requests for information and specific guidance on where to send requests for records may be addressed to: Privacy Act Request, DO, Director, Disclosure Services Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Certain records in this system are exempt from 5 U.S.C. 552a(c)(3), (d)(1), (2), (3), and (4), (e)(1), (e)(4)(G), (H),and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). See 31 CFR 1.36.

HISTORY:

Notice of this system of records was last published in full in the **Federal Register** on November 7, 2016 (81 FR 78266) as the Department of the Treasury .013—Civil Rights Complaints and Compliance Review Files.

[FR Doc. 2023–03990 Filed 2–24–23; 8:45 am]

BILLING CODE 4810–AK–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Departmental Offices

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the Department of the Treasury's Office of Foreign Assets Control is soliciting comments concerning OFAC's Iranian Financial Sanctions Regulations Report on Closure by U.S. Financial Institutions of Correspondent Accounts and Payable-Through Accounts.

DATES: Comments should be received on or before March 29, 2023 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent

within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION:

Departmental Offices (DO)

Title: Coronavirus Capital Projects Fund.

OMB Control Number: 1505–0277.

Type of Review: Revision of a currently approved collection.

Description: Section 604 of the Social Security Act (the ''Act''), as added by section 9901 of the American Rescue Plan Act of 2021, Public Law 117–2 (Mar. 11, 2021) established the Coronavirus Capital Projects Fund (''CPF''). The CPF provides $10 billion in funding for the U.S. Department of the Treasury (''Treasury'') to make payments according to a statutory formula to States (defined to include each of the 50 states, the District of Columbia, and Puerto Rico), seven territories and freely associated states (the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau), and Tribal governments [1] to carry out critical capital projects directly enabling work, education, and health monitoring, including remote options, in response to the public health emergency with respect to the Coronavirus Disease (COVID–19).

The current information collection is being used to solicit information related to quarterly project and expenditure reports and annual performance reports submitted by CPF recipients that are states, territories, or freely associated states. For these recipients, the information collection is being renewed without changes.

Treasury is adding to this information collection Compliance and Reporting Guidance that will be used to solicit information related to annual project, expenditure and performance reports submitted by CPF recipients that are Tribal governments.

The Compliance and Reporting Guidance provides recipients with information needed to fulfill their reporting requirements and compliance obligations. Data is submitted to Treasury using a web-based portal and in accordance with specific data requirements.

Project and expenditure reports must be submitted quarterly for the duration of the period of performance for States, territories, and freely associated states, and annually for the duration of the period of performance for Tribal governments. The project and expenditure report contains a set of standardized questions to ascertain the recipient's use of funds received as of the date of reporting, as well as the status of individual projects. Treasury will make the data submitted by recipients publicly available.

Performance reports must be submitted annually for all recipients for the duration of the period of performance. For states, territories, and freely associated states, the performance report will contain detailed performance data corresponding to the ''Programs'' specified previously in a recipient's Grant Plan. This will include information on efforts to improve equity and engage communities. The performance report is largely freely written text, and while there are certain data and topics that recipients must cover in the performance report, it is mostly free-form written content. Recipients are required to publish the performance report on their website and provide the reports to Treasury. Treasury will make the performance reports and associated data submitted by recipients publicly available. For Tribal governments, the performance report will also be free-form written content, but is shorter and less detailed.

Form: Compliance and Reporting Guidance for States, Territories, and Freely Associated States; Compliance and Reporting Guidance for Tribal Governments.

Affected Public: State, Territorial, Freely Associated State, and Tribal governments receiving CPF grant funds.

Estimated Number of Respondents: 609.

Frequency of Response: States, territories, and freely associated states: 4 times per year for project and expenditure reports, and 1 time per year for performance reports; Tribal governments: 1 time per year.

Estimated Total Number of Annual Responses: 845.

Estimated Time per Response: 62 hours for State project and expenditure reports. 80 hours for State performance reports. 50 hours for Tribal annual reports.

Estimated Total Annual Burden Hours: 46,852.

Authority: 44 U.S.C. 3501 *et seq.*

Melody Braswell,

Treasury PRA Clearance Officer.

[FR Doc. 2023–03956 Filed 2–24–23; 8:45 am]

BILLING CODE 4810–AL–P

[1] An eligible Tribal government is the recognized governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, community, component band, or component reservation, individually identified (including parenthetically) in the list published most recently as of the date of enactment of this Act pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131). The State of Hawaii, for exclusive use of the Department of Hawaiian Home Lands and the Native Hawaiian Education Programs to assist Native Hawaiians, is also eligible to apply for funding under this funding category.

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple Internal Revenue Service (IRS) Information Collection Requests

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice of Information Collection, request for comment.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before March 29, 2023 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION:

Internal Revenue Service

1. Title: Forest Activities Schedule.

OMB Number: 1545–0007.

Form Number: Form T.

Abstract: Taxpayers use Form T to provide information on timber accounts when a sale or deemed sale under Internal Revenue Code (IRC) sections 631(a), 631(b), or other exchange has occurred during the tax year. The IRS uses this information to determine if the taxpayer reported the correct amount of income and deductions.

Type of Review: Extension of a currently approved collection.

Affected Public: Private sector.

Estimated Number of Responses: 10.

Estimated Time per Respondent: 36 hours, 11 minutes.

Estimated Total Annual Burden Hours: 362.

2. Title: United States Additional Estate Tax Return.

OMB Number: 1545–0016.

Form Number: 706–A.

Abstract: Form 706–A is used by individuals to compute and pay the additional estate taxes due under Code section 2032A(c). IRS uses the information to determine that the taxes have been properly computed. The form is also used for the basis election of section 1016(c)(1).

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 180.

Estimated Time per Respondent: 1 hour, 19 minutes.

Estimated Total Annual Burden Hours: 1,678.

3. Title: Consent of Shareholder To Include Specific Amount in Gross Income.

OMB Number: 1545–0043.

Form Number: 972.

Abstract: Form 972 is filed by shareholders of corporations who agree to include a consent dividend in gross income as a taxable dividend. The IRS uses Form 972 as a check to see if an amended return is filed by the shareholder to include the amount in income and to determine if the corporation claimed the correct amount as a deduction on its tax return.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100.

Estimated Time per Respondent: 3 hrs, 51 min.

Estimated Total Annual Burden Hours: 385.

4. Title: Dividends and Distributions.

OMB Number: 1545–0110.

Form Number: Form 1099–DIV.

Abstract: Form 1099–DIV is used by the IRS to ensure that dividends are properly reported as required by Internal Revenue Code section 6402, that liquidation distributions are correctly reported as required by Internal Revenue Code section 6403, and to determine whether payees are correctly reporting their income.

Current Actions: There is an increase in the estimated number of respondents previously approved by OMB.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit groups.

Estimated Number of Respondents: 89,588,000.

Estimated Time per Respondent: 28 minutes.

Estimated Total Annual Burden Hours: 42,106,360.

5. Title: U.S. Departing Alien Income Tax Statement.

OMB Number: 1545–0138.

Form Number: 2063.

Abstract: Form 2063 is used by a departing resident alien against whom a termination assessment has not been made, or a departing nonresident alien who has no taxable income from United States sources, to certify that they have satisfied all U.S. income tax obligations. The data is used by the IRS to certify that departing aliens have complied with U.S. income tax laws.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Responses: 20,540.

Estimated Time per Response: 50 minutes.

Estimated Total Annual Burden Hours: 17,049.

6. Titles: Form 3520, Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts and Form 3520–A, Annual Information Return of Foreign Trust With a U.S. Owner.

OMB Number: 1545–0159.

Form Numbers: Forms 3520 and 3520–A.

Abstract: U.S. persons file Form 3520 to report certain transactions with foreign trusts, ownership of foreign trusts under the rules of Internal Revenue Code sections 671 through 679, and receipt of certain large gifts or bequests from certain foreign persons. Form 3520–A is the annual information return of a foreign trust with at least one U.S. owner. The form provides information about the foreign trust, its U.S. beneficiaries, and any U.S. person who is treated as an owner of any portion of the foreign trust under the grantor trust rules.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,820.

Estimated Time per Respondent: 51 hours, 56 minutes.

Estimated Total Annual Burden Hours: 94,537.

7. Title: Occupational Tax and Registration Return for Wagering.

OMB Number: 1545–0236.

Form Number: 11–C.

Abstract: Form 11–C is used to register persons accepting wagers, as required by Internal Revenue Code section 4412. The IRS uses this form to register the respondent, collect the annual stamp tax imposed by Code section 4411, and to verify that the tax on wagers is reported on Form 730, Monthly Tax Return for Wagers.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 11,500.

Estimated Time per Respondent: 7 hours, 4 minutes.

Estimated Total Annual Burden Hours: 81,190 hours.

8. Title: TD 7918, Creditability of Foreign Taxes.

OMB Number: 1545–0746.

Form Number: TD 7918.

Abstract: Internal Revenue Code (IRC) section 901 allows a taxpayer a tax credit for the amount of any income, war profits, or excess profits taxes it has paid or accrued during the taxable year. Treasury Regulations section 1.901–2A(e) allows a dual capacity taxpayer to apply the safe harbor formula to qualifying levies when determining the credit. Section 1.901–2A(d) requires the taxpayer to provide a statement electing to use the safe harbor formula.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, estates, and trusts.

Estimated Number of Responses: 120.

Estimated Time per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 41.

9. Title: Interest Charge on DISC-Related Deferred Tax Liability.

OMB Number: 1545–0939.

Form Number: 8404.

Abstract: Shareholders of Interest Charge Domestic International Sales Corporations (IC–DISCs) use Form 8404 to figure and report an interest charge on their DISC-related deferred tax liability. The interest charge is required by Internal Revenue Code section 995(f). IRS uses Form 8404 to determine whether the shareholder has correctly figured and paid the interest charge on a timely basis.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals or households.

Estimated Number of Respondents: 2,000.

Estimated Time per Respondent: 7 hours, 47 minutes.

Estimated Total Annual Burden Hours: 15,580 hours.

10. Title: Generation-Skipping Transfer Tax Return for Distributions.

OMB Number: 1545–1144.

Form Number: Form 706–GS (D).

Abstract: Form 706–GS(D) is used by persons who receive taxable distributions from a trust to compute and report the generation-skipping transfer tax imposed by Internal Revenue Code section 2601. IRS uses the information to verify that the tax has been properly computed.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,000.

Estimated Time per Respondent: 59 minutes.

Estimated Total Annual Burden Hours: 980 hours.

11. Title: Debt Instruments with OID; Contingent Payments; Anti-Abuse Rule.

OMB Number: 1545–1450.

Form Number: TD 8674.

Abstract: This regulation relates to the tax treatment of debt instruments that provide for one or more contingent payments. The regulation also treats a debt instrument and a related hedge as an integrated transaction. The regulation provides general rules, definitions, and reporting and recordkeeping requirements for contingent payment debt instruments and for integrated debt instruments.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, and state, local, or tribal governments.

Estimated Number of Respondents: 180,000.

Estimated Time per Respondent: 29 minutes.

Estimated Total Annual Burden Hours: 89,000.

12. Title: TD 8649, Netting Rule for Certain Conversion Transactions.

OMB Number: 1545–1452.

Form Number: TD 8649

Abstract: Internal Revenue Code (IRC) section 1258 recharacterizes capital gains from conversion transactions as ordinary income to the extent of the time value element. Treasury Regulations section 1.1258–1 provides that certain gains and losses may be netted for purposes of determining the amount of gain recharacterized. To be eligible for netting relief, the taxpayer must identify on its books and records all the positions that are part of the conversion transaction before the close of the day on which the positions become part of the conversion transaction.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and households, business or other for-profit organizations.

Estimated Number of Responses: 50,000.

Estimated Time per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 5,000.

13. Title: Guidance Regarding Deduction and Capitalization of Expenditures.

OMB Number: 1545–1870.

Form Number: TD 9107.

Abstract: The information required to be retained by taxpayers will constitute enough documentation for purposes of substantiating a deduction. The information will be used by the agency on audit to determine the taxpayer's entitlement to a deduction. The respondents include taxpayers who engage in certain transactions involving the acquisition of a trade or business or an ownership interest in a legal entity.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 3,000.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 3,000.

14. Title: Regulations Governing Practice Before the Internal Revenue Service.

OMB Number: 1545–1871.

Form Number: T.D. 9165.

Abstract: These regulations will ensure that taxpayers are provided adequate information regarding the limits of tax shelter advice that they receive and ensure, that practitioners properly advise taxpayers of relevant information with respect to tax shelter options.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals or households.

Estimated Number of Respondents: 100,000.

Estimated Time per Respondent: 8 hours.

Estimated Total Annual Burden Hours: 13,333 hours.

15. Title: Information Return of U.S. Persons With Respect To Foreign Disregarded Entities; and Transactions Between Foreign Disregarded Entity of a Foreign Tax Owner and the Filer.

OMB Number: 1545–1910.

Form Number: Form 8858 and Sch M (Form 8858).

Abstract: Form 8858 and Schedule M (Form 8858) are used by certain U.S. persons that own a foreign disregarded entity (FDE) directly or, in certain circumstances, indirectly or constructively.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals or households.

Form 8858:

Estimated Number of Respondents: 20,000.

Estimated Time per Respondent: 35.99 hours.

Estimated Total Annual Burden Hours: 719,800.

Form 8858 (Sch M):

Estimated Number of Respondents: 8,000.

Estimated Time per Respondent: 24.75 hours.

Estimated Total Annual Burden Hours: 198,000 hours.

16. Title: Application to Participate in the Income Verification Express Service (IVES) Program.

OMB Number: 1545–2032.

Form Number: 13803.

Abstract: Form 13803, Application to Participate in the Income Verification Express Service (IVES) Program, is used to submit the required information necessary to complete the e-services enrollment process for IVES users and to identify delegates receiving transcripts on behalf of the principal account user.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Respondents: 200.

Estimated Time per Respondent: 30 mins.

Estimated Total Annual Burden Hours: 100.

17. Title: Employment Tax Adjustments; and Rules Relating to Additional Medicare Tax.

OMB Number: 1545–2097.

Form Numbers: TD 9405, TD 9645.

Abstract: This document contains final regulations relating to employment tax adjustments and employment tax refund claims. These regulations modify the process for making interest-free adjustments for both underpayments and overpayments of Federal Insurance Contributions Act (FICA) and Railroad Retirement Tax Act (RRTA) taxes and federal income tax withholding (ITW) under sections 6205(a) and 6413(a), respectively, of the Internal Revenue Code (Code).

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Respondents: 3,400,000.

Estimated Time per Respondent: 4 hrs., 58 mins.

Estimated Total Annual Burden Hours: 16,900,000.

Authority: 44 U.S.C. 3501 *et seq.*

Melody Braswell,

Treasury PRA Clearance Officer.

[FR Doc. 2023–03976 Filed 2–24–23; 8:45 am]

BILLING CODE 4830–01–P

UNIFIED CARRIER REGISTRATION PLAN

Sunshine Act Meetings

TIME AND DATE: March 2, 2023, 8:00 a.m. to 5:00 p.m., Eastern time.

PLACE: This meeting will take place at the Sheraton Virginia Beach Oceanfront, 3501 Atlantic Avenue, Virginia Beach, VA 23451. The meeting will also be accessible via conference call and via Zoom Meeting and Screenshare. Any interested person may call (i) 1–929–205–6099 (US Toll) or 1–669–900–6833 (US Toll), Meeting ID: 915 0493 1016, to listen and participate in this meeting. The website to participate via Zoom Meeting and Screenshare is *https://kellen.zoom.us/meeting/register/tJUod-2hrToqG9IKX1BM_YbB6S5vEnGZwCNk.*

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Enforcement Subcommittee (the ''Subcommittee'') will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement. The subject matter of this meeting will include:

Proposed Agenda

I. Call to Order—UCR Enforcement Subcommittee Chair

The Subcommittee Chair will welcome attendees, call the meeting to order, call roll for the Subcommittee, confirm whether a quorum is present, and facilitate self-introductions.

II. Verification of Publication of Meeting Notice—UCR Executive Director

The UCR Executive Director will verify the publication of the meeting notice on the UCR website and distribution to the UCR contact list via email followed by the subsequent publication of the notice in the **Federal Register**.

III. Review and Approval of Subcommittee Agenda and Setting of Ground Rules—UCR Enforcement Subcommittee Chair

For Discussion and Possible Subcommittee Action

The Subcommittee Agenda will be reviewed, and the Subcommittee will consider adoption.

Ground Rules

➢ Subcommittee action only to be taken in designated areas on agenda

IV. Mission of the Subcommittee—UCR Enforcement Subcommittee Chair

For Discussion and Possible Subcommittee Action

The UCR Enforcement Subcommittee Chair will lead discussion to establish a mission statement of the Subcommittee. The Subcommittee may consider and take action to establish a mission statement.

V. Subcommittee Goals and Responsibilities—UCR Enforcement Subcommittee Chair

For Discussion and Possible Subcommittee Action

The Subcommittee will discuss the establishment of goals and responsibilities for the Subcommittee. The Subcommittee may consider and take action to establish goals and responsibilities for the Subcommittee.

VI. Review and Discussion of 2022 Enforcement Activities—UCR Enforcement Subcommittee Chair

The Subcommittee will review tools and activities undertaken in 2022 to conduct enforcement activities.

VII. NRS Tools—UCR Enforcement Subcommittee Chair, Seikosoft Representative, DSL Transportation Services, Inc.

The Subcommittee Chair, Seikosoft Representative, and DSL Transportation Services, Inc., will review various tools and reports available in the NRS system that are available to support enforcement activities. As part of this review, the Subcommittee will also look at the current enforcement portal and discuss whether, at this time, there are additional features the Subcommittee would like the enforcement portal to contain.

VIII. Discussion of Data Sources Currently Available to States and Other Helpful Sources—UCR Enforcement Subcommittee Chair

The Subcommittee will identify key tools and sources of UCR data available to states, the differences in availability of these sources between states, and collect information on what would be helpful to provide.

IX. Discussion of Should-Have-Beens—UCR Enforcement Subcommittee Chair, DSL Transportation Services, Inc.

The Subcommittee Chair will review discussions from previous UCR Subcommittee and UCR Board of Directors Meetings regarding the use of Should-Have-Beens (SHBs).

X. Training—UCR Enforcement Subcommittee Chair

The Subcommittee Chair will discuss training opportunities for the Subcommittee and those providing enforcement services for the UCR Plan.

XI. Other Business—UCR Enforcement Subcommittee Chair

The Subcommittee Chair will call for any other items Subcommittee members would like to discuss.

XII. Adjournment—UCR Enforcement Subcommittee Chair

The Subcommittee Chair will adjourn the meeting.

The agenda will be available no later than 5:00 p.m. Eastern time, February 23, 2023 at: *https://plan.ucr.gov.*

CONTACT PERSON FOR MORE INFORMATION: Elizabeth Leaman, Chair, Unified Carrier Registration Plan Board of Directors, (617) 305–3783, *eleaman@board.ucr.gov.*

Alex B. Leath,

Chief Legal Officer, Unified Carrier Registration Plan.

[FR Doc. 2023–04080 Filed 2–23–23; 11:15 am]

BILLING CODE 4910–YL–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Human Resources and Administration/Operations, Security, and Preparedness, 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, ''Insider Threat Program-VA'' (196VA007). This System of Records allows VA to establish capabilities to detect, deter, and mitigate insider threats. VA will use the System of Records to facilitate management of insider threat inquiries; identify potential threats to VA resources and information assets; manage referrals of potential insider threats to and from internal and external partners; provide authorized assistance to lawful administrative, civil, counterintelligence, and criminal investigations; and provide statistical reports and meet other insider threat reporting requirements.

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.

FOR FURTHER INFORMATION CONTACT: Terry Clyburn, Director Operations and National Security Services, Department of Veterans Affairs 810 Vermont Avenue NW, Washington, DC 20420; *terry.clyburn@va.gov;* 202–461–5563.

SUPPLEMENTARY INFORMATION: Executive Order (E.O.) 13587, Structural Reforms to Improve the Security of Classified Networks and the Responsible Sharing and Safeguarding of Classified Information, (October 7, 2011), requires Federal agencies to establish an insider threat detection and prevention program to ensure the security of classified networks and the responsible sharing and safeguarding of classified information with appropriate protections for privacy and civil liberties. Once E.O. 13587 was issued, VA initiated an Insider Threat Program (ITP) to meet these requirements. Insider threats can include any of the following: attempted or actual espionage, subversion, sabotage, terrorism, or extremist activities directed against the Department and its personnel, facilities, information resources, and activities; unauthorized use of or intrusion into automated information systems; unauthorized disclosure of classified, controlled unclassified, sensitive, or proprietary information to technology; indicators of potential insider threats or other incidents that may indicate activities of an insider threat; and other threats to the Department, such as indicators of potential for workplace violence or misconduct. The records that the ITP will compile in support of the Program may originate from any VA component, office, program, record, or source, and may include records pertaining to information security, personnel security, or systems security.

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 January 6, 2023 for publication.

Dated: February 22, 2023.

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:

Insider Threat Program–VA (196VA007).

SECURITY CLASSIFICATION:

Unclassified and classified.

SYSTEM LOCATION:

Systems of records are generally maintained on information systems owned, operated by, or operated on behalf of the Department. Records in this system are maintained at 810 Vermont Ave NW, Washington, DC 20420.

SYSTEM MANAGER(S):

Program Manager, Insider Threat Analytic Team (202–461–5900), Office of Operations, Security, and Preparedness, Department of Veterans Affairs, 810 Vermont Ave NW, Washington, DC 20420, James Babin, *james.babin@va.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

E.O. 13587, Structural Reforms to Improve the Security of Classified Networks and the Responsible Sharing and Safeguarding of Classified Information (Oct. 7, 2011); E.O. 13526, Classified National Security Information (December 29, 2009); E.O. 12968, Access to Classified Information (August 4, 1995); Presidential Memorandum, National Insider Threat Policy and Minimum Standards for Executive Branch Insider Threat Programs (November 21, 2012); VA Directive 0327, Insider Threat Policy (February 5, 2015).

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to detect, deter, and mitigate insider threats. VA will use the system to facilitate management of insider threat inquiries; identify and track potential insider threats to VA; manage referrals of potential insider threats to and from internal and external partners; provide authorized assistance to lawful administrative, civil, counterintelligence, and criminal investigations; and generate statistical reports and meet other insider threat reporting requirements.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

These records include information on Veterans Affairs ''insiders'' as defined above, which include present and former VA employees, contractors, detailees, assignees, interns, visitors, and guests. In addition, persons who report concerns, witnesses, relatives, and individuals with other relevant personal associations with the insider are covered by the system of records notice.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records may include:

Information potentially relevant to resolving possible insider threats and lawful DHS security investigations, including authorized physical, personnel, and communications security investigations, and information systems security analysis and reporting. Such information may include:

- Individual's name and alias(es);
- Date and place of birth;
- Social Security number;
- Address;
- Open source information, including publicly available social media information;
- Personal and official email addresses;
- Citizenship;
- Personal and official phone numbers;
- Driver license number(s);
- Vehicle Identification Number(s);
- License plate number(s);
- Ethnicity and race;
- Current Employment and Performance Information;
- Work history;
- Education history;
- Contract information;
- Information on family members, dependents, relatives and other personal associations;
- Passport number(s); DHS-held Travel records;
- Gender;
- Hair and eye color;
- Biometric data;
- Other physical or distinguishing attributes of an individual;
- Medical information;
- Access control pass, credential number, or other identifying number(s);
- Media obtained through authorized procedures, such as CCTV footage; and
- Any other information provided to obtain access to DHS facilities or information systems.
- Records relating to the management and operation of the DHS physical, personnel, and communications security programs, including:
- Completed standard form questionnaires issued by the Office of Personnel Management;
- Background investigative reports and supporting documentation, including criminal background, medical, and financial data;

▪ Current and former clearance status(s);
▪ Other information related to an individual's eligibility for access to classified information;
▪ Criminal history records;
▪ Polygraph examination results;
▪ Logs of computer activities on all DHS IT systems or any IT systems accessed by DHS personnel;
▪ Nondisclosure agreements;
▪ Document control registries;
▪ Courier authorization requests;
▪ Derivative classification unique identifiers;
▪ Requests for access to sensitive compartmented information (SCI);
▪ Records reflecting personal and official foreign travel;
▪ Facility access records;
▪ Records of contacts with foreign persons; and
▪ Briefing/debriefing statements for special programs, sensitive positions, and other related information and documents required in connection with personnel security clearance determinations.
▪ Reports of investigations or inquiries regarding security violations or misconduct, including:
▪ Individuals' statements or affidavits and correspondence;
▪ Incident reports;
▪ Drug test results;
▪ Investigative records of a criminal, civil, or administrative nature;
▪ Letters, emails, memoranda, and reports;
▪ Exhibits, evidence, statements, and affidavits;
▪ Inquiries relating to suspected security violations;
▪ Recommended remedial actions for possible security violations; and
▪ Personnel files containing information about misconduct and adverse actions.
▪ Any information related to the management and operation of the DHS ITP, including:
▪ Documentation pertaining to fact-finding or analytical efforts by ITP personnel to identify insider threats to DHS resources, personnel, property, facilities, or information;
▪ Records of information technology events and other information that could reveal potential insider threat activities;
▪ Intelligence reports and database query results relating to individuals covered by this system;
▪ Information obtained from the Intelligence Community, law enforcement partners, and from other agencies or organizations about individuals and/or organizations known or reasonably suspected of being engaged in conduct constituting, preparing for, aiding, or relating to an insider threat;
▪ Information provided by subjects and individual members of the public; and
▪ Information provided by individuals who report known or suspected insider threats.

RECORD SOURCE CATEGORIES:

Records are obtained from (1) software that monitors VA users' activity on U.S. Government computer networks; (2) information supplied by individuals to the Department or by the individual's employer; (3) information provided to the Department to gain access to VA facilities, information, equipment, networks, or systems; (4) publicly available information obtained from open source platforms, including publicly available social media; (5) any departmental records for which the Insider Threat Program (ITP) has been given authorized access; and (6) any federal, state, local government, or private sector records for which the ITP has been given authorized access. The Insider Threat Analytic Response Team (ITART) also receives tips and leads by other means, such as email or telephone. The ITART may receive a tip from any party, including members of the public.

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. *DoJ, Litigation, Administrative Proceeding:* To the Department of Justice (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. *OPM:* To the Office of Personnel Management (OPM) in connection with the application or effect of civil service laws, rules, regulations, or OPM guidelines in particular situations.

8. *EEOC:* To the Equal Employment Opportunity Commission (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. *FLRA:* To the Federal Labor Relations Authority (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. *MSPB:* To the Merit Systems Protection Board (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. *NARA:* To the National Archives and Records Administration (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.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records may be stored on magnetic disc, tape, and digital media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by first and last name, Social Security number, date of birth, phone number, other unique individual identifiers, and other types of information by key word search.

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, VHA RCS 10–1, Item Numbers 5252.21–5252.24.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

VA ITP safeguards records in this system according to applicable rules and policies, including all applicable VA automated systems security and access policies. VA has imposed strict controls to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RECORD ACCESS PROCEDURES:

Individuals seeking information on the existence and content of records in this system pertaining to them should contact the system manager 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. Please note: some records in this system are exempt from record access and amendment provisions of 5 U.S.C. 552a(k).

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 record is being contested, the reasons for contesting it, and the proposed amendment to the record. Please note: some records in this system are exempt from record access and amendment provisions of 5 U.S.C. 552a(k).

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:

The Secretary of Veterans Affairs, pursuant to 5 U.S.C. 552a(k)(1), (k)(2), and (k)(5), has exempted law enforcement investigatory material and classified intelligence information in this system from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f). When this system receives a record from another system exempted under 5 U.S.C. 552a, VA will claim the same exemptions for those records that are claimed for the original primary systems of records from which they originated and claims any additional exemptions set forth here.

HISTORY:

None.

[FR Doc. 2023–03938 Filed 2–24–23; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–XXXX]

Agency Information Collection Activity: Native American Direct Loan (NADL) Processing Requirements

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection of a new collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 28, 2023.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–XXXX'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–XXXX'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the

burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: 38 U.S.C. 3761–3765.

Title: Native American Direct Loan (NADL) Processing Requirements.

OMB Control Number: 2900–XXXX.

Type of Review: New collection.

Abstract: The information collected in this package assists Native American Veterans in obtaining the VA home loan benefit to purchase, construct, or improve dwellings on trust lands, or to refinance their existing Native American Direct Loans (NADL) to a lower interest rate.

Affected Public: Individuals and households.

Estimated Annual Burden: 1,721.00 hours.

Estimated Average Burden per Respondent: 28.04 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 737.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2023–03898 Filed 2–24–23; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0176]

Agency Information Collection Activity: Certification of Training Hours, Wages, and Progress

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 28, 2023.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0176'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0176'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: 38 U.S.C. 501(a), and 38 U.S.C. 3677.

Title: Certification of Training Hours, Wages, and Progress.

OMB Control Number: 2900–0176.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 28–1905c is used to gather the necessary information to determine any changes in enrollment certification, and document monthly progression and attendance as outlined in the claimant's vocational rehabilitation plan. This information is essential to track the type and hours of training, as well as the rating of the claimant's performance toward the completion of his or her training program under 38 U.S.C. Chapter 31 and 38 U.S.C. Chapter 35. Without the information gathered on this form, benefits could be delayed under 38 U.S.C. 501(a).

Affected Public: Individuals and households.

Estimated Annual Burden: 380 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,140.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2023–03943 Filed 2–24–23; 8:45 am]

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FEDERAL REGISTER

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Part II

Department of Energy

10 CFR Part 430
Energy Conservation Program: Energy Conservation Standards for Refrigerators, Refrigerator-Freezers, and Freezers; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2017–BT–STD–0003]

RIN 1904–AD80

Energy Conservation Program: Energy Conservation Standards for Refrigerators, Refrigerator-Freezers, and Freezers

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

ACTION: Notice of proposed rulemaking and announcement of public meeting.

SUMMARY: The Energy Policy and Conservation Act, as amended (''EPCA''), prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including refrigerators, refrigerator-freezers, and freezers. EPCA also requires the U.S. Department of Energy (''DOE'' or ''the Department'') to periodically determine whether more stringent standards would be technologically feasible and economically justified, and would result in significant energy savings. In this notice of proposed rulemaking (''NOPR''), DOE proposes amended energy conservation standards for refrigerators, refrigerator-freezers, and freezers, and also announces a public meeting to receive comment on these proposed standards and associated analyses and results.

DATES:

Comments: DOE will accept comments, data, and information regarding this NOPR no later than April 28, 2023.

Meeting: DOE will hold a public meeting via webinar on Tuesday, April 11, 2023, from 1:00 p.m. to 4:00 p.m., in Washington, DC. See section VII, ''Public Participation,'' for webinar registration information, participant instructions and information about the capabilities available to webinar participants. Comments regarding the likely competitive impact of the proposed standard should be sent to the Department of Justice contact listed in the **ADDRESSES** section on or before March 29, 2023.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov,* under by docket number EERE–2017–BT–STD–0003. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2017–BT–STD–0003, by any of the following methods:

Email: ConsumerRefrigFreezer 2017STD0003@ee.doe.gov. Include the docket number EERE–2017–BT–STD–0003 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 VII of this document.

Docket: The docket for this activity, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The docket web page can be found at *www.regulations.gov/docket/EERE-2017-BT-STD-0003.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section VII of this document for information on how to submit comments through *www.regulations.gov.*

EPCA requires the Attorney General to provide DOE a written determination of whether the proposed standard is likely to lessen competition. The U.S. Department of Justice Antitrust Division invites input from market participants and other interested persons with views on the likely competitive impact of the proposed standard. Interested persons may contact the Division at *energy.standards@usdoj.gov* on or before the date specified in the **DATES** section. Please indicate in the ''Subject'' line of your email the title and Docket Number of this proposed rule.

FOR FURTHER INFORMATION CONTACT:

Mr. Lucas Adin, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 287–5904. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Mr. Matthew Schneider, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (240) 597–6265. Email: *matthew.schneider@hq.doe.gov.*

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

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Synopsis of the Proposed Rule

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. (42 U.S.C. 6291–6309) These products include refrigerators, refrigerator-freezers, and freezers, the subject of this proposed rulemaking.

Pursuant to EPCA, any new or amended energy conservation standard must be designed to achieve the maximum improvement in energy efficiency that DOE determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Furthermore, the new or amended standard must result in a significant conservation of energy. (42 U.S.C. 6295(o)(3)(B)) EPCA also provides that not later than 6 years after issuance of any final rule establishing or amending a standard, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a notice of proposed rulemaking including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m))

In accordance with these and other statutory provisions discussed in this document, DOE proposes amended energy conservation standards for refrigerators, refrigerator-freezers, and freezers. The proposed standards, which are expressed in kWh/yr, are shown in Table I.1. These proposed standards, if adopted, would apply to all refrigerators, refrigerator-freezers, and freezers listed in Table I.1 manufactured in, or imported into, the United States starting on the date 3 years after the publication of the final rule for this proposed rule.

[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.

TABLE I.1—PROPOSED ENERGY CONSERVATION STANDARDS FOR REFRIGERATORS, REFRIGERATOR-FREEZERS, AND FREEZERS

Product class	Equations for maximum energy use (kWh/yr)	
	Based on AV (ft^3)	Based on av (L)
1. Refrigerator-freezers and refrigerators other than all-refrigerators with manual defrost	6.79AV + 191.3	0.240av + 191.3.
1A. All-refrigerators—manual defrost	5.77AV + 164.6	0.204av + 164.6.
2. Refrigerator-freezers—partial automatic defrost	(6.79AV + 191.3)*K2	(0.240av + 191.3)*K2.
3. Refrigerator-freezers—automatic defrost with top-mounted freezer	6.86AV + 198.6 + 28I	0.242av + 198.6 + 28I.
3–BI. Built-in refrigerator-freezer—automatic defrost with top-mounted freezer	8.24AV + 238.4 + 28I	0.291av + 238.4 + 28I.
3A. All-refrigerators—automatic defrost	(6.01AV + 171.4)*K3A	(0.212av + 171.4)*K3A.
3A–BI. Built-in All-refrigerators—automatic defrost	(7.22AV + 205.7)*K3ABI	(0.255av + 205.7)*K3ABI.
4. Refrigerator-freezers—automatic defrost with side-mounted freezer	6.89AV + 241.2 + 28I	0.243av + 241.2 + 28I.
4–BI. Built-In Refrigerator-freezers—automatic defrost with side-mounted freezer	8.79AV + 307.4 + 28I	0.310av + 307.4 + 28I.
5. Refrigerator-freezers—automatic defrost with bottom-mounted freezer	(7.61AV + 272.6)*K5 + 28I	(0.269av + 272.6)*K5 + 28I.
5–BI. Built-In Refrigerator-freezers—automatic defrost with bottom-mounted freezer	(8.65AV + 309.9)*K5BI + 28I	(0.305av + 309.9)*K5BI + 28I.
5A. Refrigerator-freezer—automatic defrost with bottom-mounted freezer with through-the-door ice service.	(7.26AV + 329.2)*K5A	(0.256av + 329.2)*K5A.
5A–BI. Built-in refrigerator-freezer—automatic defrost with bottom-mounted freezer with through-the-door ice service.	(8.21AV + 370.7)*K5ABI	(0.290av + 370.7)*K5ABI.
6. Refrigerator-freezers—automatic defrost with top-mounted freezer with through-the-door ice service.	7.14AV + 280.0	0.252av + 280.0.
7. Refrigerator-freezers—automatic defrost with side-mounted freezer with through-the-door ice service.	(6.92AV + 305.2)*K7	(0.244av + 305.2)*K7.
7–BI. Built-In Refrigerator-freezers—automatic defrost with side-mounted freezer	(8.82AV + 384.1)*K7BI	(0.311av + 384.1)*K7BI.
8. Upright freezers with manual defrost	5.57AV + 193.7	0.197av + 193.7.
9. Upright freezers with automatic defrost	7.76AV + 205.5 + 28I	0.274av + 205.5 + 28I.
9–BI. Built-In Upright freezers with automatic defrost	9.37AV + 247.9 + 28I	0.331av + 247.9 + 28I.
10. Chest freezers and all other freezers except compact freezers	7.29AV + 107.8	0.257av + 107.8.
10A. Chest freezers with automatic defrost	10.24AV + 148.1	0.362av + 148.1.
11. Compact refrigerator-freezers and refrigerators other than all-refrigerators with manual defrost.	7.68AV + 214.5	0.271av + 214.5.
11A. Compact all-refrigerators—manual defrost	6.66AV + 186.2	0.235av + 186.2.
12. Compact refrigerator-freezers—partial automatic defrost	(7.68AV + 214.5)*K12	(0.271av + 214.5)*K12.
13. Compact refrigerator-freezers—automatic defrost with top-mounted freezer	10.62AV + 305.3 + 28I	0.375av + 305.3 + 28I.
13A. Compact all-refrigerators—automatic defrost	(8.25AV + 233.4)*K13A	(0.291av + 233.4)*K13A.
14. Compact refrigerator-freezers—automatic defrost with side-mounted freezer	6.14AV + 411.2 + 28I	0.217av + 411.2 + 28I.
15. Compact refrigerator-freezers—automatic defrost with bottom-mounted freezer	10.62AV + 305.3 + 28I	0.375av + 305.3 + 28I.
16. Compact upright freezers with manual defrost	7.35AV + 191.8	0.260av + 191.8.
17. Compact upright freezers with automatic defrost	9.15AV + 316.7	0.323av + 316.7.
18. Compact chest freezers	7.86AV + 107.8	0.278av + 107.8.

AV = Total adjusted volume, expressed in ft^3, as determined in appendices A and B of subpart B of 10 CFR part 430.
av = Total adjusted volume, expressed in Liters.
I = 1 for a product with an automatic icemaker and = 0 for a product without an automatic icemaker.
Door Coefficients (*e.g.,* K3A) are as defined in Table I.2.

TABLE I.2—DESCRIPTION OF DOOR COEFFICIENTS FOR PROPOSED MAXIMUM ENERGY USE EQUATIONS FOR REFRIGERATORS, REFRIGERATOR-FREEZERS, AND FREEZERS

Door coefficient	Products with a transparent door	Products without a transparent door with a door-in-door	Products without a transparent door or door-in-door with added external doors
K2	N/A	N/A	$1 + 0.02 * (N_d - 1)$.
K3A K3ABI. K13A.	1.10	N/A	N/A.
K5 K5BI. K5A K5ABI. K7 K7BI.		1.06	$1 + 0.02 * (N_d - 2)$. $1 + 0.02 * (Nd - 3)$. $1 + 0.02 * (Nd - 2)$.
K12	N/A	N/A	$1 + 0.02 * (N_d - 1)$.

N_d is the number of external doors.

1. Benefits and Costs to Consumers

Table I.3 presents DOE's evaluation of the economic impacts of the proposed standards on consumers of refrigerators, refrigerator-freezers, and freezers, as measured by the average life-cycle cost (''LCC'') savings and the simple payback period (''PBP'').[3] The average LCC

[3] The average LCC savings refer to consumers that are affected by a standard and are measured relative to the efficiency distribution in the no-new-standards case, which depicts the market in the

savings are positive for all product classes for which a standard is proposed, and the PBP is less than the average lifetime of refrigerators, refrigerator-freezers, and freezers, which varies by product class (see section IV.F.7 of this document).

TABLE I.3—IMPACTS OF PROPOSED ENERGY CONSERVATION STANDARDS ON CONSUMERS OF REFRIGERATORS, REFRIGERATOR-FREEZERS, AND FREEZERS

[TSL 5]

Product class	Average LCC savings (2021$)	Simple payback period (years)
PC 3	36.04	5.3
PC 5	49.73	4.8
PC 5BI	39.94	5.7
PC 5A	115.76	5.7
PC 7	101.33	5.0
PC 9	69.26	3.9
PC 10	N/A	N/A
PC 11A (residential)	9.97	2.1
PC 11A (commercial)	3.42	3.2
PC 17	21.90	5.0
PC 18	17.59	4.2

DOE's analysis of the impacts of the proposed standards on consumers is described in section IV.F of this document.

2. Impact on Manufacturers [4]

The industry net present value (''INPV'') is the sum of the discounted cash flows to the industry from the NOPR publication year through the end of the analysis period (2023–2056). Using a real discount rate of 9.1 percent, DOE estimates that the INPV for manufacturers of refrigerators, refrigerator-freezers, and freezers, in the case without amended standards is $4.97 billion. Under the proposed standards, the change in INPV is estimated to range from −20.2 percent to −16.0 percent, which is approximately −$1.0 billion to −$792.8 million. In order to bring products into compliance with amended standards, it is estimated that the industry would incur total conversion costs of $1.32 billion.

DOE's analysis of the impacts of the proposed standards on manufacturers is described in section IV.J of this document. The analytic results of the manufacturer impact analysis (''MIA'') are presented in section V.B.2 of this document.

3. National Benefits and Costs

DOE's analyses indicate that the proposed energy conservation standards for refrigerators, refrigerator-freezers, and freezers would save a significant amount of energy. Relative to the case without amended standards, the lifetime energy savings for refrigerators, refrigerator-freezers, and freezers purchased in the 30-year period that begins in the anticipated year of compliance with the amended standards (2027–2056) amount to 5.3 quadrillion British thermal units (''Btu''), or quads.[5] This represents a savings of 12 percent relative to the energy use of these products in the case without amended standards (referred to as the ''no-new-standards case'').

The cumulative net present value (''NPV'') of total consumer benefits of the proposed standards for refrigerators, refrigerator-freezers, and freezers ranges from $6.6 billion (at a 7-percent discount rate) to $20.4 billion (at a 3-percent discount rate). This NPV expresses the estimated total value of future operating-cost savings minus the estimated increased product costs for refrigerators, refrigerator-freezers, and freezers purchased in 2027–2056.

In addition, the proposed standards for refrigerators, refrigerator-freezers, and freezers are projected to yield significant environmental benefits. DOE estimates that the proposed standards would result in cumulative emission reductions (over the same period as for energy savings) of 179.2 million metric tons (''Mt'') [6] of carbon dioxide (''CO_2''), 83.1 thousand tons of sulfur dioxide (''SO_2''), 274.4 thousand tons of nitrogen oxides (''NO_X''), 1,204.7 thousand tons of methane (''CH_4''), 1.9 thousand tons of nitrous oxide (''N_2O''), and 0.5 tons of mercury (''Hg'').[7]

DOE estimates the value of climate benefits from a reduction in greenhouse gases (GHG) using four different estimates of the social cost of CO_2 (''SC-CO_2''), the social cost of methane (''SC-CH_4''), and the social cost of nitrous oxide (''SC-N_2O''). Together these represent the social cost of GHG (SC-GHG).[8] DOE used interim SC-GHG values developed by an Interagency

compliance year in the absence of new or amended standards (see section IV.F.9 of this document). The simple PBP, which is designed to compare specific efficiency levels, is measured relative to the baseline product (see section IV.C of this document).

[4] All monetary values in this document are expressed in 2021 dollars.

[5] The quantity refers to full-fuel-cycle (''FFC'') energy savings. FFC energy savings includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and, thus, presents a more complete picture of the impacts of energy efficiency standards. For more information on the FFC metric, see section IV.H.2 of this document.

[6] A metric ton is equivalent to 1.1 short tons. Results for emissions other than CO_2 are presented in short tons.

[7] DOE calculated emissions reductions relative to the no-new-standards case, which reflects key assumptions in the *Annual Energy Outlook 2022* (''*AEO2022*''). *AEO2022* represents current federal and state legislation and final implementation of regulations as of the time of its preparation. See section IV.K of this document for further discussion of *AEO2022* assumptions that effect air pollutant emissions.

[8] On March 16, 2022, the Fifth Circuit Court of Appeals (No. 22–30087) granted the federal government's emergency motion for stay pending appeal of the February 11, 2022, preliminary injunction issued in *Louisiana* v. *Biden,* No. 21–cv–1074–JDC–KK (W.D. La.). As a result of the Fifth Circuit's order, the preliminary injunction is no longer in effect, pending resolution of the federal government's appeal of that injunction or a further court order. Among other things, the preliminary injunction enjoined the defendants in that case from ''adopting, employing, treating as binding, or relying upon'' the interim estimates of the social cost of greenhouse gases—which were issued by the Interagency Working Group on the Social Cost of Greenhouse Gases on February 26, 2021—to monetize the benefits of reducing greenhouse gas emissions. As reflected in this rule, DOE has reverted to its approach prior to the injunction and presents monetized greenhouse gas abatement benefits where appropriate and permissible under law.

Working Group on the Social Cost of Greenhouse Gases (IWG).[9] The derivation of these values is discussed in section IV.L of this document. For presentational purposes, the climate benefits associated with the average SC-GHG at a 3-percent discount rate are estimated to be $8.1 billion. DOE does not have a single central SC-GHG point estimate and it emphasizes the importance and value of considering the benefits calculated using all four SC-GHG estimates.

DOE estimated the monetary health benefits of SO_2 and NO_X emissions reductions, also discussed in section IV.L of this document. DOE estimated the present value of the health benefits would be $5.3 billion using a 7-percent discount rate, and $14.2 billion using a 3-percent discount rate.[10] DOE is currently only monetizing (for SO_2 and NO_X) $PM_{2.5}$ precursor health benefits and (for NO_X) ozone precursor health benefits, but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct $PM_{2.5}$ emissions.

Table I.4 summarizes the economic benefits and costs expected to result from the proposed standards for refrigerators, refrigerator-freezers, and freezers. There are other important unquantified effects, including certain unquantified climate benefits, unquantified public health benefits from the reduction of toxic air pollutants and other emissions, unquantified energy security benefits, and distributional effects, among others.

TABLE I.4—SUMMARY OF MONETIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR REFRIGERATORS, REFRIGERATOR-FREEZERS, AND FREEZERS

[TSL 5]

	Billion 2021$
3% discount rate	
Consumer Operating Cost Savings	32.7
Climate Benefits*	8.1
Health Benefits**	14.2
Total Benefits†	55.1
Consumer Incremental Product Costs‡	12.3
Net Benefits	42.7
7% discount rate	
Consumer Operating Cost Savings	13.6
Climate Benefits* (3% discount rate)	8.1
Health Benefits**	5.3
Total Benefits†	27.0
Consumer Incremental Product Costs	6.9
Net Benefits	20.1

Note: This table presents the costs and benefits associated with product name shipped in 2027–2056. These results include benefits to consumers which accrue after 2056 from the products shipped in 2027–2056.

*Climate benefits are calculated using four different estimates of the social cost of carbon (SC-CO_2), methane (SC-CH_4), and nitrous oxide (SC-N_2O) (model average at 2.5 percent, 3 percent, and 5 percent discount rates; 95th percentile at 3 percent discount rate) (see section IV.L of this document). Together these represent the global SC-GHG. For presentational purposes of this table, the climate benefits associated with the average SC-GHG at a 3 percent discount rate are shown, but the Department does not have a single central SC-GHG point estimate. On March 16, 2022, the Fifth Circuit Court of Appeals (No. 22–30087) granted the Federal government's emergency motion for stay pending appeal of the February 11, 2022, preliminary injunction issued in *Louisiana* v. *Biden,* No. 21–cv–1074–JDC–KK (W.D. La.). As a result of the Fifth Circuit's order, the preliminary injunction is no longer in effect, pending resolution of the Federal government's appeal of that injunction or a further court order. Among other things, the preliminary injunction enjoined the defendants in that case from ''adopting, employing, treating as binding, or relying upon'' the interim estimates of the social cost of greenhouse gases—which were issued by the Interagency Working Group on the Social Cost of Greenhouse Gases on February 26, 2021—to monetize the benefits of reducing greenhouse gas emissions. As reflected in this rule, DOE has reverted to its approach prior to the injunction and presents monetized greenhouse gas abatement benefits where appropriate and permissible under law.

**Health benefits are calculated using benefit-per-ton values for NO_X and SO_2. DOE is currently only monetizing (for SO_2 and NO_X) $PM_{2.5}$ precursor health benefits and (for NO_X) ozone precursor health benefits, but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct $PM_{2.5}$ emissions. *See* section IV.L of this document for more details.

†Total and net benefits include those consumer, climate, and health benefits that can be quantified and monetized. For presentation purposes, total and net benefits for both the 3-percent and 7-percent cases are presented using the average SC-GHG with a 3-percent discount rate, but the Department does not have a single central SC-GHG point estimate. DOE emphasizes the importance and value of considering the benefits calculated using all four SC-GHG estimates.

[9] See Interagency Working Group on Social Cost of Greenhouse Gases, Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide. Interim Estimates Under Executive Order 13990, Washington, DC, February 2021 (''February 2021 SC-GHG TSD''). *www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf.*

[10] DOE estimates the economic value of these emissions reductions resulting from the considered TSLs for the purpose of complying with the requirements of Executive Order 12866.

The benefits and costs of the proposed standards can also be expressed in terms of annualized values. The monetary values for the total annualized net benefits are (1) the reduced consumer operating costs, minus (2) the increase in product purchase prices and installation costs, plus (3) the value of climate and health benefits of emission reductions, all annualized.[11]

The national operating savings are domestic private U.S. consumer monetary savings that occur as a result of purchasing the covered products and are measured for the lifetime of refrigerators, refrigerator-freezers, and freezers shipped in 2027–2056. The benefits associated with reduced emissions achieved as a result of the proposed standards are also calculated based on the lifetime of refrigerators, refrigerator-freezers, and freezers shipped in 2027–2056. Total benefits for both the 3-percent and 7-percent cases are presented using the average GHG social costs with a 3-percent discount rate. Estimates of SC-GHG values are presented for all four discount rates in section IV.L of this document.

Table I.5 presents the total estimated monetized benefits and costs associated with the proposed standard, expressed in terms of annualized values. The results under the primary estimate are as follows.

Using a 7-percent discount rate for consumer benefits and costs and health benefits from reduced NO_X and SO_2 emissions, and the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated cost of the standards proposed in this rule is $730.0 million per year in increased equipment costs, while the estimated annual monetized benefits are $1.4 billion in reduced equipment operating costs, $467.9 million in climate benefits, and $563.3 million in health benefits. In this case, the net monetized benefit would amount to $1.7 billion per year.

Using a 3-percent discount rate for all benefits and costs, the estimated cost of the proposed standards is $707.4 million per year in increased equipment costs, while the estimated annual monetized benefits are $1.9 billion in reduced operating costs, $467.9 million in climate benefits, and $815.2 million in health benefits. In this case, the net monetized benefit would amount to $2.5 billion per year.

TABLE I.5—ANNUALIZED MONETIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR REFRIGERATORS, REFRIGERATOR-FREEZERS, AND FREEZERS

[TSL 5]

	Million 2021$/year		
	Primary estimate	Low-net-benefits estimate	High-net-benefits estimate
3% discount rate			
Consumer Operating Cost Savings	1,878.6	1,745.5	2,030.6
Climate Benefits *	467.9	453.4	482.4
Health Benefits **	815.2	790.3	840.1
Total Benefits †	3,161.7	2,989.3	3,353.1
Consumer Incremental Product Costs ‡	707.4	774.3	681.3
Net Benefits	2,454.3	2,215.0	2,671.9
7% discount rate			
Consumer Operating Cost Savings	1,431.7	1,339.6	1,534.2
Climate Benefits * (3% discount rate)	467.9	453.4	482.4
Health Benefits **	563.3	547.4	579.1
Total Benefits †	2,462.9	2,340.4	2,595.7
Consumer Incremental Product Costs	730.0	788.4	706.3
Net Benefits	1,732.9	1,552.0	1,889.4

Note: This table presents the costs and benefits associated with refrigerators, refrigerator-freezers, and freezers shipped in 2027–2056. These results include benefits to consumers which accrue after 2056 from the products shipped in 2027–2056. The Primary, Low Net Benefits, and High Net Benefits Estimates utilize projections of energy prices from the *AEO 2022* Reference case, Low Economic Growth case, and High Economic Growth case, respectively. In addition, incremental equipment costs reflect a medium decline rate in the Primary Estimate, a low decline rate in the Low Net Benefits Estimate, and a high decline rate in the High Net Benefits Estimate. The methods used to derive projected price trends are explained in section IV.H.3 of this document. Note that the Benefits and Costs may not sum to the Net Benefits due to rounding.

* Climate benefits are calculated using four different estimates of the global SC-GHG (see section IV.L of this document). For presentational purposes of this table, the climate benefits associated with the average SC-GHG at a 3 percent discount rate are shown, but the Department does not have a single central SC-GHG point estimate, and it emphasizes the importance and value of considering the benefits calculated using all four SC-GHG estimates. On March 16, 2022, the Fifth Circuit Court of Appeals (No. 22–30087) granted the Federal government's emergency motion for stay pending appeal of the February 11, 2022, preliminary injunction issued in *Louisiana* v. *Biden,* No. 21–cv–1074–JDC–KK (W.D. La.). As a result of the Fifth Circuit's order, the preliminary injunction is no longer in effect, pending resolution of the Federal government's appeal of that injunction or a further court order. Among other things, the preliminary injunction enjoined the defendants in that case from ''adopting, employing, treating as binding, or relying upon'' the interim estimates of the social cost of greenhouse gases—which were issued by the Interagency Working Group on the Social Cost of Greenhouse Gases on February 26, 2021—to monetize the benefits of reducing greenhouse gas emissions. As reflected in this rule, DOE has reverted to its approach prior to the injunction and presents monetized greenhouse gas abatement benefits where appropriate and permissible under law.

[11] To convert the time-series of costs and benefits into annualized values, DOE calculated a present value in 2022, the year used for discounting the NPV of total consumer costs and savings. For the benefits, DOE calculated a present value associated with each year's shipments in the year in which the shipments occur (*e.g.,* 2030), and then discounted the present value from each year to 2022. Using the present value, DOE then calculated the fixed annual payment over a 30-year period, starting in the compliance year, that yields the same present value.

** Health benefits are calculated using benefit-per-ton values for NO_X and SO_2. DOE is currently only monetizing (for SO_2 and NO_X) $PM_{2.5}$ precursor health benefits and (for NO_X) ozone precursor health benefits, but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct $PM_{2.5}$ emissions. The health benefits are presented at real discount rates of 3 and 7 percent. See section IV.L of this document for more details.

† Total benefits for both the 3-percent and 7-percent cases are presented using the average SC-GHG with a 3-percent discount rate, but the Department does not have a single central SC-GHG point estimate.

DOE's analysis of the national impacts of the proposed standards is described in sections IV.H, IV.K, and IV.L of this document.

4. Conclusion

DOE has tentatively concluded that the proposed standards represent the maximum improvement in energy efficiency that is technologically feasible and economically justified, and would result in the significant conservation of energy. Specifically, with regard to technological feasibility, products achieving these proposed standard levels are already commercially available for all covered product classes. As for economic justification, DOE's analysis shows that the benefits of the proposed standard exceed, to a great extent, the burdens of the proposed standards.

Using a 7-percent discount rate for consumer benefits and costs and NO_X and SO_2 reduction benefits, and a 3-percent discount rate case for GHG social costs, the estimated cost of the proposed standards for refrigerators, refrigerator-freezers, and freezers is $730.0 million per year in increased product costs, while the estimated annual monetized benefits are $1.4317 billion in reduced product operating costs, $467.9 million in climate benefits and $563.3 million in health benefits. The net monetized benefit amounts to $1.7329 billion per year.

The significance of energy savings offered by a new or amended energy conservation standard cannot be determined without knowledge of the specific circumstances surrounding a given rulemaking.[12] For example, some covered products and equipment have substantial energy consumption occur during periods of peak energy demand. The impacts of these products on the energy infrastructure can be more pronounced than products with relatively constant demand. Accordingly, DOE evaluates the significance of energy savings on a case-by-case basis.

As previously mentioned, the proposed standards are projected to result in estimated national energy savings of 5.3 quads (FFC), the equivalent of the electricity use of 57 million homes in one year. In addition, they are projected to reduce GHG emissions. Based on these findings, DOE has initially determined the energy savings from the proposed standard levels are ''significant'' within the meaning of 42 U.S.C. 6295(o)(3)(B). A more detailed discussion of the basis for this tentative conclusion is contained in the remainder of this document and the accompanying technical support document (''TSD'').

DOE also considered more stringent energy efficiency levels as potential standards and is still considering them in this rulemaking. However, DOE has tentatively concluded that the potential burdens of the more stringent energy efficiency levels would outweigh the projected benefits.

Based on consideration of the public comments DOE receives in response to this document and related information collected and analyzed during the course of this rulemaking effort, DOE may adopt energy efficiency levels presented in this document that are either higher or lower than the proposed standards, or some combination of level(s) that incorporate the proposed standards in part.

II. Introduction

The following section briefly discusses the statutory authority underlying this proposed rule, as well as some of the relevant historical background related to the establishment of standards for refrigerators, refrigerator-freezers, and freezers.

A. Authority

EPCA authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. Title III, Part B of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles. These products include refrigerators, refrigerator-freezers, and freezers, the subject of this document. (42 U.S.C. 6292(a)(1)) EPCA prescribed initial energy conservation standards for these products (42 U.S.C. 6295(b)(1)–(2)), and directed DOE to conduct three cycles of future rulemakings during which the Department was tasked with determining whether to amend these standards. (42 U.S.C. 6295(b)(3)(A)(i), (b)(3)(B), and (b)(4)). DOE has completed these rulemakings. EPCA further provides that, not later than six years after the issuance of any final rule establishing or amending a standard, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a NOPR including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(1))

The energy conservation program under EPCA consists essentially of four parts: (1) testing, (2) labeling, (3) the establishment of Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA 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).

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(a)–(c)) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions set forth under EPCA. (See 42 U.S.C. 6297(d))

Subject to certain criteria and conditions, DOE is required to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of each covered product. (42 U.S.C. 6295(o)(3)(A) and 42 U.S.C. 6295(r)) Manufacturers of covered products must use the prescribed DOE test procedure as the basis for certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA and when making representations to the public regarding the energy use or efficiency of those products. (42 U.S.C. 6293(c) and 42 U.S.C. 6295(s)) Similarly, DOE must use these test procedures to determine whether the products comply with standards adopted pursuant to EPCA. (42 U.S.C. 6295(s)). The DOE test procedures for consumer refrigerators, refrigerator-freezers, and freezers appear at 10 CFR part 430, subpart B, appendix

[12] Procedures, Interpretations, and Policies for Consideration in New or Revised Energy Conservation Standards and Test Procedures for Consumer Products and Commercial/Industrial Equipment, 86 FR 70892, 70901 (Dec. 13, 2021).

A, Uniform Test Method for Measuring the Energy Consumption of Refrigerators, Refrigerator-Freezers, and Miscellaneous Refrigeration Products (''appendix A'') and 10 CFR part 430, subpart B, appendix B, Uniform Test Method for Measuring the Energy Consumption of Freezers (''appendix B'').

DOE must follow specific statutory criteria for prescribing new or amended standards for covered products, including refrigerators, refrigerator-freezers, and freezers. Any new or amended standard for a covered product must be designed to achieve the maximum improvement in energy efficiency that the Secretary of Energy (''Secretary'') determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A) and 42 U.S.C. 6295(o)(3)(B)) Furthermore, DOE may not adopt any standard that would not result in the significant conservation of energy. (42 U.S.C. 6295(o)(3))

Moreover, DOE may not prescribe a standard: (1) for certain products, including refrigerators, refrigerator-freezers, and freezers, if no test procedure has been established for the product, or (2) if DOE determines by rule that the standard is not technologically feasible or economically justified. (42 U.S.C. 6295(o)(3)(A)–(B)) In deciding whether a proposed standard is economically justified, DOE must determine whether the benefits of the standard exceed its burdens. (42 U.S.C. 6295(o)(2)(B)(i)) DOE must make this determination after receiving comments on the proposed standard, and by considering, to the greatest extent practicable, the following seven statutory factors:

(1) The economic impact of the standard on manufacturers and consumers of the products subject to the standard;

(2) The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to result from the standard;

(3) The total projected amount of energy (or as applicable, water) savings likely to result directly from the standard;

(4) Any lessening of the utility or the performance of the covered products likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

(6) The need for national energy and water conservation; and

(7) Other factors the Secretary of Energy (''Secretary'') considers relevant.

(42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

Further, EPCA establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii))

EPCA also contains what is known as an ''anti-backsliding'' provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6295(o)(1)) Also, the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States. (42 U.S.C. 6295(o)(4))

Additionally, EPCA specifies requirements when promulgating an energy conservation standard for a covered product that has two or more subcategories. DOE must specify a different standard level for a type or class of product that has the same function or intended use, if DOE determines that products within such group: (A) consume a different kind of energy from that consumed by other covered products within such type (or class); or (B) have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard. (42 U.S.C. 6295(q)(1)) In determining whether a performance-related feature justifies a different standard for a group of products, DOE must consider such factors as the utility to the consumer of the feature and other factors DOE deems appropriate. *Id.* Any rule prescribing such a standard must include an explanation of the basis on which such higher or lower level was established. (42 U.S.C. 6295(q)(2))

Finally, pursuant to the amendments contained in the Energy Independence and Security Act of 2007 (''EISA 2007''), Public Law 110–140, any final rule for new or amended energy conservation standards promulgated after July 1, 2010, is required to address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3)) Specifically, when DOE adopts a standard for a covered product after that date, it must, if justified by the criteria for adoption of standards under EPCA (42 U.S.C. 6295(o)), incorporate standby mode and off mode energy use into a single standard, or, if that is not feasible, adopt a separate standard for such energy use for that product. (42 U.S.C. 6295(gg)(3)(A)–(B)) DOE's current test procedures for refrigerators, refrigerator-freezers, and freezers address standby mode and off mode energy use. In this proposed rule, DOE intends to incorporate such energy use into any amended energy conservation standards that it may adopt.

B. Background

1. Current Standards

In a final rule published on September 15, 2011 (''September 2011 Final Rule''), DOE prescribed the current energy conservation standards for consumer refrigerators, refrigerator-freezers, and freezers manufactured on and after September 15, 2014. 76 FR 57516. These standards are set forth in DOE's regulations at 10 CFR 430.32(a) and are repeated in Table I.2 of this document.

TABLE II.1—CURRENT FEDERAL ENERGY CONSERVATION STANDARDS FOR CONSUMER REFRIGERATORS, REFRIGERATOR-FREEZERS, AND FREEZERS

Product class	Equations for maximum energy use (kWh/yr)	
	Based on AV (ft^3)	Based on av (L)
1. Refrigerator-freezers and refrigerators other than all-refrigerators with manual defrost	7.99AV + 225.0	0.282av + 225.0
1A. All-refrigerators—manual defrost	6.79AV + 193.6	0.240av + 193.6

TABLE II.1—CURRENT FEDERAL ENERGY CONSERVATION STANDARDS FOR CONSUMER REFRIGERATORS, REFRIGERATOR-FREEZERS, AND FREEZERS—Continued

Product class	Equations for maximum energy use (kWh/yr)	
	Based on AV (ft^3)	Based on av (L)
2. Refrigerator-freezers—partial automatic defrost	7.99AV + 225.0	0.282av + 225.0
3. Refrigerator-freezers—automatic defrost with top-mounted freezer without an automatic icemaker	8.07AV + 233.7	0.285av + 233.7
3–BI. Built-in refrigerator-freezer—automatic defrost with top-mounted freezer without an automatic icemaker	9.15AV + 264.9	0.323av + 264.9
3I. Refrigerator-freezers—automatic defrost with top-mounted freezer with an automatic icemaker without through-the-door ice service	8.07AV + 317.7	0.285av + 317.7
3I–BI. Built-in refrigerator-freezers—automatic defrost with top-mounted freezer with an automatic icemaker without through-the-door ice service	9.15AV + 348.9	0.323av + 348.9
3A. All-refrigerators—automatic defrost	7.07AV + 201.6	0.250av + 201.6
3A–BI. Built-in All-refrigerators—automatic defrost	8.02AV + 228.5	0.283av + 228.5
4. Refrigerator-freezers—automatic defrost with side-mounted freezer without an automatic icemaker	8.51AV + 297.8	0.301av + 297.8
4–BI. Built-In Refrigerator-freezers—automatic defrost with side-mounted freezer without an automatic icemaker	10.22AV + 357.4	0.361av + 357.4
4I. Refrigerator-freezers—automatic defrost with side-mounted freezer with an automatic icemaker without through-the-door ice service	8.51AV + 381.8	0.301av + 381.8
4I–BI. Built-In Refrigerator-freezers—automatic defrost with side-mounted freezer with an automatic icemaker without through-the-door ice service	10.22AV + 441.4	0.361av + 441.4
5. Refrigerator-freezers—automatic defrost with bottom-mounted freezer without an automatic icemaker	8.85AV + 317.0	0.312av + 317.0
5–BI. Built-In Refrigerator-freezers—automatic defrost with bottom-mounted freezer without an automatic icemaker	9.40AV + 336.9	0.332av + 336.9
5I. Refrigerator-freezers—automatic defrost with bottom-mounted freezer with an automatic icemaker without through-the-door ice service	8.85AV + 401.0	0.312av + 401.0
5I–BI. Built-In Refrigerator-freezers—automatic defrost with bottom-mounted freezer with an automatic icemaker without through-the-door ice service	9.40AV + 420.9	0.332av + 420.9
5A. Refrigerator-freezer—automatic defrost with bottom-mounted freezer with through-the-door ice service	9.25AV + 475.4	0.327av + 475.4
5A–BI. Built-in refrigerator-freezer—automatic defrost with bottom-mounted freezer with through-the-door ice service	9.83AV + 499.9	0.347av + 499.9
6. Refrigerator-freezers—automatic defrost with top-mounted freezer with through-the-door ice service	8.40AV + 385.4	0.297av + 385.4
7. Refrigerator-freezers—automatic defrost with side-mounted freezer with through-the-door ice service	8.54AV + 432.8	0.302av + 432.8
7–BI. Built-In Refrigerator-freezers—automatic defrost with side-mounted freezer with through-the-door ice service	10.25AV + 502.6	0.362av + 502.6
8. Upright freezers with manual defrost	5.57AV + 193.7	0.197av + 193.7
9. Upright freezers with automatic defrost without an automatic icemaker	8.62AV + 228.3	0.305av + 228.3
9I. Upright freezers with automatic defrost with an automatic icemaker	8.62AV + 312.3	0.305av + 312.3
9–BI. Built-In Upright freezers with automatic defrost without an automatic icemaker	9.86AV + 260.9	0.348av + 260.9
9I–BI. Built-in upright freezers with automatic defrost with an automatic icemaker	9.86AV + 344.9	0.348av + 344.9
10. Chest freezers and all other freezers except compact freezers	7.29AV + 107.8	0.257av + 107.8
10A. Chest freezers with automatic defrost	10.24AV + 148.1	0.362av + 148.1
11. Compact refrigerator-freezers and refrigerators other than all-refrigerators with manual defrost	9.03AV + 252.3	0.319av + 252.3
11A. Compact all-refrigerators—manual defrost	7.84AV + 219.1	0.277av + 219.1
12. Compact refrigerator-freezers—partial automatic defrost	5.91AV + 335.8	0.209av + 335.8
13. Compact refrigerator-freezers—automatic defrost with top-mounted freezer	11.80AV + 339.2	0.417av + 339.2
13I. Compact refrigerator-freezers—automatic defrost with top-mounted freezer with an automatic icemaker	11.80AV + 423.2	0.417av + 423.2
13A. Compact all-refrigerators—automatic defrost	9.17AV + 259.3	0.324av + 259.3
14. Compact refrigerator-freezers—automatic defrost with side-mounted freezer	6.82AV + 456.9	0.241av + 456.9
14I. Compact refrigerator-freezers—automatic defrost with side-mounted freezer with an automatic icemaker	6.82AV + 540.9	0.241av + 540.9
15. Compact refrigerator-freezers—automatic defrost with bottom-mounted freezer	11.80AV + 339.2	0.417av + 339.2
15I. Compact refrigerator-freezers—automatic defrost with bottom-mounted freezer with an automatic icemaker	11.80AV + 423.2	0.417av + 423.2
16. Compact upright freezers with manual defrost	8.65AV + 225.7	0.306av + 225.7
17. Compact upright freezers with automatic defrost	10.17AV + 351.9	0.359av + 351.9
18. Compact chest freezers	9.25AV + 136.8	0.327av + 136.8

AV = Total adjusted volume, expressed in ft^3, as determined in appendices A and B of subpart B of this part.
av = Total adjusted volume, expressed in Liters.

2. History of Standards Rulemaking for Consumer Refrigerators, Refrigerator-Freezers, and Freezers

On November 15, 2019, DOE published a request for information (''RFI'') to collect data and information to help DOE determine whether any new or amended standards for consumer refrigerators, refrigerator-freezers, and freezers would result in a significant amount of additional energy savings and whether those standards would be technologically feasible and economically justified. 84 FR 62470 (''November 2019 RFI'').

Comments received following the publication of the November 2019 RFI helped DOE identify and resolve issues related to the subsequent preliminary analysis.[13] DOE published a notice of public meeting and availability of the preliminary TSD on October 15, 2021 (''October 2021 Preliminary Analysis''). 86 FR 57378. DOE subsequently held a public meeting on December 1, 2021, to discuss and receive comments on the preliminary TSD. The preliminary TSD that presented the methodology and results of the preliminary analysis is available at: *www.regulations.gov/document/EERE-2017-BT-STD-0003-0021.*

DOE received nine docket comments in response to the October 2021 Preliminary Analysis from the interested parties listed in Table II.2.

TABLE II.2—OCTOBER 2021 PRELIMINARY ANALYSIS WRITTEN COMMENTS

Organization(s)	Reference in this NOPR	Organization type
Association of Home Appliance Manufacturers	AHAM	Trade Organization.
Appliance Standards Awareness Project, American Council for an Energy-Efficient Economy, National Consumer Law Center (On behalf of its low-income clients).	Joint Advocates	Efficiency Organization.
California Investor-Owned Utilities	CA IOUs	Utility Supplier.
Shorey Consulting	Shorey	Consultant.
ComEd Energy Solutions Center, Northwest Energy Efficiency Alliance	ComEd and NEEA	Joint Commenters.
GE Appliances, a Haier company	GEA	Manufacturer.
Samsung Electronics America, Inc.	Samsung	Manufacturer.
Sub-Zero Group, Inc.	Sub-Zero	Manufacturer.
Whirlpool Corporation	Whirlpool	Manufacturer.
Anonymous	Anonymous	Individual.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[14]

3. Test Procedure

EPCA sets forth generally applicable criteria and procedures for DOE's adoption and amendment of test procedures. (42 U.S.C. 6293) Manufacturers of covered products must use these test procedures to certify to DOE that their product complies with energy conservation standards and to quantify the efficiency of their product. DOE must finalize new or amended test procedures that impact measured energy use or efficiency at least 180 days prior to publication of a NOPR proposing new or amended energy conservation standards. (Section 8(d) of 10 CFR part 430, subpart C, appendix A (''Process Rule''))

DOE's current energy conservation standards for consumer refrigerators, refrigerator-freezers, and freezers are expressed in terms of annual energy use (''AEU'') in kilowatt-hours per year (''kWh/yr'') as measured by the current test procedures at appendix A and appendix B, as applicable. (10 CFR 430.32(a)) The current test procedure incorporates by reference the Association of Home Appliance Manufacturers (''AHAM'') industry test procedure updated in 2019, AHAM Standard HRF–1, ''Energy and Internal Volume of Refrigerating Appliances,'' (''HRF–1–2019''). 10 CFR 430.3(i)(4). The current test procedure was finalized in a final rule published on October 12, 2021 (''October 2021 TP Final Rule''). 86 FR 56790. The October 2021 TP Final Rule amended the test procedure by incorporating the latest industry test standard (HRF–1–2019). However, DOE did not adopt the change in icemaker energy use included in the 2019 revision of HRF–1. 86 FR 56793. While DOE had proposed to implement this change in the in the proposed test procedure rulemaking (84 FR 70842, 70848–70850 (December 23, 2019)), DOE indicated in the October 2021 TP Final Rule that it would not require the calculations until the compliance dates of any amended energy conservation standards for these products, which incorporated the amended automatic icemaker energy consumption. 86 FR 56793. DOE concluded that the test procedure would not alter the measured energy use of consumer refrigeration products. *Id.*

The analysis presented in this NOPR is based on the test procedure as finalized in the October 2021 TP Final Rule, except for the calculation of the change in energy use attributed to icemaker energy use. The change in icemaker energy use is discussed further in section III.B of this document. DOE is proposing implementation of the revised icemaker energy use calculation in this NOPR. The value of the revised icemaker energy use and the plans to implement this change coincident with the date of future energy conservation standards were discussed at length and included in the most recent test procedure final rule, consistent with the Process Rule.

AS/NZ 4474.1:2007 is referenced in the amendatory text of this document but has already been approved for appendix A. No changes are proposed.

4. Off Mode and Standby Mode

Pursuant to the amendments contained in the Energy Independence and Security Act of 2007 (''EISA 2007''), Public Law 110–140, any final rule for new or amended energy conservation standards promulgated after July 1, 2010, is required to address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3)) Specifically, when DOE adopts a standard for a covered product after that date, it must, if justified by the criteria for adoption of standards under EPCA (42 U.S.C. 6295(o)), incorporate standby mode and off mode energy use into a single standard, or, if that is not feasible, adopt a separate standard for such energy use for that product. (42 U.S.C. 6295(gg)(3)(A)–(B)) DOE's current test procedures for consumer refrigerators, refrigerator-freezers, and freezers measure the energy use of these products during extended time periods that include periods when the compressor and other key components are cycled off. All of the energy these products use during the ''off cycles'' is already included in the measurements.

[13] Comments submitted in response to the RFI are available at *www.regulations.gov/document/EERE-2017-BT-STD-0003-0021/comment.*

[14] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop energy conservation standards for refrigerators, refrigerator-freezers, and freezers. (Docket No. EERE–2017–BT–STD–0003, which is maintained at *https://www.regulations.gov/document/EERE-2017-BT-STD-0003).* The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

A given refrigeration product being tested could include auxiliary features that draw power in a standby or off mode. In such instances, the DOE test procedures generally instruct manufacturers to set certain auxiliary features to the lowest power position during testing. *See* section 5.5.2(e) of AHAM Standard HRF–1–2008. In this lowest power position, any standby or off mode energy use of such auxiliary features would be included in the energy measurement. As a result, DOE's current energy conservation standards, and any amended energy conservation standards would account for standby mode and off mode energy use in the AEU metric.

C. Deviation From Appendix A

In accordance with section 3(a) of 10 CFR part 430, subpart C, appendix A (''appendix A''), DOE notes that it is deviating from the provision in appendix A regarding the pre-NOPR stages for an energy conservation standards rulemaking. Section 6(a)(2) of appendix A states that if the Department determines it is appropriate to proceed with a rulemaking, the preliminary stages of a rulemaking to issue or amend an energy conservation standard that DOE will undertake will be a framework document and preliminary analysis, or an advance notice of proposed rulemaking. For the reasons that follow, DOE finds it necessary and appropriate to deviate from this step in appendix A and to instead publish this NOPR without conducting these preliminary stages. DOE finds that there would be little benefit in repeating the preliminary stages of this proposed rule. The earlier stages of a rulemaking are intended to introduce the various analyses DOE conducts during the rulemaking process, present preliminary results, and request initial feedback from interested parties to seek early input. As DOE is using similar analytical methods in this NOPR to previous amendments to the standard for refrigerators, refrigerator-freezers and freezers, publication of a framework document, preliminary analysis, or ANOPR would be largely redundant of previously published documents. Stakeholders have previously provided numerous rounds of input on these methodologies in the most recent rulemaking. However, as discussed in section IV of this NOPR, DOE has updated analytical inputs in its analyses where appropriate and welcomes submission of additional data, information, and comments.

Section 6(f)(2) of appendix A provides that the length of the public comment period for the NOPR will be at least 75 days. For this NOPR, DOE finds it necessary and appropriate to provide a 60-day comment period. As stated previously, the analytical methods used for this NOPR are similar to those used in previous rulemaking notices. Consequently, DOE has determined it is necessary and appropriate to provide a 60-day comment period, which the Department has determined provides sufficient time for interested parties to review the NOPR and develop comments.

III. General Discussion

DOE developed this proposal after considering oral and written comments, data, and information from interested parties that represent a variety of interests. The following discussion addresses issues raised by these commenters.

A. Product Classes and Scope of Coverage

When evaluating and establishing energy conservation standards, DOE divides covered products into product classes by the type of energy used or by capacity or other performance-related features that justify differing standards. In making a determination whether a performance-related feature justifies a different standard, DOE must consider such factors as the utility of the feature to the consumer and other factors DOE determines are appropriate. (42 U.S.C. 6295(q))

When establishing the product classes, DOE is proposing to revise the class structure by eliminating the classes that add icemakers and through-the-door ice dispensers while maintaining the same AEU calculations. The product class discussion in section IV of this document explores this issue further.

B. Test Procedure

EPCA sets forth generally applicable criteria and procedures for DOE's adoption and amendment of test procedures. (42 U.S.C. 6293) Manufacturers of covered products must use these test procedures to certify to DOE that their product complies with energy conservation standards and to quantify the efficiency of their product. DOE's current energy conservation standards for refrigerators, refrigerator-freezers, and freezers are expressed in terms of AEU, expressed in kWh/year. (*See* 10 CFR 430.32(a).)

AHAM stated it would have been preferable for DOE to conduct its analysis with the final test procedure that DOE published before the preliminary analysis and that will be used to demonstrate compliance with a possible amended standard and that, in this case, the revised test procedure does not change measured efficiency so much that they would expect that the entire analysis would need to be redone as a result of the new test procedure. (AHAM, Public Meeting Transcript, No. 30 at p. 1) [15]

DOE responds that it conducted the preliminary analysis consistent with the test procedure currently used to demonstrate compliance with standards. Specifically, the icemaker energy use adder used in the preliminary analysis was 84 kWh/yr. For the NOPR analysis, DOE adopted the revised test procedure finalized in the October 2021 TP final rule (to be used to demonstrate compliance with a possible amended standard) which included a revised icemaker energy use adder of 28 kWh/yr, that is more closely aligned with AHAM's HRF–1–2019—which represents the industry standard. As discussed in the October 2021 TP final rule, DOE determined it would not require testing with the amended icemaking energy use adder until the compliance dates of the next amended energy conservation standards for refrigeration products. This NOPR proposes that product class representations made on or after the compliance date of revised standards would require use of the 28 kWh/year value.

The California IOUs stated the existing test procedures in appendices A and B do a poor job predicting efficiency at ambient conditions below 90 °F and that they would benefit significantly by including an additional ambient test condition to properly inform consumers about what products work well in a real-world use cycle. From their testing, the California IOUs stated that not testing at both 90 °F and 60 °F leaves a significant gap in representative performance evaluation of an average use cycle based on the significant unit-to-unit variation and rank order impact changes shown by the DOE and CA IOU product testing. They therefore asked DOE to reconsider their conclusion in the October 2021 Test Procedure Final Rule to not require testing at two ambient conditions, per IEC 62552, in the DOE consumer refrigeration test procedure. (California IOUs, No. 33, pp. 6–9)

[15] A notation in the form ''AHAM, No. 31 at pp. 6–7'' identifies a written comment: (1) Made by the Association of Home Appliance Manufacturers; (2) recorded in document number 27 that is filed in the docket of this test procedure rulemaking (Docket No. EERE–2014–BT–STD–0003) and available for review at *www.regulations.gov;* and (3) which appears on pages 6 and 7 of document number 31.

ComEd and NEEA agreed with the sentiment from California IOUs that testing should require a set of lower ambient temperatures along with the 90-degree temperature mark and recommended that DOE consider adopting the IEC Refrigerator Test Procedure, which their analysis suggests will permit more representative energy values to be calculated than the current DOE test procedure of user interactions with refrigerators. Along with Samsung, they also recommended that DOE collect more field data on refrigerator energy use to understand how to improve the representativeness of the test procedure. (ComEd Energy Solutions Center & Northwest Energy Efficiency Alliance, No. 37, pp. 9–10; Samsung, No. 32, p. 3)

In another comment, ComEd and NEEA cited average usage of models in ambient temperatures lower than 90 degrees and cited how requiring a lower test point would create an incentive for manufacturers to focus on the broad range of ambient temperatures. (ComEd Energy Solutions Center & Northwest Energy Efficiency Alliance, No. 37, pp. 2–4) ComEd and NEEA also pointed to energy savings that could result from testing products at a lower ambient temperature. (ComEd Energy Solutions Center & Northwest Energy Efficiency Alliance, No. 37, pp. 4–7)

DOE responds that it has already finalized the test procedure without requiring additional lower ambient testing based both on data provided by a manufacturer and on its own test data, which indicated that the current test procedure conducted in a 90 °F ambient temperature does not underestimate the benefit of variable-speed technology. 86 FR 56790, 56790–56825 (October 12, 2021) DOE appreciates the additional data, which DOE will consider when considering revisions to the test procedure as required by the 7-year lookback provision. (42 U.S.C. 6314(a)(1)(A))

ComEd and NEEA further recommended that DOE adopt an optional method of testing for ice makers and undertake further testing and analysis. They stated they also believe that considerable variation exists in the efficiency of the ice making process itself and that the test method should include a way to quantify this aspect. They strongly urged DOE to reword the test method regarding the setup of ice makers to specify the base method as one in which the appliance makes ice and deactivates the icemaking process itself when the ice bucket is full (or an equivalent set of actions to achieve this) to reduce circumvention. (ComEd Energy Solutions Center & Northwest Energy Efficiency Alliance, No. 37, pp. 8–9)

In response, DOE notes that it has considered the test burden associated with measurement of the energy use associated with icemaking (rather than using the fixed icemaking energy use adder) as part of the most recent concluded test procedure rulemaking. DOE concluded that the benefits of a direct measurement of icemaking energy use would not outweigh the additional test burden associated with making the measurement, due in part to the updated understanding that the magnitude of ice usage is significantly less than initially thought. 84 FR 70842, 70848–70849 (December 23, 2019). DOE did not adopt an icemaking energy use test, either mandatory or optional, in the recently concluded test procedure rulemaking cycle and has finalized the test procedure on that basis. 86 FR 56790 (October 12, 2021). Regarding the potential for circumvention by making the icemaker inoperative during the test, DOE notes that the wording of section 5.5.2(j) of HRF–1–2019, which is incorporated by reference by the DOE test procedure, has clear instructions that only the harvesting of ice shall be interrupted when an icemaker is made inoperative during an energy test and that the inoperative state should simulate the state when the icemaker senses that the bin is filled. Any tests that reduce the power of additional components when the icemaker is inoperative during an energy test would be invalid. DOE believes that these requirements are sufficiently clear and that it would not be justified to impose the additional burden of connecting a water supply to a test unit to allow the ice bin to be filled and the bin sensor to make the icemaker inoperative.

C. Technological Feasibility

1. General

In each energy conservation standards rulemaking, DOE conducts a screening analysis based on information gathered on all current technology options and prototype designs that could improve the efficiency of the products or equipment that are the subject of the proposed rule. As the first step in such an analysis, DOE develops a list of technology options for consideration in consultation with manufacturers, design engineers, and other interested parties. DOE then determines which of those means for improving efficiency are technologically feasible. DOE considers technologies incorporated in commercially available products or in working prototypes to be technologically feasible. Sections 6(b)(3)(i) and 7(b)(1) of appendix A to 10 CFR part 430, subpart C.

After DOE has determined that particular technology options are technologically feasible, it further evaluates each technology option in light of the following additional screening criteria: (1) practicability to manufacture, install, and service; (2) adverse impacts on product utility or availability; (3) adverse impacts on health or safety, and (4) unique-pathway proprietary technologies. Sections 6(b)(3)(ii)–(v) and 7(b)(2)–(5) of the Process Rule. Section IV.B of this document discusses the results of the screening analysis for refrigerators, refrigerator-freezers, and freezers, particularly the designs DOE considered, those it screened out, and those that are the basis for the standards considered in this rulemaking. For further details on the screening analysis for this rulemaking, see chapter 4 of the NOPR TSD.

2. Maximum Technologically Feasible Levels

When DOE proposes to adopt an amended standard for a type or class of covered product, it must determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for such product. (42 U.S.C. 6295(p)(1)) Accordingly, in the engineering analysis, DOE determined the maximum technologically feasible (''max-tech'') improvements in energy efficiency for refrigerators, refrigerator-freezers, and freezers, using the design parameters for the most efficient products available on the market or in working prototypes. The max-tech levels that DOE determined for this proposed rulemaking are described in section IV.C.1.e of this proposed rule and in chapter 5 of the NOPR TSD.

D. Energy Savings

1. Determination of Savings

For each trial standard level (''TSL''), DOE projected energy savings from application of the TSL to refrigerators, refrigerator-freezers, and freezers purchased in the 30-year period that begins in the year of compliance with the proposed standards (2027–2056).[16] The savings are measured over the entire lifetime of refrigerators, refrigerator-freezers, and freezers purchased in the previous 30-year

[16] Each TSL is composed of specific efficiency levels for each product class. The TSLs considered for this NOPR are described in section V.A of this document. DOE conducted a sensitivity analysis that considers impacts for products shipped in a 9-year period.

period. DOE quantified the energy savings attributable to each TSL as the difference in energy consumption between each standards case and the no-new-standards case. The no-new-standards case represents a projection of energy consumption that reflects how the market for a product would likely evolve in the absence of amended energy conservation standards.

DOE used its national impact analysis (''NIA'') spreadsheet model to estimate national energy savings (''NES'') from potential amended or new standards for refrigerators, refrigerator-freezers, and freezers. The NIA spreadsheet model (described in section IV.H of this document) calculates energy savings in terms of site energy, which is the energy directly consumed by products at the locations where they are used. For electricity, DOE reports NES in terms of primary energy savings, which is the savings in the energy that is used to generate and transmit the site electricity. DOE also calculates NES in terms of FFC energy savings. The FFC metric includes the energy consumed in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and thus presents a more complete picture of the impacts of energy conservation standards.[17] DOE's approach is based on the calculation of an FFC multiplier for each of the energy types used by covered products or equipment. For more information on FFC energy savings, see section IV.H.2 of this document.

2. Significance of Savings

To adopt any new or amended standards for a covered product, DOE must determine that such action would result in significant energy savings. (42 U.S.C. 6295(o)(3)(B))

The significance of energy savings offered by a new or amended energy conservation standard cannot be determined without knowledge of the specific circumstances surrounding a given rulemaking.[18] Certain covered products and equipment may have most of their energy consumption occur during periods of peak energy demand. The impacts of such products on the energy infrastructure can be more pronounced than products with relatively constant demand. However, residential refrigerators, freezers, and refrigerator-freezers have loads that are more consistent throughout the year. Accordingly, DOE evaluates the significance of energy savings on a case-by-case basis, taking into account the significance of cumulative FFC national energy savings, the cumulative FFC emissions reductions, and the need to confront the global climate crisis, among other factors. DOE has initially determined the energy savings from the proposed standard levels are ''significant'' within the meaning of 42 U.S.C. 6295(o)(3)(B).

E. Economic Justification

1. Specific Criteria

As noted previously, EPCA provides seven factors to be evaluated in determining whether a potential energy conservation standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII)) The following sections discuss how DOE has addressed each of those seven factors in this rulemaking.

a. Economic Impact on Manufacturers and Consumers

In determining the impacts of a potential amended standard on manufacturers, DOE conducts an MIA, as discussed in section IV.J of this document. DOE first uses an annual cash-flow approach to determine the quantitative impacts. This step includes both a short-term assessment—based on the cost and capital requirements during the period between when a regulation is issued and when entities must comply with the regulation—and a long-term assessment over a 30-year period. The industry-wide impacts analyzed include (1) INPV, which values the industry on the basis of expected future cash flows, (2) cash flows by year, (3) changes in revenue and income, and (4) other measures of impact, as appropriate. Second, DOE analyzes and reports the impacts on different types of manufacturers, including impacts on small manufacturers. Third, DOE considers the impact of standards on domestic manufacturer employment and manufacturing capacity, as well as the potential for standards to result in plant closures and loss of capital investment. Finally, DOE takes into account cumulative impacts of various DOE regulations and other regulatory requirements on manufacturers.

For individual consumers, measures of economic impact include the changes in LCC and PBP associated with new or amended standards. These measures are discussed further in the following section. For consumers in the aggregate, DOE also calculates the national net present value of the consumer costs and benefits expected to result from particular standards. DOE also evaluates the impacts of potential standards on identifiable subgroups of consumers that may be affected disproportionately by a standard.

b. Savings in Operating Costs Compared to Increase in Price (LCC and PBP)

EPCA requires DOE to consider the savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered product that are likely to result from a standard. (42 U.S.C. 6295(o)(2)(B)(i)(II)) DOE conducts this comparison in its LCC and PBP analysis.

The LCC is the sum of the purchase price of a product (including its installation) and the operating expense (including energy, maintenance, and repair expenditures) discounted over the lifetime of the product. The LCC analysis requires a variety of inputs, such as product prices, product energy consumption, energy prices, maintenance and repair costs, product lifetime, and discount rates appropriate for consumers. To account for uncertainty and variability in specific inputs, such as product lifetime and discount rate, DOE uses a distribution of values, with probabilities attached to each value.

The PBP is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more efficient product through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost due to a more stringent standard by the change in annual operating cost for the year that standards are assumed to take effect.

For its LCC and PBP analysis, DOE assumes that consumers who follow existing purchase patterns will purchase the covered products in the first year of compliance with new or amended standards. Consumer response to higher costs associated with the rule may reduce sales below the levels that otherwise would have been expected in the absence of a new standard. The LCC savings for the considered efficiency levels are calculated relative to the case that reflects projected market trends in the absence of new or amended standards. DOE's LCC and PBP analysis is discussed in further detail in section IV.F of this document.

c. Energy Savings

Although significant conservation of energy is a separate statutory

[17] The FFC metric is discussed in DOE's statement of policy and notice of policy amendment. 76 FR 51282 (Aug. 18, 2011), as amended at 77 FR 49701 (Aug. 17, 2012).

[18] The numeric threshold for determining the significance of energy savings established in a final rule published on February 14, 2020 (85 FR 8626, 8670), was subsequently eliminated in a final rule published on December 13, 2021 (86 FR 70892).

requirement for adopting an energy conservation standard, EPCA requires DOE, in determining the economic justification of a standard, to consider the total projected energy savings that are expected to result directly from the standard. (42 U.S.C. 6295(o)(2)(B)(i)(III)) As discussed in section III.D of this document, DOE uses the NIA spreadsheet models to project national energy savings.

d. Lessening of Utility or Performance of Products

In establishing product classes and in evaluating design options and the impact of potential standard levels, DOE evaluates potential standards that would not lessen the utility or performance of the considered products. (42 U.S.C. 6295(o)(2)(B)(i)(IV)) Based on data available to DOE, the standards proposed in this document would not reduce the utility or performance of the products under consideration in this rulemaking.

e. Impact of Any Lessening of Competition

EPCA directs DOE to consider the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from a proposed standard. (42 U.S.C. 6295(o)(2)(B)(i)(V)) It also directs the Attorney General to determine the impact, if any, of any lessening of competition likely to result from a proposed standard and to transmit such determination to the Secretary within 60 days of the publication of a proposed rule, together with an analysis of the nature and extent of the impact. (42 U.S.C. 6295(o)(2)(B)(ii)) DOE will transmit a copy of this proposed rule to the Attorney General with a request that the Department of Justice (''DOJ'') provide its determination on this issue. DOE will publish and respond to the Attorney General's determination in the final rule. DOE invites comment from the public regarding the competitive impacts that are likely to result from this proposed rule. In addition, stakeholders may also provide comments separately to DOJ regarding these potential impacts. *See* the **ADDRESSES** section for information to send comments to DOJ.

f. Need for National Energy Conservation

DOE also considers the need for national energy and water conservation in determining whether a new or amended standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)(VI)) The energy savings from the proposed standards are likely to provide improvements to the security and reliability of the Nation's energy system. Reductions in the demand for electricity also may result in reduced costs for maintaining the reliability of the Nation's electricity system. DOE conducts a utility impact analysis to estimate how standards may affect the Nation's needed power generation capacity, as discussed in section IV.M of this document.

DOE maintains that environmental and public health benefits associated with the more efficient use of energy are important to take into account when considering the need for national energy conservation. The proposed standards are likely to result in environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases (''GHGs'') associated with energy production and use. DOE conducts an emissions analysis to estimate how potential standards may affect these emissions, as discussed in section IV.K of this document; the estimated emissions impacts are reported in section V.B.6 of this document. DOE also estimates the economic value of emissions reductions resulting from the considered TSLs, as discussed in section IV.L of this document.

g. Other Factors

In determining whether an energy conservation standard is economically justified, DOE may consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII)) To the extent DOE identifies any relevant information regarding economic justification that does not fit into the other categories described previously, DOE could consider such information under ''other factors.''

2. Rebuttable Presumption

As set forth in 42 U.S.C. 6295(o)(2)(B)(iii), EPCA creates a rebuttable presumption that an energy conservation standard is economically justified if the additional cost to the consumer of a product that meets the standard is less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable DOE test procedure. DOE's LCC and PBP analyses generate values used to calculate the effects that proposed energy conservation standards would have on the payback period for consumers. These analyses include, but are not limited to, the 3-year payback period contemplated under the rebuttable-presumption test. In addition, DOE routinely conducts an economic analysis that considers the full range of impacts to consumers, manufacturers, the Nation, and the environment, as required under 42 U.S.C. 6295(o)(2)(B)(i). The results of this analysis serve as the basis for DOE's evaluation of the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification). The rebuttable presumption payback calculation is discussed in section IV.F.10 of this proposed rule.

IV. Methodology and Discussion of Related Comments

This section addresses the analyses DOE has performed for this proposed rulemaking with regard to refrigerators, refrigerator-freezers, and freezers. Separate subsections address each component of DOE's analyses.

DOE used several analytical tools to estimate the impact of the standards proposed in this document. The first tool is a spreadsheet that calculates the LCC savings and PBP of potential amended or new energy conservation standards. The national impacts analysis uses a second spreadsheet set that provides shipments projections and calculates national energy savings and net present value of total consumer costs and savings expected to result from potential energy conservation standards. DOE uses the third spreadsheet tool, the Government Regulatory Impact Model (''GRIM''), to assess manufacturer impacts of potential standards. These three spreadsheet tools are available on the DOE website for this proposed rulemaking: *www.regulations.gov/docket/EERE-2017-BT-STD-0003.* Additionally, DOE used output from the latest version of the Energy Information Administration's (''EIA's'') *Annual Energy Outlook* (''*AEO*''), a widely known energy projection for the United States, for the emissions and utility impact analyses.

DOE received some comments that, rather than addressing specific aspects of the analysis, are general statements regarding the appropriateness of amending energy conservation standards and/or the efficiency levels that might be appropriate.

AHAM stated that the preliminary analysis relied heavily on the use of technologies that can affect reliability, longevity, and affordability of products. Accordingly, they claimed that DOE had placed too much emphasis on the implementation of variable-speed compressors later in the EL progression, and that DOE was overestimating the impact of vacuum insulated panels (''VIPs'') in reducing energy consumption. (AHAM, No. 31, pp. 8–11)

Sub-Zero fully supported and affirmed the comments that were submitted by AHAM, which emphasized that there are significant limitations to further energy regulation if products are to remain reliable, long-lived and affordable. Sub-Zero also stated that further increases in efficiency for the built-in [19] products they manufacture are not justified and will save minimal energy worldwide and pose a significant and unnecessary burden on manufacturers and noted that built-ins comprise only 1.3 percent of total U.S. refrigerator and freezer shipments according to AHAM 2019 shipment data. (Sub-Zero, No. 34, p. 1; Sub-Zero, No. 34, p. 2)

AHAM and Sub-Zero comments suggesting that amending standards might reduce reliability and product life are addressed in section IV.F.6 of this document. AHAM's comments and those of other stakeholders regarding the impact of VIPs are discussed in section IV.A.2 of this document. In response to Sub-Zero regarding built-in products, DOE revised the analysis in the NOPR phase to more specifically address built-in classes—this is discussed in more detail in section IV.C.1.a of this document.

Samsung noted the freestanding top-mount product classes (3, 3A, and 3I) serves as a great example of increased energy savings given it has significant market share of 42 percent and it has the ability to adapt to a tightening of standards given the room for innovation with energy efficiency technologies compared to other freestanding products. They stated that improving on the EL for these classes can provide nearly double the energy savings. (Samsung, No. 32, p. 2)

When considering the information provided in the preliminary analysis TSD published in October 2021, DOE found that in 2020 top-mount refrigerator-freezers and classes for which they are a proxy (PC 1, 2, 3, 6) constituted 36.7% of the market, while bottom-mounts alone constituted 40.2 percent (PC 5, 5A). These data indicate that, in contrast to the Samsung claim, focusing on the bottom-mount product classes could actually lead to greater energy savings due to its larger market share. In any case, DOE agrees that increasing stringency for classes that have large market shares could be very effective in achieving national energy savings.

The California IOUs stated they generally support DOE analyzing the updated energy conservation standards levels for this equipment and the finding that there are significantly higher efficiency levels with positive net present value (NPV) for consumers. (California IOUs, No. 33, p. 1)

The California IOUs included two tables, which identified the highest EL that DOE presented in the preliminary analysis for which DOE found a positive NPV for freestanding and built-in product classes. Barring updates to the preliminary analysis that incorporate other comments, they asked that DOE adopt the efficiency level for each product class with the highest savings while still having a positive NPV. (California IOUs, No. 33, p. 5–6) DOE notes that EPCA requires consideration of seven factors when setting standard levels including total projected energy savings, among others (see the discussion in section III.E.1 of this document).

A. Market and Technology Assessment

DOE develops information in the market and technology assessment that provides an overall picture of the market for the products concerned, including the purpose of the products, the industry structure, manufacturers, market characteristics, and technologies used in the products. This activity includes both quantitative and qualitative assessments, based primarily on publicly available information. The subjects addressed in the market and technology assessment for this proposed rule include (1) a determination of the scope of the rulemaking and product classes, (2) manufacturers and industry structure, (3) existing efficiency programs, (4) shipments information, (5) market and industry trends; and (6) technologies or design options that could improve the energy efficiency of consumer refrigerators, refrigerator-freezers, and freezers. The key findings of DOE's market assessment are summarized in the following sections. See chapter 3 of the NOPR TSD for further discussion of the market and technology assessment.

1. Scope of Coverage and Product Classes

In the October 2021 Preliminary Analysis, DOE identified two potential product class modifications, products with icemakers, and products with multiple doors or specialty doors. The following two subsections address these topics.

Product Classes With Automatic Icemakers

As discussed later in this section, DOE has identified an opportunity to simplify and consolidate the presentation of maximum allowable energy use for products within product classes that may or may not have an automatic icemaker, and in doing so DOE expects the product class representations to be more streamlined and simplified.

To represent the annual energy consumed by automatic icemakers in refrigerators, refrigerator-freezers, and freezers, DOE's test procedures specify a constant energy-use adder of 84 kWh/year (by use of a 0.23 kWh/day adder; see section 5.3(a)(i) of 10 CFR part 430, subpart B, appendix A and section 5.3.(a) of appendix B). With this constant adder, the standard levels for product classes with an automatic icemaker are equal to the standards of their counterparts without an icemaker plus the 84 kWh/year. Consistent with prior discussions in the test procedure rulemaking, this NOPR proposes to amend this equation such that for representations made on or after the compliance date of any potential new energy conservation standards, the adder to be used shall change from 84 kWh/yr to 28 kWh/yr. DOE determined as part of the October 2021 TP Final Rule that the revised adder would more accurately reflect energy use during a representative average use cycle. 86 FR 56811. However, DOE indicated that it would not adopt this change in the test procedure until the date of potential future energy conservation standard amendments. *Id.* at 86 FR 56793. Thus, this change is being proposed in this document, with an implementation date to coincide with the compliance date of the standards proposed in this document.

AHAM reiterated their support for merging product classes for products with and without automatic icemakers due to use of the icemaker adder rather than a measured value but stated DOE must ensure that the icemaking classes do not end up with a more stringent standard as a result. (AHAM, No. 31, pp. 6–7; AHAM, Public Meeting Transcript, No. 30, pp. 13–14)

DOE has concluded that because the standards for the product classes with and without automatic icemakers are effectively the same, except for the constant adder, there is an opportunity to express the maximum allowable energy use for both icemaking and non-icemaking classes in the same equation,

[19] DOE defines a built-in consumer refrigeration product as one that is no more than 24 inches in depth, excluding doors, handles, and custom front panels; that is designed, intended, and marketed exclusively to be (1) Installed totally encased by cabinetry or panels that are attached during installation; (2) Securely fastened to adjacent cabinetry, walls or floor; (3) Equipped with unfinished sides that are not visible after installation; and (4) Equipped with an integral factory-finished face or built to accept a custom front panel (see 10 CFR 430.2).

thus consolidating the presentation of classes and their energy conservation standards. The equation would, for those classes that may or may not have an icemaker, include a term equal to the icemaking energy use adder multiplied by a factor that is defined to equal 1 for products with icemakers and to equal zero for products without icemakers. This approach would consolidate the product class structure, and while products with and without ice makers would be represented by a single product class descriptor and maximum energy use equation, they would continue to have different maximum energy use values, due to the ice maker coefficient in the equations.

DOE requests comments on its proposal to consolidate the presentation of maximum allowable energy use for products of classes that may or may not have an automatic icemaker.

Special Door and Multi-Door Designs

In the October 2021 Preliminary Analysis, DOE considered certain refrigerators, refrigerator-freezers, and freezers available on the market that offer special door types that allow consumers to access or view the internal storage compartment without a typical door opening. Some products available on the market offer glass doors to allow a view inside the cabinet. Potential changes to product class structure to address changes to energy consumption as a result of these features were considered, and more information was requested from interested parties.

Door-in-door design is a relatively new setup offered in certain standard-size refrigerator-freezers. Typically, manufacturers add a second smaller door between the fresh food compartment's outer door and the inner cabinet. This design allows the consumer to access items loaded in the door shelves without opening an interior door that encloses the inner cabinet. Some door-in-door designs have an outer glass door, providing the user a transparent view of the inner cabinet. Some refrigerators, refrigerator-freezers, and freezers, available on the market also offer multi-door setups which deviate from the popular French-door design. Some designs include one or more ''drawers'' which can be pulled out of the main compartment and allow for more fresh food storage than more traditional designs. Other designs may include a ''quadrant'' design in which four doors are placed in a two-by-two configuration with two doors for the freezer compartment, and two for the fresh food.

AHAM commented that in its preliminary analysis DOE declined to adopt a separate product class or an energy use allowance for products with glass door or door-in-door type features. They stated that other jurisdictions have a constant multiplier used in the development of standards to account for the number of doors on a product, and there are separate product classes for glass door products in commercial refrigerators. (AHAM, No. 31, p. 7) GEA supported AHAM's position on multidoor products and suggested using gasket area as a basis for a multidoor multiplier. (GEA, No. 38, p. 3) Whirlpool also noted that there is justification for applying a multiplier for multidoor products. (Whirlpool, No. 35, pp. 8–10) Sub-Zero asked DOE to consider adding a product class for built-ins with specialty doors and urged DOE to define additional product classes for analyses and set separate standards levels for built-ins with specialty doors. (Sub-Zero, No. 34, p. 2)

DOE reviewed the prevalence of products with multiple or specialty doors and conducted analysis to assess the energy use impact of such design features. More detail regarding this assessment is provided in Chapters 3 and 5 of the NOPR TSD. As a result, DOE concluded that some allowance for multiple doors and specialty doors would be appropriate for classes where such features are offered. Specifically, DOE is proposing the following allowances for classes for which the specific features are relevant.

- Two percent energy use allowance for each externally-opening door in excess of the typical minimum for the class (*i.e.,* more than 2 doors for refrigerator-freezer classes 5 and 7, and more than 3 doors for class 5A). This would be applicable for current product classes 5, 5A, and 7, with a limits of six percent for product classes 5 and 7, representing a product with five doors (three in excess of the typical minimum), and four percent for product class 5A, also representing a product with five doors (in this case two in excess of the typical minimum). For the purposes of this provision, a drawer with an externally-exposed face would be considered an externally-opening door.
- Six percent total energy use allowance for a product with a door-in-door feature implemented in one or more of its doors. This would apply instead of any multiple-door allowance for product classes 5, 5A, and 7.
- Ten percent total energy use allowances for a product with a transparent door or doors. This would apply instead of any multiple-door or door-in-door allowance for product classes 3A, 5, 5A, 7, and 13A.

With this proposed approach, the maximum energy use allowance would be ten percent, for a glass door. However, if the standard level for any of the eligible classes is set at a level for which this allowance would represent backsliding, *i.e.,* allow such a product to have more energy use than the current standard (adjusted for the change in icemaker energy use adder), the allowance would be reduced to eliminate such backsliding. The proposal uses the number of doors in excess of the typical minimum number of doors, rather than using an adjustment based on gasket size, as suggested by GEA, in an attempt to maintain better simplicity of the adjustment and determination of the maximum allowable energy use. In response to Sub-Zero, DOE notes that this provision would apply to built-in classes as well as freestanding classes.

DOE requests comment on its proposal for establishing energy use allowances for multiple doors and/or specialty doors. Should such an energy use allowance structure be established, and, if so, are the proposed energy use allowance levels appropriate? If they are not appropriate, DOE requests input on what the energy use allowance values should be, with supporting data to demonstrate that the alternative levels suggested are justified.

DOE also considered whether any definitions would be required to clarify what products the door allowances would apply to. As described previously, the allowances for multiple doors would apply for externally-opening doors or drawers. DOE believes that these descriptions provide sufficient clarity such that additional definitions regarding multiple doors would not be required.

For transparent doors, DOE proposes to add a definition that aligns with the definition of display doors for walk-in coolers and freezers, which defines a display door as a door that either is designed for product display or has 75 percent or more of its surface area composed of glass or another transparent material. (*See* 10 CFR 431.302). Specifically, DOE proposes to define transparent door as a door for which 75 percent or more of the surface area is glass or another transparent material.

For door-in-door features, DOE proposes to add a clarifying definition indicating that a door-in-door is a set of doors or an outer door and inner drawer for which (a) both doors (or both the door and the drawer) must be opened to provide access to the interior through a single opening, (b) gaskets for both doors (or both the door and the drawer)

are exposed to external ambient conditions on the outside around the full perimeter of the respective openings, and (c) the space between the two doors (or between the door and the drawer) achieves temperature levels consistent with the temperature requirements of the interior compartment to which the door-in-door provides access.

DOE requests comments on the proposed definitions to clarify transparent door and door-in-door features. If the proposed definitions are not appropriate, DOE requests comment on what specific changes should be made to the definitions, or what other definitions are necessary, so that they would appropriately describe the intended specialized doors.

2. Technology Options

In the preliminary market analysis and technology assessment, DOE identified 37 technology options that would be expected to improve the efficiency of refrigerators, refrigerator-freezers, and freezers, as measured by the DOE test procedure:

TABLE IV.1—TECHNOLOGY OPTIONS IDENTIFIED IN THE PRELIMINARY ANALYSIS

Insulation:
1. Improved resistivity of insulation (insulation type).
2. Inert blowing fluid CO_2.
3. Increased insulation thickness.
4. Gas-filled insulation panels.
5. Vacuum-insulated panels (''VIP'').
Gasket and Door Design:
6. Improved gaskets.
7. Double door gaskets.
8. Improved door face frame.
9. Reduced heat load for through-the-door (''TTD'') feature.
Anti-Sweat Heater:
10. Condenser hot gas (Refrigerant anti-sweat heating).
11. Electric anti-sweat heater sizing.
12. Electric heater controls.
Compressor:
13. Improved compressor efficiency.
14. Variable-speed compressors.
15. Linear compressors.
Evaporator:
16. Increased surface area.
17. Improved heat exchange.
Condenser:
18. Increased surface area.
19. Microchannel condenser.
20. Improved heat exchange.
21. Force convection condenser.
Defrost System:
22. Reduced energy for automatic defrost.
23. Adaptive defrost.
24. Condenser hot gas defrost.
Control System:
25. Electronic Temperature control.
26. Anti-Distribution control.
Other Technologies:
27. Fan and fan motor improvements.
28. Improved expansion valve.
29. Fluid control or solenoid off-cycle valve.
30. Alternative refrigerants.
31. Component location.
32. Phase change materials.
Alternative Refrigeration Cycles:
33. Ejector refrigerator.
34. Dual evaporator systems.
35. Two-stage system.
36. Dual-loop system.
37. Lorenz-Meutzner cycle.

Several commenters provided feedback on some of these technology options. These comments are summarized, along with DOE's responses.

Samsung agreed with the DOE's various technology options, specifically DOE's identification of variable-speed compressors and R–600a as means to improve energy efficiency. (Samsung, No. 32, pp. 2–3)

AHAM clarified that when considering ''alternate refrigerants'' as a technology option, DOE recognize that the use of R–600a should not be considered an option to account for a decrease in energy consumption if DOE's analysis accounts for a full transition from HFCs by January 1, 2023. AHAM also stated DOE's analysis regarding refrigerant for product classes 5, 5I, and 5A are flawed as the alternative refrigerants considered may not be accurate of the current or transitioning market. AHAM further stated the R–600a compressors only at ELs 3 and 4 is not reflective of the market; AHAM shipment data indicate a significant number of units are already using Isobutane (R–600a) refrigerant and/or variable-speed compressors to meet the current DOE standard or ENERGY STAR® levels. AHAM stated DOE needs to redo its analysis of product classes 5, 5I and 5A to incorporate market representative models and adjust the projected technology paths to account for options already in use. (AHAM, No. 31, pp. 4, 8–9)

In response, DOE reassessed its treatment of R–600a as a design option in the October 2021 Preliminary Analysis. It is DOE's understanding, confirmed through discussions with manufacturers, that following the removal of HFC–134a as a viable refrigerant for consumer refrigeration product in the U.S., manufacturers are primarily using R–600a as a replacement.[20] Hence, DOE assumed for its NOPR analysis that all consumer refrigeration products, even those at baseline efficiency levels, now use R–600a. DOE is aware that other alternative refrigerant choices are allowed to be used and further would not be banned by a recent EPA proposal restricting refrigerants.[21] However, based on all available information, DOE is not aware of any instances in which these alternatives are being considered by manufacturers as viable approaches for increases in efficiency in these products. 87 FR 76738, 76785 (December 15, 2022). Hence, refrigerant change has not been included as a technology option in this NOPR.

Darren Rains stated that the current design of many homes, commercial, and industrial refrigeration units allow cooling fans to pull air directly over a unit's condenser coils, resulting in dust and debris clogging the coils. As a result of this Rains states that accumulation of dust, hair, and lint on the condenser coils lowers the unit's ability to dissipate heat. Rains suggests that all incoming airflow openings must be covered by filtering materials sufficient to keep out the vast majority of debris, lint, and hair away from the condenser coils, and that filtering materials be easy to remove, replace, and are resistant to cleaning with a vacuum. Rains also suggests that gaps underneath refrigeration units have closed cell foam to address suction of debris into the unit. (Rains, No. 27, pp. 1–2)

DOE responds that consumer refrigeration products are tested before installation in homes and therefore before there is the potential to clog the condenser coil. Hence, even though air filters and/or other protection of the coils from dust or other debris may provide an efficiency benefit during home use, they would not be expected to affect the measurement of efficiency in the DOE test procedure. This is a factor that AHAM could potentially consider in development of a future revision of the HRF–1 test standard, and is also a factor that DOE may consider in a future test procedure rulemaking.

[20] In a final rule published December 1, 2016, the Environmental Protection Agency (''EPA''), as part of its Significant New Alternatives Policy (''SNAP'') program covering ozone-depleting refrigerants and related substances, changed the status of HFC–134a, the refrigerant to ''unacceptable'' for consumer refrigeration products starting January 1, 2021. 81 FR 86778, 86893.

[21] On December 15, 2022, EPA published a proposed rule restricting the use of refrigerants with GWP of 150 or greater. 87 FR 76738. Refrigerants including R–290, R–441A, R–600a, and HFC–152a meet this GWP requirement and are listed as acceptable under EPA's SNAP rules (see *https://www.epa.gov/snap/substitutes-household-refrigerators-and-freezers*).

The Joint Commenters stated they believe DOE may be underestimating VIP performance by relying on outdated information and/or otherwise inappropriate assumptions. The Joint Commenters noted DOE did not provide ample explanation for the 50 percent degradation factor/scaling factor and urged DOE to investigate an appropriate, updated scaling factor informed by recent interviews with manufacturers rather than relying on the previous rulemaking. They also stated the energy savings from VIPs presented in the preliminary analysis appear to be notably smaller than those found in a 2018 study and therefore urged DOE to reevaluate its modeling to ensure that the energy savings from VIPs are appropriately being captured. (Joint Commenters, No. 36, pp. 3–4)

DOE notes that, while the use of VIPs has become more common, it is not yet a technology that is used in a majority of products. DOE found few VIPs in the products that it purchased, and reverse engineered using destructive teardowns. The use of VIPs is not advertised in manufacturer product literature; thus, it is difficult to conduct statistical analysis to correlate efficiency levels with use of the technology. Manufacturers have reported varied levels of success using the technology. The information that DOE has been able to obtain on this topic through manufacturer interviews is by no means exhaustive, but it doesn't suggest that energy use reduction associated with use of VIPs is significantly different than would be estimated by the approach derivative of the previous rulemaking that was adopted in the preliminary analysis. DOE has used this approach also for the NOPR analysis. The details of the VIP analysis are described further in Chapter 5 of the NOPR TSD.

Based on the comments received, DOE has not identified any new technologies to add to the list provided as part of the preliminary analysis, and has removed alternative refrigerants as a technology option, since it would already be used in products at any efficiency level.

For Product Class 11A, ASAP recognized that many of the most efficient models are powered coolers that have small, adjusted volumes. However, they encouraged DOE to investigate the design features present in these very high-efficiency models to determine if such design features are more broadly applicable to the product class. (ASAP, Public Meeting Transcript, No. 30, p. 22)

In response, DOE notes that several of the most efficient products certified under product class 11A are DC-input models marketed for use in cars or boats. For example, the Alpicool TS50 is rated as a 1.8 cuft model with energy use 40% less than the maximum allowable annual energy use for products in its class. Product information shows that it is intended for car or boat service, and thus, it cannot be considered representative of the market. (''Alpicool TS Series'', No. XXXX)

B. Screening Analysis

DOE uses the following five screening criteria to determine which technology options are suitable for further consideration in an energy conservation standards rulemaking: [22]

(1) *Technological feasibility.* Technologies that are not incorporated in commercial products or in working prototypes will not be considered further.

(2) *Practicability to manufacture, install, and service.* If it is determined that mass production and reliable installation and servicing of a technology in commercial products could not be achieved on the scale necessary to serve the relevant market at the time of the projected compliance date of the standard, then that technology will not be considered further.

(3) *Impacts on product utility or product availability.* If it is determined that a technology would have a significant adverse impact on the utility of the product for significant subgroups of consumers or would result in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the United States at the time, it will not be considered further.

(4) *Adverse impacts on health or safety.* If it is determined that a technology would have significant adverse impacts on health or safety, it will not be considered further.

(5) *Unique-Pathway Proprietary Technologies.* If a design option utilizes proprietary technology that represents a unique pathway to achieving a given efficiency level, that technology will not be considered further due to the potential for monopolistic concerns.

In summary, if DOE determines that a technology, or a combination of technologies, fails to meet one or more of the listed five criteria, it will be excluded from further consideration in the engineering analysis. The reasons for eliminating any technology are discussed in the following sections.

The subsequent sections include comments from interested parties pertinent to the screening criteria, DOE's evaluation of each technology option against the screening analysis criteria, and whether DOE determined that a technology option should be excluded (''screened out'') based on the screening criteria.

1. Screened-Out Technologies

In the October 2021 preliminary analysis, DOE screened out the technologies presented in Table IV.2 on the basis of technological feasibility, practicability to manufacture, install, and service, adverse impacts on utility or availability, adverse impacts on health and safety, and/or unique-pathway proprietary technologies.

AHAM stated DOE's analysis relies heavily on the use of variable-speed compressors (''VSCs'') to achieve efficiency gains, indicating that (a) for some product classes, achieving even EL1 would require the use of VSCs, (b) there is additional design work and related costs required to implement VSCs, and (c) there are potential concerns about harmonic and interference issues. (AHAM, No. 31, p. 10) GEA stated DOE's analysis of the potential use of VSCs to reach certain energy levels fails to account for several costs associated with the use of VSCs. (GEA, No. 38 at p. 10)

DOE notes that it is clear from AHAM's statements, review of product literature, and discussions with manufacturers, that VSCs are a common design option used in a large percentage of currently-shipped consumer refrigeration products, with around one third of the U.S. refrigerator market adapting to VSCs and increasing implementation. (Samsung, No. 32, pp. 2–3) Furthermore, while AHAM suggested that DOE consider harmonics and possible electric grid interference from VSCs, DOE is not aware of any issues related to VSCs and harmonics to date, nor any requirements in place at this time. DOE is aware that Natural Resources Canada (NRCan) has released a comprehensive energy efficiency guide regarding variable frequency drives for informative purposes, with discussion of harmonics.[23] DOE notes, however, that the stated primary focus of the NRCan publication is for 'off-the-shelf', low-voltage variable frequency drives typically used in conjunction

[22] 10 CFR part 430, subpart C, appendix A, sections 6(b)(3) and 7(b).

[23] The NRCan publication regarding variable frequency drives can be found at *https://www.nrcan.gc.ca/sites/www.nrcan.gc.ca/files/energy/pdf/energystar/variable-frequency-drives-eng.pdf*.

with AC, polyphase, and induction motors, which does not include drives for consumer refrigeration VSCs. Hence, because VSCs are currently implemented in a substantive number of products and DOE is not aware of harmonic interference at this time, DOE believes it is inappropriate to screen out this technology.

TABLE IV.2—TECHNOLOGIES SCREENED-OUT IN THE PRELIMINARY ANALYSIS

Improved Gaskets, Double Gaskets, and Improved Door Face Frame.
Linear Compressors.
Fluid Control or Solenoid Off-Cycle Valves.
Improved Evaporator Heat Exchange.
Improved Condenser Heat Exchange.
Forced Convection Condenser.
Condenser Hot Gas Defrost.
Compressor Location at Top.
Evaporator Fan Motor Location Outside Cabinet.
Air Distribution Control.
Phase Change Materials.
Lorenz-Meutzner Cycle.
Dual-Loop Systems.
Two-Stage System.
Ejector Refrigerator.
Improved VIPs.
Inert Blowing Fluid CO_2.

2. Remaining Technologies

Through a review of each technology, DOE concluded in the preliminary analysis that all of the other identified technologies listed in section IV.A.2 of this document met all five screening criteria to be examined further as design options in DOE's NOPR analysis. In summary, DOE did not screen out the following technology options:

TABLE IV.3—TECHNOLOGIES REMAINING IN THE PRELIMINARY ANALYSIS

Insulation:
1. Improved resistivity of insulation (insulation type).
2. Increased insulation thickness.
3. Gas-filled insulation panels.
4. Vacuum-insulated panels.
Gasket and Door Design:
5. Reduced heat load for TTD feature.
Anti-Sweat Heater:
6. Refrigerant anti-sweat heating.
7. Electric anti-sweat heater sizing.
8. Electric heater controls.
Compressor:
9. Improved compressor efficiency.
10. Variable-speed compressors.
Evaporator:
11. Improved expansion valve.
12. Increased surface area.
13. Dual evaporator systems.
Condenser:
14. Increased surface area.
15. Microchannel condenser.
Defrost System:
16. Reduced energy for automatic defrost.
17. Adaptive defrost.
Control System:
18. Electronic Temperature control.
Other Technologies:
19. Fan and fan motor improvements.
20. Alternative refrigerants.

DOE has determined that these technology options are technologically feasible because they are being used or have previously been used in commercially available products or working prototypes. DOE also finds that all of the remaining technology options meet the other screening criteria (*i.e.,* practicable to manufacture, install, and service and do not result in adverse impacts on consumer utility, product availability, health, or safety, unique-pathway proprietary technologies). For additional details, see chapter 4 of the NOPR TSD.

DOE did not receive any comments specifically about screening technologies that have not already been mentioned previously. DOE's assessment of screening technologies has not changed for the NOPR analysis, and thus DOE has screened out that same group of technologies in the NOPR phase. Hence, the technologies remaining, that are considered as design options for the engineering analysis, are the same as those in the preliminary analysis, except for alternative refrigerants, which DOE has removed from the technology option list for the reasons mentioned in section IV.A.2 of this document.

C. Engineering Analysis

The purpose of the engineering analysis is to establish the relationship between the efficiency and cost of consumer refrigerators, refrigerator-freezers, and freezers. There are two elements to consider in the engineering analysis; the selection of efficiency levels to analyze (*i.e.,* the ''efficiency analysis'') and the determination of product cost at each efficiency level (*i.e.,* the ''cost analysis''). In determining the performance of higher-efficiency products, DOE considers technologies and design option combinations not eliminated by the screening analysis. For each product class, DOE estimates the baseline cost, as well as the incremental cost for the product at efficiency levels above the baseline. The output of the engineering analysis is a set of cost-efficiency ''curves'' that are used in downstream analyses (*i.e.,* the LCC and PBP analyses and the NIA).

1. Efficiency Analysis

DOE typically uses one of two approaches to develop energy efficiency levels for the engineering analysis: (1) relying on observed efficiency levels in the market (*i.e.,* the efficiency-level approach), or (2) determining the incremental efficiency improvements associated with incorporating specific design options to a baseline model (*i.e.,* the design-option approach). Using the efficiency-level approach, the efficiency levels established for the analysis are determined based on the market distribution of existing products (in other words, based on the range of efficiencies and efficiency level ''clusters'' that already exist on the market). Using the design option approach, the efficiency levels established for the analysis are determined through detailed engineering calculations and/or computer simulations of the efficiency improvements from implementing specific design options that have been identified in the technology assessment. DOE may also rely on a combination of these two approaches. For example, the efficiency-level approach (based on actual products on the market) may be extended using the design option approach to ''gap fill'' levels (to bridge large gaps between other identified efficiency levels) and/or to extrapolate to the max-tech level (particularly in cases where the max-tech level exceeds the maximum efficiency level currently available on the market).

For the preliminary analysis, DOE used a combined efficiency-level and design-option approach. First, an efficiency-level approach was used to establish an analysis tied to existing products on the market. A design option approach was used to extend the analysis through ''built-down'' efficiency levels and ''built-up'' efficiency levels where there were gaps in the range of efficiencies of products that were reverse engineered. Products from the product classes 3, 5, 5A, 7, 9, 10, 11A, & 18 were tested and torn down to provide information to lay the groundwork for the analysis. Design option analysis techniques were used to extend the analysis to higher efficiency levels and to fill any efficiency level gaps. Due to limitations in acquiring models from every product class for testing, DOE did not acquire for test and teardown, nor construct analysis for, all product classes. DOE focused the analysis on products with the highest market share. Regarding built-in product classes, certification data collected in DOE's Compliance Certification Database (''CCD'') indicated that the

potential for efficiency improvement was comparable for built-in classes and their corresponding freestanding classes. (See Section 5.2.1 of the Preliminary Analysis TSD) Thus, DOE concluded that the freestanding classes could act as proxies for the built-in classes. Section 10.4 of the preliminary analysis TSD discusses use of the engineering analysis for the analyzed classes to represent the cost-efficiency relationship for the classes for which engineering analysis was not conducted.

AHAM raised two general comments regarding representativeness of the classes and products analyzed for the preliminary analysis. First, AHAM claimed that DOE used product classes as proxy for other classes which were not sufficiently representative—this comment primarily addressed built-in classes. (AHAM, No. 31, pp. 5–6) Second, AHAM asserted that DOE selected models for teardown that were not representative of the specific classes analyzed—this comment primarily addressed the increase in multi-door product configurations, mainly for product classes 5, 5I, and 5A. (AHAM, No. 31, p. 2) These general comments are discussed in detail below.

a. Built-In Products

AHAM agreed that, given the significant number of product classes, it is appropriate for DOE to evaluate some classes in detail and use that analysis as a proxy for other similar product classes. However, AHAM stated DOE consolidated its analysis too much. (AHAM, Public Meeting Transcript, No. 30, p. 7–8 [24]) Specifically, AHAM stated freestanding product classes are not a proxy for built-in product classes and DOE should evaluate them separately. (AHAM, No. 31, 5–6) In addition to AHAM, GEA also objected to the use of freestanding products as analogues for built-in products in DOE's analysis and requested a separate analysis for built-in product classes. GEA stated built-in products are fundamentally different than freestanding products in that built-in products have different physical constraints as to size and shape, different configurations for their mechanical systems, and different markets and customer segments. Sub-Zero also noted that built-ins now utilize combinations of every practical energy saving design option identified by DOE and therefore urged DOE to seriously address the reality that a more stringent standard is not justified for some product classes, such as built-ins. (GEA, No. 38, p. 2; Sub-Zero, No. 34, p. 2)

On the other hand, the Joint Commenters stated they support DOE's approach of analyzing the same potential efficiency increases for built-in product classes as those for corresponding freestanding product classes. (Joint Commenters, No. 36, p. 5)

In response to these comments, DOE revised its analysis to address built-in products more directly. Specifically, DOE conducted additional analysis for class 5–BI, based on information from the 5–BI analysis conducted to support the September 2011 Final Rule, CCD and product literature data, and information provided by built-in product manufacturers during interviews. DOE has used the differences in the analyses between class 5 and 5–BI to approximate the differences between freestanding and built-in class pairs for other relevant built-in classes (*e.g.,* classes 3A, 7, and 9).

b. Representativeness of Reverse-Engineered and Analyzed Products

AHAM expressed concern that in some cases the features present in the teardown products were not representative of the market. (AHAM, Public Meeting Transcript, No. 30, pp. 7, 14–17) According to AHAM, DOE's analysis of product classes 5 and 5A in the preliminary analysis did not appear to be representative of the market in terms of volume, features, and number of doors; specifically, DOE's analysis focused on bottom-mount refrigerator/freezers with only two doors—one for the refrigerator and one for the freezer. AHAM stated it is unclear whether the analysis accounts for the differences between classes 5 and 5A and urged DOE to conduct further consultation with manufacturers in order to better account for these distinctions. (AHAM, No. 31, p. 2–3) Whirlpool agreed with these AHAM comments. (No. 35, pp. 2–3)

The California IOUs expressed similar concerns about whether all of the models selected to represent specific classes and efficiency levels were fully representative. They specifically pointed to the high cost of dual-evaporator systems, used in the DOE analysis for product classes 5A and 7 to reach EL2, as being non-representative. (California IOUs, Public Meeting Transcript, No. 30, p. 30) ASAP also noted that, when going from efficiency level 1 to 2 in the preliminary analysis, there is an incremental cost increase of more than $300 for Product Class 5A and more than $250 for Product Class 7 and that the technology options added at EL–2 are a higher-efficiency compressor and a single VIP for Product Class 5A and then dual evaporators in a single VIP for Product Class 7. ASAP requested an explanation of what is driving that incremental cost in both cases of going from EL–1 to EL–2. (ASAP, Public Meeting Transcript, No. 30, p. 27–28)

In response to these comments regarding the representativeness of the models analyzed, DOE investigated and came to similar conclusions. Thus, DOE revised the analysis for this NOPR such that (a) analyses for both product classes 5 and 5A are based on three-door designs, (b) the capacities of the product class 5 representative units are larger, (c) the capacities of the product class 5A units are smaller, and (d) the analyses for product classes 5A and 7 do not consider use of dual evaporators as a design option, remaining more consistent with a more representative single-evaporator design. DOE believes the analyses conducted for this NOPR are representative of the product classes in the market.

c. Baseline Efficiency/Energy Use

For each product/equipment class, DOE generally selects a baseline model as a reference point for each class, and measures changes resulting from potential energy conservation standards against the baseline. The baseline model in each product/equipment class represents the characteristics of a product/equipment typical of that class (*e.g.,* capacity, physical size). Generally, a baseline model is one that just meets current energy conservation standards, or, if no standards are in place, the baseline is typically the most common or least efficient unit on the market.

For the preliminary analysis, DOE chose baseline efficiency levels represented by the current Federal energy conservation standards, expressed as maximum annual energy consumption as a function of the product's adjusted volume, with the exclusion of the automatic icemaker energy contribution for product classes that include this feature. The current standards incorporate allowance of a constant 84 kWh/yr icemaker adder for product classes with automatic icemakers, consistent with the current test procedure, which requires adding

[24] A notation in the form ''AHAM, Public Meeting Transcript, No. 30 at p. 3'' identifies an oral comment that DOE received on December 1, 2021, during the public meeting, and was recorded in the public meeting transcript posted in the docket for this test procedure rulemaking (Docket No. EERE–2014–BT–STD–0003). This particular notation refers to a comment (1) made by the Association of Home Appliance Manufacturer during the public meeting; (2) recorded in document number 30, which is the public meeting transcript that is filed in the docket of this test procedure rulemaking; and (3) which appears on page 3 of document number 30.

this amount of annual energy use to the product's tested performance if the product has an automatic icemaker.

For the analysis in this NOPR, DOE adjusted the baseline energy usage levels for each class to account for the planned revision in the test procedure of the icemaker energy use adder to 28 kWh/year. From this baseline DOE conducted direct analyses for 9 product classes, with some classes including two representative adjusted volumes. In conducting these analyses, 13 baseline units were used in construction of cost curves, and had their characteristics determined in large part by purchased, tested, and reverse engineered tear-down models. Further information on the design characteristics of specific analyzed baseline models is summarized in the NOPR TSD.

d. Higher Efficiency Levels

AHAM commented that DOE should examine a gap-fill EL between the current DOE standard and the previously analyzed EL 1 for freestanding bottom-mount refrigerator-freezers (product classes 5, 5I, and 5A). Whirlpool agreed, but expanded on this, indicating that DOE should examine a gap-fill EL between the current DOE standard and the analyzed EL 1 for freestanding top-mount and side-by-side refrigerator-freezers (product classes 3, 3I, 4, 6, and 7). (AHAM, No. 31, p. 4; Whirlpool, No. 35, p. 4–5)

Whirlpool also noted that in the last refrigerator, refrigerator-freezer, and freezer energy conservation standards rulemaking, DOE considered (in the corresponding TSD) gap-fill efficiency levels between baseline and ESTAR Version 4.0 levels, which at the time were 20% more efficient than the DOE federal minimum for most product classes. Whirlpool stated DOE should analyze gap fill levels like those considered in the last rulemaking due to their own precedent and to at least consider them at this state and due to distinct technology options, product cost, and customer impacts of refrigerators, refrigerator-freezers, and freezers produced at these levels compared to refrigerators, refrigerator-freezers, and freezers at baseline and EL1. Whirlpool further stated it is extremely important that DOE consider these gap fill levels for the non-built-in top mount and side-by-side product classes. They stated the product costs needed to improve even a 5% gap fill level for those PCs will be substantially lower than their estimated costs of meeting EL1 and that savings would still be delivered to consumers, but at a much lower product cost increase, which would minimize the impact from amended standards to low-income consumers often from disadvantaged communities. (Whirlpool, No. 35, p. 4–8)

In interviews, manufacturers reiterated that gap-fill ELs should be evaluated, particularly for top-mount and side-by-side refrigerator-freezers.

In response, in this NOPR analysis DOE analyzed a 5% EL for product classes 3 and 7 (the top-mount refrigerators-freezers, and side-by-side refrigerator-freezers, respectively).

For the NOPR analysis, DOE analyzed up to five incremental efficiency levels beyond the baseline for each of the analyzed product classes. For products classes 3 and 7, this included an efficiency level roughly 5% more efficient than the current energy conservation standard. For other classes, the efficiency levels start at EL2, near 10% more efficiency than the current energy conservation standard, equivalent to the current ENERGY STAR® level for refrigerators, refrigerator-freezers, and freezers. For the NOPR analysis, DOE extended the efficiency levels in steps of close to 5% of the current energy conservation standard up to EL 4. Finally, EL 5 represents ''max-tech'', using design option analysis to extend the analysis beyond EL 4 using all applicable design options, including max efficiency variable-speed compressors, and considerable use of VIPs.

For Product Classes 5A, 7, and 11A, ASAP, California IOUs, and Joint Commenters stated they found that there are models listed in DOE's Compliance Certification Database that are more efficient than DOE's max-tech levels. They further stated that DOE presented a figure in the PTSD that showed available models that are more efficient than the max-tech efficiency level for Product Class 7. They therefore encouraged DOE to reevaluate the max-tech efficiency levels for Product Classes 5A, 7, and 11A so that they represent true max-tech levels. (ASAP, Public Meeting Transcript, No. 30, p. 22; California IOUs, No. 30; pp. 24–26; Joint Commenters, No. 36, p. 1–2) As indicated in section IV.A.2, DOE notes that some of the most efficient products of product class 11A are DC-input products and thus not generally representative of the refrigerator market. As for product classes 5A and 7, the max-tech efficiency levels analyzed in this NOPR were 21.5% and 22%, respectively. These max-tech levels are consistent with the maximum available efficiency levels of representative products sold by major manufacturers with which DOE conducted interviews.

The Joint Commenters noted that the TSD states that the energy efficiency ratios (''EER'') for VSCs are typically consistent with those of the highest available efficiency single-speed compressors (''SSC'') at the same capacity but stated that low-capacity compressors (generally models less than ¼ hp or 500 BTU/hr) would typically be present in compact product classes. They included a figure which showed, for both R–134a and R–600a compressors, the EER of a VSC can be 1 to 2 points higher than that of the most efficient SSC at the same capacity (<500 BTU/hr) and, therefore, DOE may be underestimating the savings from VSC for compact products by failing to capture the improved full-load efficiency in addition to the part-load savings. (Joint Commenters, No. 36, p. 4–5)

While published EER levels for VSCs may be much higher than published EERs for single-speed compressors in the capacity range suitable for compact products, DOE has not found many such products that use such compressors, and thus has little evidence that the suggested efficiency improvements could be guaranteed. DOE believes that its engineering analysis for compact products is representative of likely performance using VSCs.

The efficiency levels analyzed beyond the baseline are shown in Table IV.4.

TABLE IV.4—INCREMENTAL EFFICIENCY LEVELS FOR ANALYZED PRODUCTS
[% Energy Use Less Than Baseline]

Product class (AV, ft)	Standard-size refrigerator							Standard-size freezers		Compact refrigerators and freezers			
	3 (11.9) (%)	3 (20.6) (%)	5** (23.0) (%)	5** (30.0) (%)	5A** (35.0) (%)	5–BI** (26.0) (%)	7 (31.5) (%)	9 (29.3) (%)	10 (26.0) (%)	11A (1.7) (%)	11A (4.4) (%)	17 (9.0) (%)	18 (8.9) (%)
EL 1*	5	5	8	7	11	8	5	10	10	10	10	10	10
EL 2*	10	10	13	11	16	13	9.5	15	15	15	15	15	15
EL 3	15	15	18	15	21.5	14	14.5	20	20	20	20	20	20
EL 4	20	20	20	17	.....	.....	19	25	23	32	30	.....	30
EL 5	27	28	.....	.....	.....	.....	22	.....	.....	.....	.....	.....	.....

*ENERGY STAR® % level varies based on specific teardown units analyzed.
** Percentages are based on a 3-door configuration.

e. VIP Analysis and Max-Tech Levels

ASAP noted that a 2018 study [25] found that the installation of vacuum insulated panels (''VIPs'') in the rear cabinet wall reduced energy consumption by 5 percent and when VIPs were added to the doors, the total reduction was almost 12 percent. ASAP further noted that, with VIPs added to the side walls and top wall (where VIPs cover approximately half of the cabinet area), the total reduction energy consumption was about 20 percent. ASAP therefore stated DOE's conclusion of a 4 to 6 percent energy savings from the installation of VIPs covering half of the cabinet area seems lower than expected and questioned this discrepancy. California IOUs also reiterated energy savings from using VIPs was being undercounted. (ASAP, Public Meeting Transcript, No. 30, pp. 22–23; California IOUs, No. 33, pp. 2–3)

The California IOUs recommended that DOE increase the maximum ELs in the PTSD by reviewing design options for commercialized products that meet or exceed the max-tech levels. The California IOUs stated that it is likely that DOE is underestimating the energy savings that can be achieved at max-tech level because there is no indication that any of the products analyzed have VIPs, which is the additional design option for most product classes at max-tech. They therefore requested that DOE revise EL 3 and EL 4 to either incorporate additional design options or revise the energy savings attributed to the included design options if they are the only ones used in these commercialized products. (California IOUs, No. 33, p. 3–4)

ASAP requested specific information, particularly dimensions, of the single VIP referenced in table 5.5.1 of the preliminary analysis which shows the design options by efficiency level for each product class. ASAP also noted there is a reference to the VIPs covering half of the cabinet area and requested clarification on whether the full cabinet area is referring to all five sides being the top, bottom, two sides, and rear (excluding the doors) or if it was something else. (ASAP, Public Meeting Transcript, No. 30, pp. 15–17 & 21–22)

ASAP noted that DOE assumed a mid-panel thermal conductivity for the VIPs but then used a scaling factor of 50 percent to account for the actual versus expected performance of VIPs and requested clarification regarding what the 50 percent factor is capturing. (ASAP, Public Meeting Transcript, No. 30, p. 23)

On the other hand, AHAM stated DOE does not account for the limitations of VIPs and does not apply it as it would likely be used in actual products and, as a result, overestimates the use and impact of VIPs in its analysis. AHAM noted DOE's emphasis on VIPs appears to result from the teardown of a single unit, which is likely not representative of how VIPs are generally deployed on a larger scale. GEA stated DOE must also account for the technical limitations of VIPs including edge effects, which is particularly important when analyzing their use in smaller products. GEA also noted that DOE's analysis indicates manufactures will implement VIPs to achieve higher energy levels, but stated that many manufacturers, including GEA, already use VIPs to meet existing standards minimums and EL 1. (AHAM, No. 31, pp. 10–11; GEA, No. 38, p. 2)

In response to the ASAP and California IOUs comments regarding a study involving use of VIPs, DOE notes that the Department's analysis was generally consistent with the study in terms of how and where VIPs would be applied into the products. DOE further notes that its analysis also was consistent with information provided by manufacturers in interviews on VIP placement—specifically, that VIPs would primarily be used on the door(s), the walls, and the tops of cabinets, preferentially for the freezer compartments. In response to ASAP's question about the 50 percent factor, this was an adjustment that DOE used in the analysis leading up to the September 2011 Final Rule based on information regarding VIP experiences by manufacturers at that time. Based on discussions with manufacturers in the current rulemaking, it is not clear that success using VIPs in production settings has significantly increased. While the cited study provides some indication that VIPs can provide significant energy savings, DOE is now aware of evidence showing commercialized products are consistently achieving such levels of improvement.

Regarding table 5.5.1 of the preliminary analysis TSD and Product Classes 5A and 7, the California IOUs acknowledged that the breakdown for different ELs was determined by the units that were selected for a direct analysis that were purchased by DOE. The California IOUs requested clarification regarding whether there were other design options, like the dual evaporators, that were not necessarily used primarily to improve efficiency. They pointed to the transition to the R600A refrigerant in the new variable-speed compressor which has its own added costs at EL–3. (California IOUs, Public Meeting Transcript No. 30, p. 28–29)

The Joint Commenters stated DOE is significantly overestimating the incremental cost to meet intermediate efficiency levels for Product Classes 5A and 7 in the preliminary analysis. They stated that DOE included dual evaporators as a design option at EL2, but it is not reasonable to assume that dual evaporators would be employed to meet intermediate ELs (*i.e.,* EL2 and EL3) given their high cost if they became the minimum standard. (Joint Commenters, No. 36, p. 2–3)

In response, DOE notes that while dual evaporators were considered for product classes 5A and 7 in the preliminary analysis, DOE did not include dual evaporators in its engineering analysis for the NOPR, due to its high cost compared to efficiency gains.

The Joint Commenters stated that, since recent state laws and the American Innovation and Manufacturing (''AIM'') Act of 2020 have caused manufacturers to already transition to R–600a and since they expect a full transition to occur well before any amended DOE standards would take effect, DOE should not attribute conversion costs associated with the refrigerant transition to updated efficiency standards. (Joint Commenters, No. 36, p. 5–6) The California IOUs requested that Iso-Butane (R–600a) be included as a refrigerant design option for all products and be incorporated into efficiency levels with positive NPV for Product Classes 5A and 7, before other less cost-effective design options. (California IOUs, No. 33, p. 1–2)

DOE agrees that all manufacturers will have transitioned to R–600a by the time of the compliance date for any new energy conservation standards. Hence, the NOPR analysis assumes that all products will use R–600a at all efficiency levels.

2. Cost Analysis

The cost analysis portion of the engineering analysis is conducted using one or a combination of cost approaches. The selection of cost approach depends on a suite of factors, including the availability and reliability of public information, characteristics of the regulated product, the availability and timeliness of purchasing the

[25] Thiessen, S., Knabben, F.T., Melo, C., & Gonçalves, J.M. (2018). A study on the effectiveness of applying vacuum insulation panels in domestic refrigerators. *International Journal of Refrigeration, 96,* p. 10–16. *https://doi.org/10.1016/j.ijrefrig.2018.09.006.*

product on the market. The cost approaches are summarized as follows:

Physical teardowns: Under this approach, DOE physically dismantles a commercially available product, component-by-component, to develop a detailed bill of materials for the product.

Catalog teardowns: In lieu of physically deconstructing a product, DOE identifies each component using parts diagrams (available from manufacturer websites or appliance repair websites, for example) to develop the bill of materials for the product.

Price surveys: If neither a physical nor catalog teardown is feasible (for example, for tightly integrated products such as fluorescent lamps, which are infeasible to disassemble and for which parts diagrams are unavailable) or cost-prohibitive and otherwise impractical (*e.g.,* large commercial boilers), DOE conducts price surveys using publicly available pricing data published on major online retailer websites and/or by soliciting prices from distributors and other commercial channels.

In the present case, DOE conducted the analysis using a combination of physical teardowns, catalog teardowns, and price surveys. Where possible, physical teardowns were used to provide a baseline of technology options and pricing for a specific product class at a specific EL level. Then with technology option information, DOE estimated the cost of various design options including compressors, VIPs, and insulation, by extrapolating the costs from price surveys. With specific costs for technology options, DOE was then able to ''build-up'' or ''build-down'' from the various teardown models to finish the cost-efficiency curves. DOE used this approach primarily because it allowed the comparison of different technologies and design options.

3. Cost-Efficiency Results

The results of the engineering analysis are presented as cost-efficiency data for each of the efficiency levels for each of the product classes that were analyzed. DOE developed estimates of MPCs for each unit in the teardown sample, and also performed additional modeling based on representative teardown samples, to extend the analysis to cover the range of efficiency levels appropriate for a representative product. In this way, DOE estimated key design details for this range of efficiency levels. The manufacturer interviews provided input for these design details—DOE selected design options that were, to the extent possible, representative of manufacturer input regarding what design options would be required to attain specific efficiency levels for the analyzed product classes. DOE then calculated differential MPCs based on design option differences across the efficiency levels—using the calculated MPCs of the teardown units and the differential MPCs, DOE calculated MPCs for each considered efficiency level. The efficiency levels and design option progression for the analyzed standard-size refrigerator-freezers are presented in Table IV.5 and Table IV.6 of this document. The cells in the table list the design options that would be applied at each higher efficiency level as compared with the next-lower efficiency level. Similarly, the efficiency levels and design options for the other analyzed classes are presented in Table IV.7 of this document. The resulting MPCs for the analyzed classes across the considered efficiency levels are presented in Tables IV.8 and IV.9 of this document. See chapter 5 of the NOPR TSD for additional detail on the engineering analysis.

DOE seeks comment on the method for estimating manufacturing production costs and on the resulting cost-efficiency curves.

See section VII.E of this document for a list of issues on which DOE seeks comment.

TABLE IV.5—EFFICIENCY LEVELS AND DESIGN OPTIONS FOR ANALYZED STANDARD-SIZE REFRIGERATOR-FREEZERS

Product class (AV[5])	EL1	EL2	EL3	EL4	EL5
3 (11.9)					
EL Percent[1]	5%	10%	15%	20%	27%.
Design Options Added.	Variable Defrost; Higher-EER Compressor.	Higher-EER Compressor	Highest-EER Compressor.	VIP side walls and doors	Variable-speed compressor system.[3]
3 (21.0)					
EL Percent[1]	5%	10%	15%	20%	28%.
Design Options Added.	Higher-EER Compressor	Variable Defrost; Higher-EER Compressor.	Variable-speed compressor system[3].	40% of Max-tech VIP[4] ...	VIP side walls and doors.
5 (23.0)[2]					
EL Percent[1]	8%	13%	18%	20%.	
Design Options Added.	BLDC Evaporator Fan Motor; Variable-speed compressor system[3].	Highest-EER Variable-speed Compressor.	71% of Max-tech VIP[4] ...	VIP side walls and doors.	
5 (30.0)[2]					
EL Percent[1]	7%	11%	15%	17%.	
Design Options Added.	Efficiency levels were shifted such that the number of EL's matches that of the 23 AV analysis. MPCs were interpolated to these new EL numbers. See Table IV.6IV.6 for design options for the efficiency levels analyzed in the engineering analysis.				
5–BI[2] (26.0)					
EL Percent[1]	8%	13%	14%.		
Design Options Added.	Variable-speed compressor system; [3] 43% of Max-tech VIP.	90% of Max-tech VIP[4] ...	VIP side walls and doors.		
5A (35.0)[2]					
EL Percent[1]	11%	16%	21.5%.		
Design Options Added.	Variable-speed compressor system[3].	Highest-EER Variable-speed Compressor; 42% of Max-tech VIP[4].	VIP side walls and doors.		
7 (31.5)					
EL Percent[1]	5%	9.5%	14.5%	19%	22%.
Design Options Added.	Highest-EER Compressor.	BLDC Evaporator Fan Motor; Variable-speed compressor system[3].	38% of Max-tech VIP[4] ...	Highest-EER Variable-speed Compressor; 75% of Max-tech VIP[4].	VIP side walls and doors.

Notes:
[1] Percent energy use less than baseline.
[2] For three-door configuration.

[3] Includes two-speed fan control.
[4] The percentage of surface area of VIP as compared with the VIP surface area used in the maximum-technology design, for which VIP would be installed for full coverage of the side walls and doors.
[5] Adjusted Volume in cubic feet.

TABLE IV.6—PRODUCT CLASS 5, 30 AV, 3-DOOR DESIGN OPTIONS AND MANUFACTURING PRODUCTION COST

Percent Energy use below Baseline.	0%	8%	13%	17%.
Design Options Added		Highest-EER Compressor; BLDC Evaporator Fan Motor.	Variable-speed compressor system; [3] 50% of Max-tech VIP.	VIP side walls and doors.
MPC	$748	$776	$809	$845.
Incremental MPC		$28	$62	$97.

Note: This information is the initial engineering analysis output. LCC, PBP, and other downstream analyses used the EL's and MPC's in Table IV.8.

TABLE IV.7—EFFICIENCY LEVELS AND DESIGN OPTIONS FOR ANALYZED STANDARD-SIZE FREEZERS AND COMPACT REFRIGERATORS, REFRIGERATOR-FREEZERS, AND FREEZERS

Product class (AV [4])	EL1	EL2	EL3	EL4
9 (29.3)				
EL Percent [1]	10%	15%	20%	25%.
Design Options Added	Highest-EER Compressor; Switch to forced-convection condenser; BLDC fans.	Highest-EER Variable-speed compressor system [2].	38% of Max-tech VIP [3]	VIP side walls and door.
10 (26.0)				
EL Percent [1]	10%	15%	20%	23%.
Design Options Added	Variable-speed compressor system [2].	Wall thickness increase	Highest-EER Variable-speed Compressor.	VIP door.
11A (1.7)				
EL Percent [1]	10%	15%	20%	32%.
Design Options Added	Wall thickness increase	Higher-EER Compressor	Higher-EER Compressor; VIP sides and door.	Highest-EER Compressor.
11A (4.4)				
EL Percent [1]	10%	15%	20%	30%.
Design Options Added	Higher-EER Compressor	Wall thickness increase	Higher-EER Compressor	Variable Speed Compressor System; [2] VIP sides walls and door.
17 (9.0)				
EL Percent [1]	10%	15%	20%.	
Design Options Added	Highest-EER Variable Speed Compressor System; [2] Variable Defrost.	50% of Max-tech VIP [3]	VIP side walls and door panels..	
18 (8.9)				
EL Percent [1]	10%	15%	20%	30%.
Design Options Added	Higher-EER Compressor; Variable Defrost.	Wall thickness increase	Higher-EER Compressor; VIP door.	Variable Speed Compressor System.[2]

Notes:
[1] Percent energy use less than baseline.
[2] Includes two-speed fan control.
[3] The percentage of surface area of VIP as compared with the VIP surface area used in the maximum-technology design, for which VIP would be installed for full coverage of the side walls and doors.
[4] Adjusted Volume in cubic feet.

TABLE IV.8—COST-EFFICIENCY CURVES FOR STANDARD-SIZE REFRIGERATOR-FREEZERS

Product class (AV [3])	EL0	EL1	EL2	EL3	EL4	EL5
3 (11.9)						
EL Percent [1]	0%	5%	10%	15%	20%	27%
MPC	$419	$426	$427	$429	$478	$507
Incremental MPC	$0	$7.14	$8.60	$10	$59	$88
3 (21.0)						
EL Percent [1]	0%	5%	10%	15%	20%	28%
MPC	$511	$513	$530	$554	$580	$618
Incremental MPC	$0	$1.59	$19	$43	$69	$107
5 (23.0) [2]						
EL Percent [1]	0%	8%	13%	18%	20%	.....
MPC	$666	$691	$693	$736	$753	.....
Incremental MPC	$0	$25	$27	$70	$87	.....
5 (30.0) [2]						
EL Percent [1]	0%	7%	11%	15%	17%	.....
MPC	$748	$773	$796	$827	$845	.....
Incremental MPC	$0	$26	$48	$79	$97	.....
5–BI [3] (26.0)						
EL Percent [1]	0%	10%	15%	16%	.....	.....

TABLE IV.8—COST-EFFICIENCY CURVES FOR STANDARD-SIZE REFRIGERATOR-FREEZERS—Continued

Product class (AV [3])	EL0	EL1	EL2	EL3	EL4	EL5
MPC	$947	$983	$1,015	$1,020	.....	.....
Incremental MPC	$0	$35	$68	$72	.....	.....
5A (35.0) [2]						
EL Percent [1]	0%	11%	16%	21.5%	.....	.....
MPC	$818	$839	$872	$914	.....	.....
Incremental MPC	$0	$21	$55	$96	.....	.....
7 (31.5)						
EL Percent [1]	0%	5%	9.5%	14.5%	19%	22%
MPC	$706	$708	$728	$748	$775	$791
Incremental MPC	$0	$2.26	$22	$42	$69	$85

Notes:
[1] Percent energy use less than baseline.
[2] For three-door configuration.
[3] Adjusted volume in cubic feet.

TABLE IV.9—COST-EFFICIENCY CURVES FOR STANDARD-SIZE FREEZERS AND COMPACT REFRIGERATORS, REFRIGERATOR-FREEZERS, AND FREEZERS

Product class (AV [2])	EL0	EL1	EL2	EL3	EL4
9 (29.3)					
EL Percent [1]	0%	10%	15%	20%	25%
MPC [2]	$519	$536	$568	$592	$620
Incremental MPC	$0	$17	$49	$73	$101
10 (26.0)					
EL Percent [1]	0%	10%	15%	20%	23%
MPC	$549	$580	$604	$606	$629
Incremental MPC	$0	$31	$55	$57	$81
11A (1.7)					
EL Percent [1]	0%	10%	15%	20%	32%
MPC	$170	$175	$176	$197	$201
Incremental MPC	$0	$5.00	$6.22	$26.78	$31
11A (4.4)					
EL Percent [1]	0%	10%	15%	20%	30%
MPC	$255	$257	$263	$274	$322
Incremental MPC	$0	$2.19	$8.12	$19	$67
17 (9.0)					
EL Percent [1]	0%	10%	15%	20%	.....
MPC	$226	$252	$272	$293	.....
Incremental MPC	$0	$26	$47	$67	.....
18 (8.9)					
EL Percent [1]	0%	10%	15%	20%	30%
MPC	$213	$215	$225	$238	$269
Incremental MPC	$0	$2.54	$12	$25	$56

Notes:
[1] Percent energy use less than baseline.
[2] Adjusted volume in cubic feet.

4. Manufacturer Selling Price

To account for manufacturers' non-production costs and revenue attributable to the product, DOE applies a multiplier (the manufacturer markup) to the MPC. The resulting manufacturer selling price (''MSP'') is the price at which the manufacturer charges its direct customer (*e.g.,* a retailer). DOE developed an average manufacturer markup by examining the annual Securities and Exchange Commission (''SEC'') 10–K reports [26] filed by publicly traded manufacturers primarily engaged in appliance manufacturing and whose combined product range includes refrigerators, refrigerator-freezers, and freezers. See chapter 12 of the NOPR TSD for additional detail on the manufacturer markup.

D. Markups Analysis

The markups analysis develops appropriate markups (*e.g.,* retailer markups, distributor markups, contractor markups) in the distribution chain and sales taxes to convert the MSP estimates derived in the engineering analysis to consumer prices, which are then used in the LCC and PBP analysis. At each step in the distribution channel, companies mark up the price of the product to cover business costs and profit margin.

For refrigerators, refrigerator-freezers, and freezers, the main parties in the distribution chain are retailers, wholesalers and general contractors.

DOE developed baseline and incremental markups for each actor in the distribution chain. Baseline markups are applied to the price of products with baseline efficiency, while incremental markups are applied to the difference in price between baseline and higher-efficiency models (the incremental cost increase). The

[26] U.S. Securities and Exchange Commission, *Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system.* Available at *www.sec.gov/edgar/search/* (last accessed July 1, 2022).

incremental markup is typically less than the baseline markup and is designed to maintain similar per-unit operating profit before and after new or amended standards.[27]

Based on microeconomic theory, the degree to which firms can pass along a cost increase depends on the level of market competition, as well as sensitivity to price changes on both the supply and demand sides (*e.g.,* supply and demand elasticity). DOE examined industry data from IBISWorld and the results suggest that the competition level among each industry group and between industry groups involved in appliance retail is medium to high.[28] In addition, consumer demand for household appliances is relatively inelastic with respect to price (*i.e.,* demand is not expected to decrease substantially with an increase in the price of product). Given the medium to high level of competition, it may be tenable for retailers to maintain a fixed markup for a short period of time after an input price increase, but the market competition should eventually force them to readjust their markups to reach a medium-term equilibrium in which per-unit margin is relatively unchanged before and after standards are implemented. DOE developed the incremental markup approach based on the effect of energy efficiency standards under second-degree price discrimination.[29] Initially, firms supply products with a wide range of energy efficiencies with the ''premium'' models significantly more energy efficient than ''basic'' models. The firm earns low margins on the basic models, and high margins on the premium models, based on customer willingness to pay for relative energy efficiency. An energy efficiency standard temporarily narrows the quality gap between the basic and premium models. To prevent premium product customers shifting to basic products that have lower margins, firms maintain their margins on premium products by reducing their markups.

To estimate the markup under standards, DOE derived an incremental markup that is applied to the incremental product costs of higher efficiency products. The overall markup on the products meeting standards is an average of the markup on the component of the cost that is equal to the baseline product and the markup on the incremental cost accrued due to standards, weighted by the share of each in the total cost of the standards-compliant product.

DOE relied on economic data from the U.S. Census Bureau to estimate average baseline and incremental markups. Specifically, DOE used the 2017 Annual Retail Trade Survey for the ''electronics and appliance stores'' sector to develop retailer markups,[30] the 2017 Annual Wholesale Trade Survey for the ''household appliances, and electrical and electronic goods merchant wholesalers'' sector to estimate wholesaler markups,[31] and the industry series for the ''residential building construction'' sector published by the 2017 Economic Census to derive general contractor markups.[32]

Chapter 6 of the NOPR TSD provides details on DOE's development of markups for refrigerators, refrigerator-freezers, and freezers.

DOE requests comment on its markups analysis and the underlying assumptions, including price elasticities specific to the market for new refrigeration products and any potential effects from a market for second refrigerators or second-hand products.

E. Energy Use Analysis

The purpose of the energy use analysis is to determine the annual energy consumption of refrigerators, refrigerator-freezers, and freezers at different efficiencies in representative U.S. single-family homes, multi-family residences, and commercial buildings, and to assess the energy savings potential of increased product efficiency. The energy use analysis estimates the range of energy use of refrigerators, refrigerator-freezers, and freezers in the field (*i.e.,* as they are actually used by consumers). The energy use analysis provides the basis for other analyses DOE performed, particularly assessments of the energy savings and the savings in consumer operating costs that could result from adoption of amended or new standards.

The DOE test procedure produces standardized results that can be used to assess or compare the performance of products operating under specified conditions. Actual energy usage in the field often differs from that estimated by the test procedure because of variation in operating conditions, the behavior of users, and other factors. In the case of refrigerators, refrigerator-freezers, and freezers, DOE used usage adjustment factors (UAFs) in the October 2021 Preliminary Analysis to address the difference in field-metered energy consumption and the DOE test results due to household-specific characteristics. 80 FR 57378–57385.

Specifically, DOE combined field-metered energy use data for full-size refrigeration products from the September 2011 Final Rule, the Northwest Energy Efficiency Alliance (''NEEA''), and the Florida Solar Energy Center (''FSEC'') with estimates of the test energy use of each field-metered unit. Then, DOE calculated a unit's UAF by dividing the annual field-metered energy use by the annual energy consumption from the DOE test procedure. DOE then used maximum likelihood estimation to fit log-normal distributions to the empirical distributions of UAFs for primary refrigerators and refrigerator-freezers, secondary refrigerators and refrigerator-freezers, and freezers. DOE sampled UAFs from these fitted log-normal distributions to estimate the actual energy use of refrigeration products for the consumer sample. DOE did not have adequate field-metering data to derive UAFs for compact refrigeration products; therefore, DOE assumed the UAF of compact refrigeration products was 1.0.

In response to the October 2021 Preliminary Analysis energy use methodology, the CA IOUs noted that the UAFs are based on refrigeration products that were installed prior to the September 2011 Final Rule standard coming into effect and questioned whether the usage patterns of these older refrigeration products are reflective of current usage patterns. (CA IOUs, No. 16 at p.34) While DOE acknowledges that the available field-metering data for generating UAF distributions are from refrigeration products installed prior to the September 2011 Final Rule standard coming into effect, DOE is unaware of more recent data to inform the estimation of UAFs or to examine how usage patterns may have changed since the effective date. Moreover, because

[27] Because the projected price of standards-compliant products is typically higher than the price of baseline products, using the same markup for the incremental cost and the baseline cost would result in higher per-unit operating profit. While such an outcome is possible, DOE maintains that in markets that are reasonably competitive it is unlikely that standards would lead to a sustainable increase in profitability in the long run.

[28] IBISWorld. *US Industry Reports (NAICS): 45211—Department Stores; 44311—Consumer Electronics Stores; 44411—Home Improvement Stores; 42362 TV & Appliance Retailers in the US.* 2022. IBISWorld. (Last accessed February 1, 2022.) *www.ibisworld.com.*

[29] Spurlock, C.A., and Fujita, K.S. (2022). Equity implications of market structure and appliance energy efficiency regulation. Energy Policy, vol. 165, 112943, 1–12.

[30] U.S. Census Bureau, *Annual Retail Trade Survey.* 2017. *www.census.gov/programs-surveys/arts.html.*

[31] U.S. Census Bureau, *Annual Wholesale Trade Survey.* 2017. *www.census.gov/awts.*

[32] U.S. Census Bureau. 2017 Economic Census. *https://www.census.gov/newsroom/press-kits/2020/2017-economic-census.html.*

most field-metering studies are confined to a single geographic location, using all available field-metering data for the derivation of UAFs allows for a more representative analysis. DOE also believes it is unlikely that the UAFs derived from the field-metering data—which are used to account for differences in energy use due to things like the number of occupants and outdoor temperature—would differ substantially with data vintage. As a result, DOE has continued to use the same data and methodology for this NOPR analysis as was used in the October 2021 Preliminary Analysis. Chapter 7 of the NOPR TSD provides details on DOE's energy use analysis for refrigerators, refrigerator-freezers, and freezers.

DOE requests comment on its methodology to develop UAFs and also requests data on actual energy use for standard-size consumer refrigerators, refrigerator-freezers, and freezers in the field to further inform the UAF development for subsequent rounds of this rulemaking.

F. Life-Cycle Cost and Payback Period Analysis

DOE conducted LCC and PBP analyses to evaluate the economic impacts on individual consumers of potential energy conservation standards for refrigerators, refrigerator-freezers, and freezers. The effect of new or amended energy conservation standards on individual consumers usually involves a reduction in operating cost and an increase in purchase cost. DOE used the following two metrics to measure consumer impacts:

- The LCC is the total consumer expense of an appliance or product over the life of that product, consisting of total installed cost (manufacturer selling price, distribution chain markups, sales tax, and installation costs) plus operating costs (expenses for energy use, maintenance, and repair). To compute the operating costs, DOE discounts future operating costs to the time of purchase and sums them over the lifetime of the product.
- The PBP is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more efficient product through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost at higher efficiency levels by the change in annual operating cost for the year that amended or new standards are assumed to take effect.

For any given efficiency level, DOE measures the change in LCC relative to the LCC in the no-new-standards case, which reflects the estimated efficiency distribution of refrigerators, refrigerator-freezers, and freezers in the absence of new or amended energy conservation standards. In contrast, the PBP for a given efficiency level is measured relative to the baseline product.

For each considered efficiency level in each product class, DOE calculated the LCC and PBP for a nationally-representative set of housing units (all product classes) and commercial buildings (product class 11A only). DOE included commercial applications in the analysis of compact refrigerators and refrigerator-freezers (product class 11A) because they are used in both the residential and commercial sectors (*e.g.,* hotel rooms and higher-education dormitories). DOE developed household samples from the 2015 Residential Energy Consumption Survey (''RECS'') and commercial building samples from the 2018 Commercial Buildings Energy Consumption Survey (''CBECS''). For each sample household or building, DOE determined the energy consumption for the refrigerator, refrigerator-freezer, or freezer and the appropriate electricity price and discount rate. By developing a representative sample of households and buildings, the analysis captured the variability in energy consumption, energy prices, and discount rates associated with the use of refrigerators, refrigerator-freezers, and freezers.

Inputs to the calculation of total installed cost include the cost of the product—which includes MPCs, manufacturer markups, retailer and distributor markups, and sales taxes—and installation costs. Inputs to the calculation of operating expenses include annual energy consumption, energy prices and price projections, repair and maintenance costs, product lifetimes, and discount rates. DOE created distributions of values for product lifetime, discount rates, and sales taxes, with probabilities attached to each value, to account for their uncertainty and variability.

The computer model DOE uses to calculate the LCC and PBP relies on a Monte Carlo simulation to incorporate uncertainty and variability into the analysis. The Monte Carlo simulations randomly sample input values from the probability distributions and refrigerators, refrigerator-freezers, and freezers user samples. For this rulemaking, the Monte Carlo approach is implemented in Python. The model calculated the LCC and PBP for products at each efficiency level for 10,000 housing units or commercial buildings per simulation run. The analytical results include a distribution of 10,000 data points showing the range of LCC savings for a given efficiency level relative to the no-new-standards case efficiency distribution. In performing an iteration of the Monte Carlo simulation for a given consumer, product efficiency is chosen based on its probability. If the chosen product efficiency is greater than or equal to the efficiency of the standard level under consideration, the LCC calculation reveals that a consumer is not impacted by the standard level. By accounting for consumers who already purchase more efficient products, DOE avoids overstating the potential benefits from increasing product efficiency.

DOE calculated the LCC and PBP for all consumers of refrigerators, refrigerator-freezers, and freezers as if each were to purchase a new product in the expected year of required compliance with new or amended standards. Any amended standards would apply to refrigerators, refrigerator-freezers, and freezers manufactured 3 years after the date on which any new or amended standard is published. (42 U.S.C. 6295(m)(4)(A)(i)) At this time, DOE estimates issuance of a final rule by the end of 2023. Therefore, for purposes of its analysis, DOE used 2027 as the first year of compliance with any amended standards for refrigerators, refrigerator-freezers, and freezers.

Table IV.10 summarizes the approach and data DOE used to derive inputs to the LCC and PBP calculations. The subsections that follow provide further discussion. Details of the spreadsheet model, and of all the inputs to the LCC and PBP analyses, are contained in chapter 8 of the NOPR TSD and its appendices.

TABLE IV.10—SUMMARY OF INPUTS AND METHODS FOR THE LCC AND PBP ANALYSIS *

Inputs	Source/method
Product Cost	Derived by multiplying MPCs by manufacturer and retailer markups and sales tax, as appropriate. Applied price learning based on historical price index data to project product costs. Applied price trend to electronic controls used on products with VSDs.
Installation Costs	Assumed no change with efficiency level; therefore, not included.

TABLE IV.10—SUMMARY OF INPUTS AND METHODS FOR THE LCC AND PBP ANALYSIS *—Continued

Inputs	Source/method
Annual Energy Use	The total annual energy use multiplied by a usage adjustment factor, which is derived using field data. Variability: Based on product class and field data.
Energy Prices	Electricity: Based on Edison Electric Institute data for 2021. Variability: Regional energy prices determined for each Census Division.
Energy Price Trends	Based on *AEO2022* price projections.
Repair and Maintenance Costs	Assumed no change with efficiency level for maintenance costs. Repair costs estimated for each product class and efficiency level.
Product Lifetime	Weibull distributions based on historical shipments and age distribution of installed stock.
Discount Rates	Approach involves identifying all possible debt or asset classes that might be used to purchase the considered appliances, or might be affected indirectly. Primary data source was the Federal Reserve Board's Survey of Consumer Finances.
Compliance Date	2027.

* References for the data sources mentioned in this table are provided in the sections following the table or in chapter 8 of the NOPR TSD.

DOE requests comment on the overall methodology and results of the LCC and PBP analyses.

AHAM stated that the method DOE used to report the fraction of consumers with a net cost in the preliminary analysis does not indicate the proportion of households that were forced to change their purchase decision (due to an assumed standard) and also had a negative impact. As a result, AHAM argues the analysis is incomplete and misleading. AHAM stated the correct interpretation of these results is that the market is working and the households who will benefit from a higher standard are already receiving that benefit. AHAM stated DOE needs to take this more nuanced interpretation into account when selecting a standard level. (AHAM, No. 31 at pp. 15) DOE maintains that showing the share of all consumers who would experience a net LCC cost is useful information, as EPCA requires DOE to consider the impact of standards on all ''consumers,'' not only those who might make a different purchasing decision. Moreover, DOE takes into consideration the results of multiple analyses, not just the LCC savings, when considering if and at what level to set an efficiency standard.

AHAM and Shorey Consulting commented that DOE only provided a summary of results from the LCC model, rather than the full LCC model. (AHAM, Public Meeting Transcript, No. 30 at pp. 41–42; Shorey Consulting, Public Meeting Transcript, No. 30 at pp. 42–43) In comparison to the Crystal Ball-based LCC models that DOE has historically used, AHAM and Shorey Consulting commented that the preliminary analysis LCC spreadsheet is less transparent, making it difficult for stakeholders to make informed comments. (AHAM, No. 31 at p. 15; Shorey Consulting, Public Meeting Transcript, No. 30 at pp. 42–43) In response, DOE notes that the complexity of the LCC analysis is such that using Crystal Ball to perform the analysis is overly burdensome and time intensive. For this reason, DOE performed the analysis using the Python programming language instead. While the current LCC spreadsheet therefore does not rely on the Crystal Ball software that LCC spreadsheets in the past have used, DOE notes that the current LCC spreadsheet continues to provide full consumer samples and essential LCC calculations on a consumer-by-consumer basis. In this framework, stakeholders are able to adjust key input values to observe how such changes would affect LCC and LCC savings at the consumer level. Moreover, this functionality is available to stakeholders without requiring the purchase of software (*e.g.,* Crystal Ball) other than Microsoft Excel, which is widely available. DOE believes this approach allows for a rigorous LCC analysis while still providing an appropriate level of transparency to stakeholders.

1. Adjusted Volume Distribution

DOE developed adjusted volume distributions within each PC containing more than one representative unit to determine the likelihood that a given purchaser would select each of the representative units for a given PC from the engineering analysis. DOE estimated the distribution of adjusted volumes for PC 3 and PC 5 based on the capacity distribution reported in the TraQline® refrigerator data spanning from Q1 2018 to Q1 2019.[33] DOE estimated the distribution of adjusted volumes for PC 11A based on the distribution of models from DOE's Compliance Certification Management System Database. Table IV.11 presents the adjusted volume distribution of each of the PCs having more than one representative unit. DOE assumed that the adjusted volume distribution remains constant over the years considered in the analysis.

TABLE IV.11—ADJUSTED VOLUME PROBABILITY FOR EACH PRODUCT CLASS HAVING MORE THAN ONE REPRESENTATIVE UNIT

Adjusted volume (cu. ft.)	Probability (%)
PC 3	
11.9	22.3
20.6	77.7
PC 5	
23	34.7
30	65.3
PC 11A	
1.7	77.8
4.4	22.2

DOE requests comment on its methodology to develop market share distributions by adjusted volume in the compliance year for each PC with two representative volumes, as well as data to further inform these distributions in subsequent rounds of this proposed rulemaking.

2. Product Cost

To calculate consumer product costs, DOE multiplied the MPCs developed in the engineering analysis by the markups described previously (along with sales taxes). DOE used different markups for baseline products and higher-efficiency products, because DOE applies an incremental markup to the increase in MSP associated with higher-efficiency products.

Economic literature and historical data suggest that the real costs of many products may trend downward over time according to ''learning'' or

[33] TraQline® is a quarterly market share tracker of 150,000+ consumers.

''experience'' curves. Experience curve analysis implicitly includes factors such as efficiencies in labor, capital investment, automation, materials prices, distribution, and economies of scale at an industry-wide level.[34] In the experience curve method, the real cost of production is related to the cumulative production or ''experience'' with a manufactured product. DOE used historical Producer Price Index (''PPI'') data for ''household refrigerator and home freezer manufacturing'' from the Bureau of Labor Statistics' (''BLS'') spanning the time period between 1981 and 2021 as a proxy of the production cost for refrigerators, refrigerator-freezers and freezers.[35] This is the most representative and current price index for refrigerators, refrigerator-freezers, and freezers. An inflation-adjusted price index was calculated by dividing the PPI series by the gross domestic product index from Bureau of Economic Analysis for the same years. The cumulative production of refrigerators, refrigerator-freezers, and freezers were assembled from the annual shipments from the Association of Household Appliance Manufacturers (AHAM) between 1951 and 2020, and shipment estimates prior to 1951 using a trend analysis. The estimated learning rate (defined as the fractional reduction in price expected from each doubling of cumulative production) is 40.0 ± 1.8 percent.

DOE included variable-speed compressors as a technology option for higher efficiency levels. To develop future prices specific for that technology, DOE applied a different price trend to the controls portion of the variable-speed compressor, which represents part of the price increment when moving from an efficiency level achieved with the highest efficiency single-speed compressor to an efficiency level with variable-speed compressor. DOE used PPI data on ''semiconductors and related device manufacturing'' between 1967 and 2021 to estimate the historic price trend of electronic components in the control.[36] The regression, performed as an exponential trend line fit, results in an R-square of 0.99, with an annual price decline rate of 6.3 percent. See chapter 8 of the TSD for further details on this topic.

In response to the October 2021 Preliminary Analysis, AHAM stated the use of learning curves to forecast future refrigerator prices is a purely empirical relationship without theoretical justification for why experience should continue to affect total costs., Rather, AHAM comments that DOE should be driven by the actual data. AHAM noted the curve used by DOE is already below actual data for certain years, and the curve is likely to significantly overestimate the future reduction in costs. AHAM stated DOE should recalculate its learning curve values to determine an appropriate rate based on the actual current data. (AHAM, No. 31 at pp. 13–14)

DOE notes that there is considerable historical evidence of consistent price declines for appliances in the past few decades. This phenomenon is generally attributable to manufacturing efficiency gained with cumulative experience producing a certain good through learning by workers and management, and is modeled by an empirical experience curve (Desroches *et al.* 2013).[37] Several studies examined refrigerator retail prices during different periods of time and showed that prices have been steadily falling while efficiency has been increasing, including for example Dale, et al. (2009) [38] and Taylor, et al. (2015).[39] The development of experience curve analysis relies on extensive historical data on the manufacturing costs of a given product; however, such data are very difficult to obtain. Thus, DOE used the Producer Price Index (PPI) published by the BLS as a proxy for manufacturing costs. The PPI, which measures the average changes in prices received by domestic producers, is quality-adjusted and available for a wide variety of specific industries (*e.g.,* refrigerator manufacturing). Since what matters in the experience curve model is the changes in producer prices and not the absolute prices, the use of PPI is suitable for the analysis. To capture the overall price evolution in relation to cumulative production during the entire period where data are available, the full historical PPI series for ''household refrigerator and home freezer manufacturing'' should be used in the price learning estimation rather than only focusing on the more recent data. A least-square power-law fit performed on the deflated price index and cumulative shipments yields an R-square of 97%, which is considered a great fit to the data. Sensitivity analyses that are based on a particular segment of the PPI data for household refrigerator manufacturing were also conducted to investigate the impact of different product price projections in the NIA of this NOPR.

The CA IOUs cited a 2014 study which found that energy efficient equipment has steeper price learning curves, indicating that efficiency standards can accelerate long-term price declines even further. They stated that the learning rate used in the preliminary analysis likely overstates the cost of increasingly efficient equipment, while understating the costs of freezers and the least efficient products (since they are undergoing less change). Therefore, the CA IOUs recommended DOE develop additional learning curves by efficiency level to better reflect the pricing dynamics consistent with established economic theory. (CA IOUs, No. 33 at pp. 4–5)

DOE acknowledges that products at different efficiency levels may experience different rates of price learning. For the most part, however, there are not sufficient data to derive experience curves at that level of detail. However, as noted above, in this NOPR, DOE included variable-speed compressors as a technology option for higher efficiency levels. To account for the faster learning associated with the electronics for variable-speed compressors, DOE applied a separate price trend to the controls portion of refrigerators, refrigerator-freezers, and freezers that utilize variable-speed compressors. DOE assumed these controls have an MPC of $20 (see chapter 5 of the NOPR TSD). This results in a greater price decline for refrigerators, refrigerator-freezers, and freezers at higher efficiency levels. If more data become available on this topic in the future, DOE will work toward further improving the price learning estimation.

3. Installation Cost

Installation cost includes labor, overhead, and any miscellaneous materials and parts needed to install the product. DOE found no evidence that installation costs for refrigerators,

[34] Taylor, M. and Fujita, K.S. Accounting for Technological Change in Regulatory Impact Analyses: *The Learning Curve Technique.* LBNL–6195E. Lawrence Berkeley National Laboratory, Berkeley, CA. April 2013. *https://escholarship.org/uc/item/3c8709p4#page-1.*

[35] Household refrigerator and home freezer manufacturing PPI series ID: PCU3352203352202; *www.bls.gov/ppi/.*

[36] Semiconductors and related device manufacturing PPI series ID: PCU334413334413; *www.bls.gov/ppi/.*

[37] Desroches, L.-B., K. Garbesi, C. Kantner, R. Van Buskirk, and H.-C. Yang. Incorporating Experience Curves in Appliance Standards Analysis. Energy Policy. 2013. 52 pp. 402–416.

[38] Dale, L., C. Antinori, M. McNeil, James E. McMahon, and K. S. Fujita. Retrospective evaluation of appliance price trends. *Energy Policy.* 2009. 37 pp. 597–605.

[39] Taylor, M., C. A. Spurlock, and H.-C. Yang. *Confronting Regulatory Cost and Quality Expectations. An Exploration of Technical Change in Minimum Efficiency Performance Standards.* 2015. Lawrence Berkeley National Lab. (LBNL), Berkeley, CA (United States). Report No. LBNL–1000576. (Last accessed July 27, 2022.) *https://www.osti.gov/biblio/1235570/.*

refrigerator-freezers, and freezers would be impacted with increased efficiency levels. As a result, DOE did not include installation costs in the LCC and PBP analysis.

DOE requests comment and data on its assumption that installation costs do not change as a function of EL for refrigeration products.

4. Annual Energy Consumption

For each sampled household or commercial building, DOE determined the energy consumption for refrigerators, refrigerator-freezers, and freezers at different efficiency levels using the approach described previously in section IV.E of this document.

5. Energy Prices

Because marginal electricity price more accurately captures the incremental savings associated with a change in energy use from higher efficiency, it provides a better representation of incremental change in consumer costs than average electricity prices. Therefore, DOE applied average electricity prices for the energy use of the product purchased in the no-new-standards case, and marginal electricity prices for the incremental change in energy use associated with the other efficiency levels considered.

DOE derived electricity prices in 2021 using data from EEI Typical Bills and Average Rates reports. Based upon comprehensive, industry-wide surveys, this semi-annual report presents typical monthly electric bills and average kilowatt-hour costs to the customer as charged by investor-owned utilities. For the residential sector, DOE calculated electricity prices using the methodology described in Coughlin and Beraki (2018).[40] For the commercial sector, DOE calculated electricity prices using the methodology described in Coughlin and Beraki (2019).[41]

To estimate energy prices in future years, DOE multiplied the 2021 energy prices by the projection of annual average price changes for each of the nine census divisions from the reference case in *AEO 2022,* which has an end year of 2050.[42] To estimate price trends after 2050, DOE used the 2050 electricity prices, held constant.[43]

6. Maintenance and Repair Costs

Repair costs are associated with repairing or replacing product components that have failed in an appliance; maintenance costs are associated with maintaining the operation of the product. DOE is not aware of any data that suggest the cost of maintenance changes as a function of efficiency for refrigerators, refrigerator-freezers, and freezers. DOE therefore assumed that maintenance costs are the same regardless of EL and do not impact the LCC or PBP.

For the preliminary analysis, DOE developed a repair cost estimation method based on the average total installed cost and average annual repair costs by PC and EL from the 2011 Final Rule. For each of three categories—standard-size refrigerator-freezers, standard-size freezers, and compact refrigeration products—DOE averaged the annual repair cost as a fraction of the total installed cost at each EL. Based on this method, DOE estimated consumers with standard-size refrigerator-freezers have annual repair costs equal to 1.8 percent of their total installed cost, consumers with standard-size freezers have an annual repair cost of 0.8 percent of their total installed cost, and consumers with compact refrigeration products have an annual repair cost of 0.9percent of their total installed cost. Because high-efficiency products have a higher installed cost, their estimated average annual repair costs are also higher.

As mentioned in section IV of this document, Sub-Zero indicated in comments on the preliminary TSD that there are significant limitations to further energy regulation if products are to remain reliable, long-lived and affordable. (Sub-Zero, No. 34, p. 1) As noted here, the LCC model DOE used in the preliminary analysis assumes that repair costs scale with total installed cost. Therefore, the higher first cost associated with higher efficiency levels translates into more expensive repair costs in DOE's repair costs analysis. DOE has not received data to support a change to this methodology, and therefore has continued to use this same methodology in the NOPR analyses. For more detail, see chapter 8 of the NOPR TSD.

DOE requests comment on its assumption that maintenance costs do not change as a function of EL for refrigeration products. DOE also requests comment and data on its methodology for determining repair costs by PC and EL.

7. Product Lifetime

DOE performed separate modeling of lifetime for standard-size refrigerators and refrigerator-freezers, standard-size freezers, and compact refrigeration products. For standard-size refrigerators, refrigerator-freezers, and freezers, DOE estimated product lifetimes by fitting a survival probability function to data on historical shipments and the age distributions of installed stock from RECS 2005, RECS 2009, and RECS 2015. The survival function, which DOE assumed has the form of a cumulative Weibull distribution, provides an average and median lifetime. Moreover, the conversion from primary to secondary refrigerator or refrigerator-freezer was also modeled as part of the lifetime determination for standard-size refrigerators and refrigerator-freezers.

For compact refrigerators, DOE estimated an average lifetime of 7.7 years using data on shipments and the number of units in use (stock). For compact freezers, DOE did not have reliable stock data available to compare against historical shipments. Therefore, DOE estimated an average lifetime of 10.7 years by multiplying the average lifetime of compact refrigerators by the ratio of the average lifetime of standard-size freezers (20.6 years) to the average lifetime of standard-size refrigerators and refrigerator-freezers (14.8 years).

In response to the preliminary analysis lifetime analysis, AHAM encouraged DOE to further consider incorporating AHAM's consumer research. Specifically, AHAM recommended that DOE adopt the average lifetimes that AHAM provided in a confidential response to the RFI. (AHAM, No. 31 at pp. 11–12) DOE appreciates AHAM's comments and the average lifetimes provided in response to the RFI. DOE incorporated the latest available shipments and representative consumer survey data into its lifetime models for the NOPR analysis. When compared to the average lifetimes provided confidentially by AHAM in response to the RFI and the average lifetimes from the September 2011 Final Rule analysis, DOE notes that the lifetime models used in the October 2021 Preliminary Analysis generally fall between the two. Using updated shipments data from AHAM, DOE has further updated the lifetime distributions for compact refrigeration products for this NOPR. This update has increased the average lifetime of

[40] Coughlin, K. and B. Beraki. *Residential Electricity Prices: A Review of Data Sources and Estimation Methods.* 2018. Lawrence Berkeley National Lab. (LBNL), Berkeley, CA (United States). Report No. LBNL–2001169. (Last accessed September 3, 2021.) *https://ees.lbl.gov/publications/residential-electricity-prices-review.*

[41] Coughlin, K. and B. Beraki. *Non-residential Electricity Prices: A Review of Data Sources and Estimation Methods.* 2019. Lawrence Berkeley National Lab. (LBNL), Berkeley, CA (United States). Report No. LBNL–2001203. (Last accessed September 3, 2021.) *https://ees.lbl.gov/publications/non-residential-electricity-prices.*

[42] U.S. Energy Information Administration. *Annual Energy Outlook 2022.* 2022. Washington, DC (Last accessed June 1, 2022.) *https://www.eia.gov/outlooks/aeo/index.php.*

compact products relative to the preliminary analysis, which aligns even more closely with the confidential data AHAM provided. A comparison of the average lifetimes in each analysis is provided in Table IV.12.

TABLE IV.12—COMPARISON OF AVERAGE LIFETIMES BY PRODUCT CATEGORY BY RULEMAKING PHASE

Category	Average lifetime (years)		
	2023 Notice of proposed rulemaking	2021 Preliminary analysis	2011 Final rule
Standard-size refrigerators and refrigerator-freezers	14.8	14.8	17.4
Standard-size freezers	20.6	20.6	22.3
Compact refrigerators and refrigerator-freezers	7.7	6.9	5.6
Compact freezers	10.7	9.7	7.5

Because DOE's lifetime models are based on nationally representative data, and because DOE's updated lifetime models are more aligned with the useful lifetimes provided by AHAM, DOE has continued to use the same lifetime model methodology that was used in the preliminary analysis, but with updated data.

See chapter 8 of the NOPR TSD for further details on the method and sources DOE used to develop product lifetimes.

DOE requests comment and data on the assumptions and methodology used to calculate refrigerator, refrigerator-freezer, and freezer survival probabilities. DOE requests comment and data on source of second refrigerators, whether from new purchase, conversion of surviving first refrigerators, or second-hand markets. DOE also welcomes any information indicating whether or not the service lifetime of refrigeration products differs by efficiency level.

8. Discount Rates

In the calculation of LCC, DOE applies discount rates appropriate to residential and commercial consumers to estimate the present value of future operating cost savings. DOE estimated distributions of residential and commercial discount rates for refrigerators, refrigerator-freezers, and freezers based on consumer financing costs and the opportunity cost of consumer funds (for the residential sector) and cost of capital of publicly traded firms (for the commercial sector).

DOE applies weighted average discount rates calculated from consumer debt and asset data, rather than marginal or implicit discount rates.[44] The LCC analysis estimates NPV over the lifetime of the product, so the appropriate discount rate will reflect the general opportunity cost of household funds, taking this time scale into account. Given the long time horizon modeled in the LCC analysis, the application of a marginal interest rate associated with an initial source of funds is inaccurate. Regardless of the method of purchase, consumers are expected to continue to rebalance their debt and asset holdings over the LCC analysis period, based on the restrictions consumers face in their debt payment requirements and the relative size of the interest rates available on debts and assets. DOE estimates the aggregate impact of this rebalancing using the historical distribution of debts and assets.

To establish residential discount rates for the LCC analysis, DOE identified all relevant household debt or asset classes in order to approximate a consumer's opportunity cost of funds related to appliance energy cost savings. It estimated the average percentage shares of the various types of debt and equity by household income group using data from the Federal Reserve Board's Survey of Consumer Finances (''SCF'') for 1995, 1998, 2001, 2004, 2007, 2010, 2013, 2016, and 2019.[45] Using the SCF and other sources, DOE developed a distribution of rates for each type of debt and asset by income group to represent the rates that may apply in the year in which amended standards would take effect.

For commercial consumers, DOE used the cost of capital to estimate the present value of cash flows to be derived from a typical company project or investment. Most companies use both debt and equity capital to fund investments, so the cost of capital is the weighted-average cost to the firm of equity and debt financing. This corporate finance approach is referred to as the weighted-average cost of capital. DOE used currently available economic data in developing discount rates. See chapter 8 in the NOPR TSD for details.

In response to the preliminary analysis, AHAM suggested DOE use the marginal cost of debt in the LCC, rather than weighted-average interest rates from a stable portfolio of debts and assets. AHAM noted that this is especially important for low-income households. (AHAM, No. 31 and pp. 17–19) AHAM also stated that the distribution of discount rates used in the LCC analysis do not correspond to reality, and strongly suggested that the assumptions that produced these distributions be reconsidered. (AHAM, No. 31 at pp. 19–20)

In response, DOE notes that the LCC analysis is not modeling a purchase decision. The LCC analysis estimates the NPV of financial trade-offs of increased upfront product costs weighed against reduced operating costs over the lifetime of the covered product, assuming the product has already been obtained and installed. The marginal rate is not the appropriate discount rate to use because fixing the discount rate at the marginal rate associated with a credit card assumes that consumers purchase the appliance with a credit card, and keep that purchase on the credit card throughout the entire time it takes to pay off that debt with only operating costs savings from the more efficient product. There is little evidence that consumers behave in this way. Consumers do not tend to shift all of their funds to assets with the highest interest rate, nor away from debt types with the highest interest rate. Examination of many years of data from

[44] The implicit discount rate is inferred from a consumer purchase decision between two otherwise identical goods with different first cost and operating cost. It is the interest rate that equates the increment of first cost to the difference in net present value of lifetime operating cost, incorporating the influence of several factors: transaction costs; risk premiums and response to uncertainty; time preferences; interest rates at which a consumer is able to borrow or lend. The implicit discount rate is not appropriate for the LCC analysis because it reflects a range of factors that influence consumer purchase decisions, rather than the opportunity cost of the funds that are used in purchases.

[45] U.S. Board of Governors of the Federal Reserve System. Survey of Consumer Finances. 1995, 1998, 2001, 2004, 2007, 2010, 2013, 2016, and 2019. (Last accessed February 1, 2022.) *https://www.federalreserve.gov/econresdata/scf/scfindex.htm.*

the Federal Reserve's Survey of Consumer Finances suggests that, at the time of each survey, the vast majority of households held multiple types of debt and/or assets. This tendency is observed across numerous cross-sections of the population, such as income groups (low-income households included), geographic locations, and age of household head. Therefore, DOE believes that using an average discount rate in the LCC best approximates the actual opportunity cost of funds faced by consumers. This opportunity cost of funds is the time-value of money for consumers. For a more detailed discussion, please see the 2020 final energy conservation standards rulemaking for room air conditioners. 85 FR 1378–1447.

See chapter 8 of the NOPR TSD for further details on the development of consumer discount rates.

9. Energy Efficiency Distribution in the No-New-Standards Case

To accurately estimate the share of consumers that would be affected by a potential energy conservation standard at a particular efficiency level, DOE's LCC analysis considered the projected distribution (market shares) of product efficiencies under the no-new-standards case (*i.e.,* the case without amended or new energy conservation standards).

To estimate the expected energy efficiency distribution of refrigerators, refrigerator-freezers, and freezers for 2027, DOE utilized model counts from DOE's CCMS database.[46] Models in the database were categorized by capacity and assigned an efficiency level based on reported energy use. In the absence of data on trends in efficiency, DOE assumed the current efficiency distribution would be representative of the efficiency distribution in 2027 in the no-new-standards case. The estimated market shares for the no-new-standards case for refrigerators, refrigerator-freezers, and freezers are shown in Table IV.13 of this document. See chapter 8 of the NOPR TSD for further information on the derivation of the efficiency distributions.

DOE requests comment on its methodology to develop market share distributions by EL for each PC and representative unit for the no-new-standards case in the compliance year, as well as data to further inform these distributions in subsequent rounds of this proposed rulemaking. DOE also requests comment on the assumption that the current efficiency distribution would remain fixed over the analysis period, and data to inform an efficiency trend by PC.

TABLE IV.13—NO-NEW-STANDARDS CASE EFFICIENCY DISTRIBUTIONS IN 2027

Product class	Total adjusted volume (cu. ft.)	2027 Market share (%)						
		EL 0	EL 1	EL 2	EL 3	EL 4	EL 5	Total*
3	11.9	56.3	13.1	30.6	0.0	0.0	0.0	100.0
	20.6	66.2	1.3	32.3	0.0	0.2	0.0	100.0
5	23	47.6	49.9	1.1	0.8	0.6	.....	100.0
	30	45.1	32.9	18.3	1.2	2.4	.....	100.0
5A	35	96.0	2.1	2.0	0.9	.....	.....	100.0
5BI	26	30.3	48.5	0.0	21.2	.....	.....	100.0
7	31.5	83.3	10.6	4.1	1.6	0.2	0.2	100.0
9	29.3	75.9	22.5	0.8	0.8	0.0	.....	100.0
10	26	94.1	5.9	0.0	0.0	0.0	.....	100.0
11A	1.7	9.1	57.0	7.5	17.8	8.6	.....	100.0
	4.4	22.9	70.3	0.0	5.1	1.7	.....	100.0
17	9	35.4	41.5	16.9	6.2	.....	.....	100.0
18	8.9	92.8	6.2	0.0	1.0	0.0	.....	100.0

*The total may not sum to 100% due to rounding.

In response to the October 2021 Preliminary Analysis, AHAM objected to DOE's use of random assignment of 2015 RECS households to base and standard cases, which assumes that consumers are agnostic to energy costs. AHAM stated that it is very unlikely that consumers with very high potential LCC savings would not have already decided to purchase a more efficient refrigerator (*i.e.,* in the no-new-standards case), and DOE's assumption that these consumers are indifferent to operating costs appears contrary to common sense and experience in the retail field.

While DOE acknowledges that economic factors may play a role when consumers decide on what type of refrigeration product to install, assignment of refrigeration product efficiency for a given installation, based solely on economic measures such as life-cycle cost or simple payback period most likely would not fully and accurately reflect actual real-world installations. There are a number of market failures discussed in the economics literature that illustrate how purchasing decisions with respect to energy efficiency are unlikely to be perfectly correlated with energy use, as described below. DOE maintains that the method of assignment, which is in part random, is a reasonable approach, one that simulates behavior in the refrigeration product market, where market failures result in purchasing decisions not being perfectly aligned with economic interests, and is more realistic than relying only on apparent cost-effectiveness criteria derived from the information in RECS. DOE further emphasizes that its approach does not assume that all purchasers of refrigeration products make economically irrational decisions (*i.e.,* the lack of a correlation is not the same as a negative correlation). By using this approach, DOE acknowledges the uncertainty inherent in the data and minimizes any bias in the analysis by using random assignment, as opposed to assuming certain market conditions that are unsupported given the available evidence.

DOE notes that consumers are typically motivated by more than simple financial trade-offs. There are consumers who are willing to pay a premium for more energy-efficient products because they are

[46] *https://www.regulations.doe.gov/certification-data/CCMS-4-Refrigerators__Refrigerator-Freezers__and_Freezers.html,* Last accessed on August 5, 2020.

environmentally conscious.[47] There are also several behavioral factors that can influence the purchasing decisions of complicated multi-attribute products, such as refrigeration products. For example, consumers (or decision makers in an organization) are highly influenced by choice architecture, defined as the framing of the decision, the surrounding circumstances of the purchase, the alternatives available, and how they're presented for any given choice scenario.[48] The same consumer or decision maker may make different choices depending on the characteristics of the decision context (*e.g.,* the timing of the purchase, competing demands for funds), which have nothing to do with the characteristics of the alternatives themselves or their prices. Consumers or decision makers also face a variety of other behavioral phenomena including loss aversion, sensitivity to information salience, and other forms of bounded rationality. Thaler and Sunstein point out that these behavioral factors are strongest when the decisions are complex and infrequent, when feedback on the decision is muted and slow, and when there is a high degree of information asymmetry.[49] These characteristics describe almost all purchasing situations of appliances and equipment, including refrigeration products. The installation of a new or replacement refrigeration product is done very infrequently, as evidenced by the mean lifetime of over 14 years for standard-size products. Further, if the purchaser of the refrigeration product is not the entity paying the energy costs (*e.g.,* a tenant), there may be little to no feedback regarding energy costs on the purchase.

Additionally, there are systematic market failures that are likely to contribute further complexity to how products are chosen by consumers. The first of these market failures is known as the split-incentive or principal-agent problem. The principal-agent problem is a market failure that results when the consumer that purchases the equipment does not internalize all of the costs associated with operating the equipment. Instead, the user of the product, who has no control over the purchase decision, pays the operating costs. There is a high likelihood of split incentive problems for refrigeration products. For example, in the case of rental properties where the landlord makes the choice of what refrigerator to install, whereas the renter is responsible for paying energy bills.

In addition to the split-incentive problem, because of the way information is presented, and in part because of the way consumers process information, there is also a market failure consisting of a systematic bias in the perception of equipment energy usage. Attari, Krantz, and Weber [50] show that consumers tend to underestimate the energy use of large energy-intensive appliances, but overestimate the energy use of small appliances. This can affect consumer choices. AHAM stated that the most appropriate solution is to have a much more robust consumer choice theory. (AHAM, no. 36 at p. 12) Therefore, it is likely that consumers systematically underestimate the energy use associated with refrigerators, resulting in less cost-effective refrigerator purchases.

These market failures affect a sizeable share of the consumer population. A study by Houde [51] indicates that there is a significant subset of consumers that appear to purchase appliances without taking into account their energy efficiency and operating costs at all.

The existence of market failures is well supported by the economics literature and by a number of case studies. If DOE developed an efficiency distribution that assigned refrigeration product efficiency in the no-new-standards case solely according to energy use or economic considerations such as life-cycle cost or payback period, the resulting distribution of efficiencies within the household sample would not reflect any of the market failures or behavioral factors above. DOE thus concludes such a distribution would not be representative of the refrigerators, refrigerator-freezers, or freezers markets. Further, even if a specific household is not subject to the market failures above, the purchasing decision of refrigeration product efficiency can be highly complex and influenced by a number of factors not captured by the information available in the RECS samples. These factors can lead to consumers choosing a refrigeration product efficiency that deviates from the efficiency predicted using only energy use or economic considerations such as life-cycle cost or payback period. However, DOE intends to continue to investigate this issue, and it welcomes additional comments as to how it might improve its assignment of appliance efficiency in its analyses.

10. Payback Period Analysis

The payback period is the amount of time it takes the consumer to recover the additional installed cost of more efficient products, compared to baseline products, through energy cost savings. Payback periods are expressed in years. Payback periods that exceed the life of the product mean that the increased total installed cost is not recovered in reduced operating expenses.

The inputs to the PBP calculation for each efficiency level are the change in total installed cost of the product and the change in the first-year annual operating expenditures relative to the baseline. The PBP calculation uses the same inputs as the LCC analysis, except that discount rates are not needed.

As noted previously, EPCA establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable test procedure. (42 U.S.C. 6295(o)(2)(B)(iii)) For each considered EL, DOE determined the value of the first year's energy savings by calculating the energy savings in accordance with the applicable DOE test procedure, and multiplying those savings by the average energy price projection for the year in which compliance with the amended standards would be required.

G. Shipments Analysis

DOE uses projections of annual product shipments to calculate the national impacts of potential amended or new energy conservation standards on energy use, NPV, and future manufacturer cash flows.[52] The shipments model takes an accounting approach, tracking market shares of each product class and the vintage of units in the stock. Stock accounting uses product shipments as inputs to estimate

[47] Ward, D.O., Clark, C.D., Jensen, K.L., Yen, S.T., & Russell, C.S. (2011): ''Factors influencing willingness-to pay for the ENERGY STAR® label,'' Energy Policy, 39(3), 1450–1458. (Available at: *www.sciencedirect.com/science/article/abs/pii/S0301421510009171*) (Last accessed Feb. 15, 2022).

[48] Ward, D.O., Clark, C.D., Jensen, K.L., Yen, S.T., & Russell, C.S. (2011): ''Factors influencing willingness-to pay for the ENERGY STAR® label,'' *Energy Policy, 39*(3), 1450–1458. (Available at: *www.sciencedirect.com/science/article/abs/pii/S0301421510009171*) (Last accessed Feb. 15, 2022).

[49] Thaler, R.H., and Sunstein, C.R. (2008). Nudge: Improving Decisions on Health, Wealth, and Happiness. New Haven, CT: Yale University Press.

[50] Attari, S.Z., D.H. Krantz, and E. Weber. Energy conservation goals: What people adopt, what they recommend, and why. 2016. 11 pp. 342–351.

[51] Houde, S. (2018): ''How Consumers Respond to Environmental Certification and the Value of Energy Information,'' *The RAND Journal of Economics,* 49 (2), 453–477 (Available at: *onlinelibrary.wiley.com/doi/full/10.1111/1756-2171.12231*) (Last accessed Feb. 15, 2022).

[52] DOE uses data on manufacturer shipments as a proxy for national sales, as aggregate data on sales are lacking. In general, one would expect a close correspondence between shipments and sales.

the age distribution of in-service product stocks for all years. The age distribution of in-service product stocks is a key input to calculations of both the NES and NPV, because operating costs for any year depend on the age distribution of the stock.

Total shipments for each product category (*i.e.,* standard-size refrigerators and refrigerator-freezers, standard-size freezers, compact refrigerators and refrigerator-freezers, and compact freezers) are developed by considering the demand from various market segments. For standard-size refrigerators and refrigerator-freezers, DOE considered demand from replacements for units in stock that fail, shipments to new construction, and the demand created by increased saturation into existing households corresponding to the conversion of a primary unit to secondary unit. For all other product categories, DOE considered demand from replacements for units in stock that fail, shipments to new construction, and shipments to first-time owners in existing households. DOE calculated shipments due to replacements using the retirement functions developed for the LCC analysis (see chapter 8 of the NOPR TSD for details). DOE projected shipments to new construction using estimates for new housing starts and the average saturation of each product category in new households. Shipments to first-time owners were estimated by analyzing the increasing penetration of products into existing households in each product category. For standard-size refrigerators and refrigerator-freezers, DOE estimated shipments from increased saturation corresponding to the conversion of a primary unit to a secondary unit utilizing the primary-to-secondary conversion function developed for the LCC analysis.

For the NOPR analysis, DOE incorporated data from stakeholders into the shipments model. Confidential aggregate historical shipments data from 2015–2019 provided by AHAM was used to calibrate the total shipments for standard-size refrigerator-freezers, compact refrigerators, upright freezers, chest freezers, and built-in refrigerator-freezers. Based on data provided by AHAM in response to the November 2019 RFI, DOE assumed that 1.4% of modelled shipments of standard-size refrigerator and refrigerator-freezers shipments were built-in units. DOE also used the market share data provided by NEEA in response to the November 2019 RFI to further disaggregate shipments of standard-size refrigerator-freezers into shipments for top-mount, side-by-side, and bottom-mount product classes.

Chapter 9 in the NOPR TSD provides further information on the shipments analysis.

DOE requests comment on the overall methodology and results of the shipments analysis.

H. National Impact Analysis

The NIA assesses the national energy savings (''NES'') and the NPV from a national perspective of total consumer costs and savings that would be expected to result from new or amended standards at specific efficiency levels.[53] (''Consumer'' in this context refers to consumers of the product being regulated.) DOE calculates the NES and NPV for the potential standard levels considered based on projections of annual product shipments, along with the annual energy consumption and total installed cost data from the energy use and LCC analyses. For the present analysis, DOE projected the energy savings, operating cost savings, product costs, and NPV of consumer benefits over the lifetime of refrigerators, refrigerator-freezers, and freezers sold from 2027 through 2056.

DOE evaluates the impacts of new or amended standards by comparing a case without such standards with standards-case projections. The no-new-standards case characterizes energy use and consumer costs for each product class in the absence of new or amended energy conservation standards. For this projection, DOE considers historical trends in efficiency and various forces that are likely to affect the mix of efficiencies over time. DOE compares the no-new-standards case with projections characterizing the market for each product class if DOE adopted new or amended standards at specific energy efficiency levels (*i.e.,* the TSLs or standards cases) for that class. For the standards cases, DOE considers how a given standard would likely affect the market shares of products with efficiencies greater than the standard.

DOE uses a spreadsheet model to calculate the energy savings and the national consumer costs and savings from each TSL. Interested parties can review DOE's analyses by changing various input quantities within the spreadsheet. The NIA spreadsheet model uses typical values (as opposed to probability distributions) as inputs.

Table IV.14 summarizes the inputs and methods DOE used for the NIA analysis for the NOPR. Discussion of these inputs and methods follows the table. See chapter 10 of the NOPR TSD for further details.

TABLE IV.14—SUMMARY OF INPUTS AND METHODS FOR THE NATIONAL IMPACT ANALYSIS

Inputs	Method
Shipments	Annual shipments from shipments model.
Compliance Date of Standard	2027.
Efficiency Trends	No trend assumed.
Annual Energy Consumption per Unit	Calculated for each efficiency level based on inputs from energy use analysis.
Total Installed Cost per Unit	Prices for the year of compliance are calculated in the LCC analysis. Prices in subsequent years are calculated incorporating price learning based on historical data.
Annual Energy Cost per Unit	Calculated for each efficiency level using the energy use per unit, and electricity prices and trends.
Repair and Maintenance Cost per Unit	Annual repair costs from LCC.
Energy Price Trends	*AEO2022* projections to 2050 and fixed at 2050 thereafter.
Energy Site-to-Primary and FFC Conversion	A time-series conversion factor based on *AEO2022*.
Discount Rate	3 percent and 7 percent.
Present Year	2022.

[53] The NIA accounts for impacts in the 50 states and U.S. territories.

1. Product Efficiency Trends

A key component of the NIA is the trend in energy efficiency projected for the no-new-standards case and each of the standards cases. Section IV.F.9 of this document describes how DOE developed an energy efficiency distribution for the no-new-standards case (which yields a shipment-weighted average efficiency) for each of the considered product classes for the year of anticipated compliance with an amended or new standard.

For the standards cases, DOE used a ''roll-up'' scenario to establish the shipment-weighted efficiency for the year that standards are assumed to become effective (2027). In this scenario, the market shares of products in the no-new-standards case that do not meet the standard under consideration would ''roll up'' to meet the new standard level, and the market share of products above the standard would remain unchanged.

In the absence of data on trends in efficiency, DOE assumed no efficiency trend over the analysis period for both the no-new-standards and standards cases. For a given case, market shares by efficiency level were held fixed to their 2027 distribution.

DOE requests comment on its assumption of no efficiency trend and seeks historical product efficiency data.

2. National Energy Savings

The NES analysis involves a comparison of national energy consumption of the considered products between each potential standards case (''TSL'') and the case with no new or amended energy conservation standards. DOE calculated the national energy consumption by multiplying the number of units (stock) of each product (by vintage or age) by the unit energy consumption (also by vintage). DOE calculated annual NES based on the difference in national energy consumption for the no-new standards case and for each higher efficiency standard case. DOE estimated energy consumption and savings based on site energy and converted the electricity consumption and savings to primary energy (*i.e.,* the energy consumed by power plants to generate site electricity) using annual conversion factors derived from *AEO 2022.* Cumulative energy savings are the sum of the NES for each year over the timeframe of the analysis.

In this NOPR analysis, DOE analyzed the energy and economic impacts of a potential standard on all product classes in the scope of refrigerators, refrigerator-freezers, and freezers. Non-representative product classes (*i.e.,* those not analyzed in the engineering, energy-use, and LCC analyses) are scaled using results for the analyzed product class that best represents each non-representative product class. For non-representative freestanding product classes, energy use values are scaled by applying the ratio of the current Federal standard baseline between the two product classes at a fixed volume. For non-representative built-in product classes, DOE developed energy scalars using the most similar freestanding representative product class and assumed a 5 percent reduction in the increase in efficiency at each EL relative to the corresponding EL for the freestanding product class. For example, a 10 percent reduction in energy use for PC 3 would correspond to a 5 percent reduction for PC3–BI). DOE assumes the incremental cost between efficiency levels is the same for representative and non-representative product classes. See chapter 10 of the NOPR TSD for more details.

AHAM stated DOE's use of compact product classes 11 and 11A as a proxy for product classes 13 and 13A is inappropriate; classes 11 and 11A are manual defrost products and 13 and 13A are automatic defrost products, meaning they are totally different products and must be treated as such. AHAM stated, therefore, DOE should analyze class 11/11A and 13/13A separately. (AHAM, No. 31, p. 4–5)

DOE agrees that product class 11/11A is not a representative proxy for product class 13/13A. As described in chapter 10 of the October 2021 Preliminary Analysis TSD, DOE used product class 18 as a proxy for product classes 13/13A in the preliminary analysis. In this NOPR, DOE conducted an engineering analysis for product class 17, compact upright freezers with automatic defrost, which shares a similar product architecture with other compact, automatic defrost product classes such as product class 13/13A. Given the similarities, DOE used product class 17 as a proxy for product class 13/13A in this NOPR. DOE also updated its approach to use product class 17 as a proxy for product classes 14 and 15, which, like 13/13A, also use automatic defrost. See chapter 10 of this NOPR TSD for details.

DOE requests comment on assumptions made in the energy use scaling for non-representative product classes in the National Impacts Analysis.

Use of higher-efficiency products is occasionally associated with a direct rebound effect, which refers to an increase in utilization of the product due to the increase in efficiency. DOE did not find any data on the rebound effect specific to refrigerators that would indicate that consumers would alter their utilization of their product as a result of an increase in efficiency. DOE assumed a rebound rate of 0.

In 2011, in response to the recommendations of a committee on ''Point-of-Use and Full-Fuel-Cycle Measurement Approaches to Energy Efficiency Standards'' appointed by the National Academy of Sciences, DOE announced its intention to use FFC measures of energy use and greenhouse gas and other emissions in the national impact analyses and emissions analyses included in future energy conservation standards rulemakings. 76 FR 51281 (Aug. 18, 2011). After evaluating the approaches discussed in the August 18, 2011, notice, DOE published a statement of amended policy in which DOE explained its determination that EIA's National Energy Modeling System (''NEMS'') is the most appropriate tool for its FFC analysis and its intention to use NEMS for that purpose. 77 FR 49701 (Aug. 17, 2012). NEMS is a public domain, multi-sector, partial equilibrium model of the U.S. energy sector [54] that EIA uses to prepare its *AEO.* The FFC factors incorporate losses in production and delivery in the case of natural gas (including fugitive emissions) and additional energy used to produce and deliver the various fuels used by power plants. The approach used for deriving FFC measures of energy use and emissions is described in appendix 10B of the NOPR TSD.

3. Net Present Value Analysis

The inputs for determining the NPV of the total costs and benefits experienced by consumers are (1) total annual installed cost, (2) total annual operating costs (energy costs and repair and maintenance costs), and (3) a discount factor to calculate the present value of costs and savings. DOE calculates net savings each year as the difference between the no-new-standards case and each standards case in terms of total savings in operating costs versus total increases in installed costs. DOE calculates operating cost savings over the lifetime of each product shipped during the projection period.

As discussed in section IV.F.2 of this document, DOE developed refrigerators, refrigerator-freezers, and freezers price trends based on an experience curve calculated using historical PPI data. For efficiency levels with a single-speed

[54] For more information on NEMS, refer to *The National Energy Modeling System: An Overview 2018,* DOE/EIA–0581(2018), April 2019. Available at *www.eia.gov/outlooks/aeo/nems/documentation/* (last accessed July 26, 2022).

compressor, DOE applied a price trend developed using the ''household refrigerator and home freezer manufacturing'' PPI to the entire cost of the unit. For efficiency levels with a variable-speed compressor, DOE applied a price trend developed from the ''semiconductors and related device manufacturing'' PPI to the cost associated with the electronics used to control the variable-speed compressor and the same price trend used for single-speed compressor units to the non-controls portion of the cost of the unit. By 2056, which is the end date of the projection period, the average (inflation-adjusted) price of single-speed compressor refrigerators, refrigerator-freezers, and freezers is projected to drop 34 percent and the average price of refrigerators, refrigerator-freezers, and freezers with a variable-speed compressor is projected to drop about 35 percent relative to 2027, the compliance year. DOE's projection of product prices is described in appendix 10C of the NOPR TSD.

To evaluate the effect of uncertainty regarding the price trend estimates, DOE investigated the impact of different product price projections on the consumer NPV for the considered TSLs for refrigerators, refrigerator-freezers, and freezers. In addition to the default price trend, DOE considered high and low-price-decline sensitivity cases. For the single-speed compressor refrigerators, refrigerator-freezers, and freezers and the non-variable-speed controls portion of refrigerators, refrigerator-freezers, and freezers, DOE estimated the high price decline and the low-price-decline scenarios based on household refrigerator and home freezer PPI data limited to the period between the period 1981–2008 and 2009–2021, respectively. For the variable-speed controls portion of refrigerators, refrigerator-freezers, and freezers, DOE estimated the high price decline and the low-price-decline scenarios based on an exponential trend line fit of the semiconductor PPI between the period 1994–2021 and 1967–1993, respectively. The derivation of these price trends and the results of these sensitivity cases are described in appendix 10C of the NOPR TSD.

The operating cost savings are energy cost savings, which are calculated using the estimated energy savings in each year and the projected price of the appropriate form of energy. To estimate energy prices in future years, DOE multiplied the average regional energy prices by the projection of annual national-average residential and commercial energy price changes in the reference case from *AEO 2022,* which has an end year of 2050. To estimate price trends after 2050, DOE used the average annual rate of change in prices from 2020 through 2050. As part of the NIA, DOE also analyzed scenarios that used inputs from variants of the *AEO 2022* reference case that have lower and higher economic growth. Those cases have lower and higher energy price trends compared to the reference case. NIA results based on these cases are presented in appendix 10C of the NOPR TSD.

In calculating the NPV, DOE multiplies the net savings in future years by a discount factor to determine their present value. For this NOPR, DOE estimated the NPV of consumer benefits using both a 3-percent and a 7-percent real discount rate. DOE uses these discount rates in accordance with guidance provided by the Office of Management and Budget (''OMB'') to Federal agencies on the development of regulatory analysis.[55] The discount rates for the determination of NPV are in contrast to the discount rates used in the LCC analysis, which are designed to reflect a consumer's perspective. The 7-percent real value is an estimate of the average before-tax rate of return to private capital in the U.S. economy. The 3-percent real value represents the ''social rate of time preference,'' which is the rate at which society discounts future consumption flows to their present value.

I. Consumer Subgroup Analysis

In analyzing the potential impact of new or amended energy conservation standards on consumers, DOE evaluates the impact on identifiable subgroups of consumers that may be disproportionately affected by a new or amended national standard. The purpose of a subgroup analysis is to determine the extent of any such disproportional impacts. DOE evaluates impacts on particular subgroups of consumers by analyzing the LCC impacts and PBP for those particular consumers from alternative standard levels.

For this NOPR, DOE analyzed the impacts of the considered standard levels on low-income households and, for product class 11A, on small businesses. For low-income households, the analysis used a subset of the RECS 2015 sample composed of low-income households. DOE separately analyzed different groups in the low-income household sample using data from RECS on home ownership status and on who pays the electricity bill. Low-income homeowners are analyzed equivalently to how they are analyzed in the standard LCC analysis. Low-income renters who do not pay their electricity bill are assumed to not be impacted by any new or amended standards. In this case, the landlord purchases the appliance and pays its operating costs, so is effectively the consumer and the renter is not impacted. Low-income renters who do pay their electricity bill are assumed to incur no first cost. DOE made this assumption to acknowledge that the vast majority of low-income renters will not pay to have their refrigerator replaced (that would be up to the landlord).

AHAM stated that DOE needs to look separately at the effects on renters, and especially low-income renters. (AHAM, No. 42 at p. 21) As stated previously, DOE has analyzed low-income renters separately from low-income homeowners to account for differences in the responsibility for refrigerator, refrigerator-freezer, and freezer purchase and operating costs for renters versus owners.

DOE notes that RECS 2015 indicates that less than 5 percent of low-income households only have a single compact refrigerator and/or freezer. Because this is the only refrigeration product in the household, DOE assumed that the landlord typically supplies the product. Additionally, RECS 2015 indicates that less than 5 percent of low-income households have a refrigeration product that would be categorized into PC 5, PC 5BI, or PC 5A. As a result, DOE did not do a low-income subgroup analysis on product classes 5, 5BI, 5A, 11A, 17, and 18.

For small businesses, DOE used the same sample from CBECS 2018 that was used in the standard LCC analysis, but used discount rates specific to small businesses. DOE used the LCC and PBP model to estimate the impacts of the considered efficiency levels on these subgroups.

Chapter 11 in the NOPR TSD describes the consumer subgroup analysis.

DOE requests comment on the overall methodology and results of the consumer subgroup analysis.

In response to the preliminary analysis, AHAM stated that the increase in first cost will disproportionately disadvantage low-income households, and that increased prices due to new or amended standards that eliminate low-price top-mount refrigerators would fall most heavily on low-income households. (AHAM, No. 42 at p. 16) As

[55] United States Office of Management and Budget. *Circular A–4: Regulatory Analysis.* September 17, 2003. Section E. Available at *https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf* (last accessed January 9, 2023).

described in section V.B.1.b of this document, DOE found that low-income households typically have higher LCC savings and lower payback periods when compared to the full consumer sample. This result is due to the fact that most low-income renters are not likely to incur the purchase cost of standards-compliant products, but they would still reap the benefits from savings in energy costs.

J. Manufacturer Impact Analysis

1. Overview

DOE performed an MIA to estimate the financial impacts of amended energy conservation standards on manufacturers of refrigerators, refrigerator-freezers, and freezers and to estimate the potential impacts of such standards on direct employment and manufacturing capacity. The MIA has both quantitative and qualitative aspects and includes analyses of projected industry cash flows, the INPV, investments in research and development (''R&D'') and manufacturing capital, and domestic manufacturing employment. Additionally, the MIA seeks to determine how amended energy conservation standards might affect manufacturing employment, capacity, and competition, as well as how standards contribute to overall regulatory burden. Finally, the MIA serves to identify any disproportionate impacts on manufacturer subgroups, including small business manufacturers.

The quantitative part of the MIA primarily relies on the Government Regulatory Impact Model (''GRIM''), an industry cash flow model with inputs specific to this rulemaking. The key GRIM inputs include data on the industry cost structure, unit production costs, product shipments, manufacturer markups, and investments in R&D and manufacturing capital required to produce compliant products. The key GRIM outputs are the INPV, which is the sum of industry annual cash flows over the analysis period, discounted using the industry-weighted average cost of capital, and the impact to domestic manufacturing employment. The model uses standard accounting principles to estimate the impacts of more stringent energy conservation standards on a given industry by comparing changes in INPV and domestic manufacturing employment between a no-new-standards case and the various TSLs. To capture the uncertainty relating to manufacturer pricing strategies following amended standards, the GRIM estimates a range of possible impacts under different scenarios.

The qualitative part of the MIA addresses manufacturer characteristics and market trends. Specifically, the MIA considers such factors as a potential standard's impact on manufacturing capacity, competition within the industry, the cumulative impact of other DOE and non-DOE regulations, and impacts on manufacturer subgroups. The complete MIA is outlined in chapter 12 of the NOPR TSD.

DOE conducted the MIA for this proposed rulemaking in three phases. In Phase 1 of the MIA, DOE prepared a profile of the refrigerator, refrigerator-freezer, and freezer manufacturing industry based on the market and technology assessment and publicly available information. This included a top-down analysis of refrigerator, refrigerator-freezer, and freezer manufacturers that DOE used to derive preliminary financial inputs for the GRIM (*e.g.,* revenues; materials, labor, overhead, and depreciation expenses; selling, general, and administrative expenses (''SG&A''); and R&D expenses). DOE also used public sources of information to further calibrate its initial characterization of the refrigerator, refrigerator-freezer, and freezer manufacturing industry, including company filings of form 10–K from the SEC,[56] corporate annual reports, the U.S. Census Bureau's *Annual Survey of Manufactures (''ASM''),*[57] and reports from Dun & Bradstreet.[58]

In Phase 2 of the MIA, DOE prepared a framework industry cash-flow analysis to quantify the potential impacts of amended energy conservation standards. The GRIM uses several factors to determine a series of annual cash flows starting with the announcement of the standard and extending over a 30-year period following the compliance date of the standard. These factors include annual expected revenues, costs of sales, SG&A and R&D expenses, taxes, and capital expenditures. In general, energy conservation standards can affect manufacturer cash flow in three distinct ways: (1) creating a need for increased investment, (2) raising production costs per unit, and (3) altering revenue due to higher per-unit prices and changes in sales volumes.

In addition, during Phase 2, DOE developed interview guides to distribute to manufacturers of refrigerators, refrigerator-freezers, and freezers in order to develop other key GRIM inputs, including product and capital conversion costs, and to gather additional information on the anticipated effects of energy conservation standards on revenues, direct employment, capital assets, industry competitiveness, and manufacturer subgroups.

In Phase 3 of the MIA, DOE conducted structured, detailed interviews with representative manufacturers. During these interviews, DOE discussed engineering, manufacturing, procurement, and financial topics to validate assumptions used in the GRIM and to identify key issues or concerns. See section IV.J.3 of this document for a description of the key issues raised by manufacturers during the interviews. As part of Phase 3, DOE also evaluated subgroups of manufacturers that may be disproportionately impacted by amended standards or that may not be accurately represented by the average cost assumptions used to develop the industry cash flow analysis. Such manufacturer subgroups may include small business manufacturers, low-volume manufacturers (''LVMs''), niche players, and/or manufacturers exhibiting a cost structure that largely differs from the industry average. DOE identified two subgroups for a separate impact analysis: small business manufacturers and domestic LVMs. The small business subgroup is discussed in section VI.B, ''Review under the Regulatory Flexibility Act'' and in chapter 12 of the NOPR TSD. The domestic LVM subgroup is discussed in section V.B.2.d and in chapter 12 of the NOPR TSD.

2. Government Regulatory Impact Model and Key Inputs

DOE uses the GRIM to quantify the changes in cash flow due to amended standards that result in a higher or lower industry value. The GRIM uses a standard, annual discounted cash-flow analysis that incorporates manufacturer costs, manufacturer markups, shipments, and industry financial information as inputs. The GRIM models changes in costs, distribution of shipments, investments, and manufacturer margins that could result from an amended energy conservation standard. The GRIM spreadsheet uses

[56] U.S. Securities and Exchange Commission, *Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system.* Available at *www.sec.gov/edgar/search/* (last accessed July 1, 2022).

[57] U.S. Census Bureau, *Annual Survey of Manufactures.* ''Summary Statistics for Industry Groups and Industries in the U.S. (2020).'' Available at: *www.census.gov/data/tables/time-series/econ/asm/2018-2020-asm.html* (Last accessed July 15, 2022).

[58] The Dun & Bradstreet Hoovers login is available at: *app.dnbhoovers.com* (Last accessed July 15, 2022).

the inputs to arrive at a series of annual cash flows, beginning in 2023 (the NOPR publication year) and continuing to 2056. DOE calculated INPVs by summing the stream of annual discounted cash flows during this period. For manufacturers of refrigerators, refrigerator-freezers, and freezers, DOE used a real discount rate of 9.1 percent, which was derived from industry financials and then modified according to feedback received during manufacturer interviews.

The GRIM calculates cash flows using standard accounting principles and compares changes in INPV between the no-new-standards case and each standards case. The difference in INPV between the no-new-standards case and a standards case represents the financial impact of the amended energy conservation standard on manufacturers. As discussed previously, DOE developed critical GRIM inputs using a number of sources, including publicly available data, results of the engineering analysis and shipments analysis, and information gathered from industry stakeholders during the course of manufacturer interviews. The GRIM results are presented in section V.B.2 of this document. Additional details about the GRIM, the discount rate, and other financial parameters can be found in chapter 12 of the NOPR TSD.

a. Manufacturer Production Costs

Manufacturing more efficient equipment is typically more expensive than manufacturing baseline equipment due to the use of more complex components, which are typically more costly than baseline components. The changes in the MPCs of covered products can affect the revenues, gross margins, and cash flow of the industry. For a complete description of the MPCs, see chapter 5 of the NOPR TSD or section IV.C of this document.

b. Shipments Projections

The GRIM estimates manufacturer revenues based on total unit shipment projections and the distribution of those shipments by efficiency level. Changes in sales volumes and efficiency mix over time can significantly affect manufacturer finances. For this analysis, the GRIM uses the NIA's annual shipment projections derived from the shipments analysis from 2023 (the NOPR publication year) to 2056 (the end year of the analysis period). See chapter 9 of the NOPR TSD for additional details or section IV.G of this document.

c. Product and Capital Conversion Costs

Amended energy conservation standards could cause manufacturers to incur conversion costs to bring their production facilities and equipment designs into compliance. DOE evaluated the level of conversion-related expenditures that would be needed to comply with each considered efficiency level in each product class. For the MIA, DOE classified these conversion costs into two major groups: (1) product conversion costs; and (2) capital conversion costs. Product conversion costs are investments in research, development, testing, marketing, and other non-capitalized costs necessary to make product designs comply with amended energy conservation standards. Capital conversion costs are investments in property, plant, and equipment necessary to adapt or change existing production facilities such that new compliant product designs can be fabricated and assembled.

Product Conversion Costs

DOE based its estimates of the product conversion costs necessary to meet the varying efficiency levels on information from manufacturer interviews, the design paths analyzed in the engineering analysis, and market share and model count information. Generally, manufacturers preferred to meet amended standards with design options that were direct and relatively straight-forward component swaps, such as incrementally more efficiency compressors. However, at higher efficiency levels, manufacturers anticipated the need for platform redesigns. Efficiency levels that significantly altered cabinet construction would require very large investments to update designs. Manufacturers noted that increasing foam thickness would require complete redesign of the cabinet, and potentially, the liner and shelving, should there be changes in interior volume. Additionally, extensive use of VIPs would require redesign of the cabinet to maximize the benefits of VIPs.

Based on manufacturer feedback, DOE also estimated ''re-flooring'' costs associated with replacing obsolete display models in big-box stores (*e.g.,* Lowe's, Home Depot, Best Buy) due to more stringent standards. Some manufacturers stated that with a new product release, big-box retailers discount outdated display models, and manufacturers share any losses associated with discounting the retail price. The estimated re-flooring costs for each efficiency level were incorporated into the product conversion cost estimates, as DOE modeled the re-flooring costs as a marketing expense. Manufacturer data was aggregated to protect confidential information.

DOE interviewed manufacturers accounting for approximately 81 percent of domestic refrigerator, refrigerator-freezer, and freezer shipments. DOE scaled product conversion costs by model counts to account for the portion of companies that were not interviewed. In manufacturer interviews, DOE received feedback on the analyzed product classes. For non-represented product classes, for which there was less available data, DOE used model counts to scale the product conversion cost estimates for analyzed product classes. See chapter 10 of the NOPR TSD for details on the mapping of analyzed product classes to non-represented product classes. See chapter 12 of the NOPR TSD for details on product conversion costs.

Capital Conversion Costs

DOE relied on information derived from manufacturer interviews and the engineering analysis to evaluate the level of capital conversion costs manufacturers would likely incur at the considered standard levels. During the interviews, manufacturers provided estimates and descriptions of the required tooling and plant changes that would be necessary to upgrade product lines to meet potential efficiency levels. Based on these inputs, DOE modeled incremental capital conversion costs for efficiency levels that could be reached with individual components swaps. However, based on feedback, DOE modeled major capital conversion costs when manufacturers would have to redesign their existing product platforms. DOE used information from manufacturer interviews to determine the cost of the manufacturing equipment and tooling necessary to implement complete redesigns.

Increases in foam thickness require either reductions to interior volume or increases to exterior volume. Since most refrigerators, refrigerator-freezers, and freezers must fit standard widths, increases in foam thickness could result in the loss of interior volume. The reduction of interior volume has significant consequences for manufacturing. In addition to redesigning the cabinet to increase the effectiveness of insulation, manufacturers must update all designs and tooling associated with the interior of the product. This could include the liner, shelving, drawers, and doors. Manufacturers would need to invest in significant new tooling to accommodate the changes in dimensions.

To minimize reductions to interior volume, manufacturers may choose to adopt VIP technology. Extensive incorporation of VIPs into designs

require significant upfront capital due to differences in the handling, storing, and manufacturing of VIPs as compared to typical polyurethane foams. VIPs are relatively fragile and must be protected from punctures and rough handling. If VIPs have leaks of any size, the panel will eventually lose much of its thermal insulative properties and structural strength. If already installed within a cabinet wall, a punctured VIP may significantly reduce the structural strength of the refrigerator, refrigerator-freezer, or freezer cabinet. As a result, VIPs require cautious handling during the manufacturing process. Manufacturers noted the need to allocate special warehouse space in order to ensure the VIPs are not jostled or roughly handled in the manufacturing environment. Furthermore, manufacturers anticipated the need for expansion of warehouse space to accommodate the storage of VIPs. VIP panels require significantly more warehouse space than the polyurethane foams currently used in most refrigerators, refrigerator-freezers, and freezers. The application of VIPs can be challenging and requires significant investment in hard-tooling or robotic systems to ensure the panels are positioned properly within the cabinet or door. Manufacturers noted that producing cabinets with VIPs are much more labor and time intensive than producing cabinets with typical polyurethane foams. Particularly in high volume factories, which can produce over a million refrigerator-freezers per year, the increase in production time associated in increased VIP usage would necessitate additional investment in manufacturing capacity to meet demand. The cost of extending production lines varies greatly by manufacturer, as it depends heavily on floor space availability in and around existing manufacturing plants.

Higher volume manufacturers would generally have higher investments as they have more production lines and greater production capacity. For manufacturers of both PC 5 (''refrigerator-freezer—automatic defrost with bottom-mounted freezer without an automatic ice maker'') and PC 5A (''refrigerator-freezer—automatic defrost with bottom-mounted freezer with through-the-door ice service''), cabinet changes in one product class would likely necessitate improvements in the other product class as they often share the same architecture, tooling and production lines.

DOE estimated industry capital conversion costs by extrapolating the interviewed manufacturers' capital conversion costs for each product class to account for the market share of companies that were not interviewed. DOE used the shipments analysis to scale the capital conversion cost estimates of the analyzed product class to account for the non-represented product class. See chapter 12 of the NOPR TSD for additional details on capital conversion costs.

DOE acknowledges that manufacturers may follow different design paths to reach the various efficiency levels analyzed. An individual manufacturer's investments depend on a range of factors, including the company's current product offerings and product platforms, existing production facilities and infrastructure, and make vs. buy decisions for components. DOE's conversion cost methodology incorporated feedback from all manufacturers that took part in interviews and extrapolated industry values. While industry average values may not represent any single manufacturer, DOE's modeling provides reasonable estimates of industry-level investments.

In general, DOE assumes all conversion-related investments occur between the year of publication of the final rule and the year by which manufacturers must comply with the new standard. The conversion cost figures used in the GRIM can be found in section V.B.2 of this document. For additional information on the estimated capital and product conversion costs, see chapter 12 of the NOPR TSD.

d. Manufacturer Markup Scenarios

MSPs include direct manufacturing production costs (*i.e.,* labor, materials, and overhead estimated in DOE's MPCs) and all non-production costs (*i.e.,* SG&A, R&D, and interest), along with profit. To calculate the MSPs in the GRIM, DOE applied manufacturer markups to the MPCs estimated in the engineering analysis for each product class and efficiency level. Modifying these manufacturer markups in the standards case yields different sets of impacts on manufacturers. For the MIA, DOE modeled two standards-case scenarios to represent uncertainty regarding the potential impacts on prices and profitability for manufacturers following the implementation of amended energy conservation standards: (1) a preservation of gross margin percentage scenario; and (2) a preservation of operating profit scenario. These scenarios lead to different manufacturer markup values that, when applied to the MPCs, result in varying revenue and cash flow impacts.

Under the preservation of gross margin percentage scenario, DOE applied a single uniform ''gross margin percentage'' markup across all efficiency levels, which assumes that manufacturers would be able to maintain the same amount of profit as a percentage of revenues at all efficiency levels within a product class. As manufacturer production costs increase with efficiency, this scenario implies that the per-unit dollar profit will increase. DOE assumed a gross margin percentage of 21 percent for all freestanding product classes and 29 percent for all built-in product classes.[59] Manufacturers tend to believe it is optimistic to assume that they would be able to maintain the same gross margin percentage as their production costs increase, particularly for minimally efficient products. Therefore, this scenario represents a high bound of industry profitability under an amended energy conservation standard.

In the preservation of operating profit scenario, as the cost of production goes up under a standards case, manufacturers are generally required to reduce their manufacturer markups to a level that maintains base-case operating profit. DOE implemented this scenario in the GRIM by lowering the manufacturer markups at each TSL to yield approximately the same earnings before interest and taxes in the standards case as in the no-new-standards case in the year after the expected compliance date of the amended standards. The implicit assumption behind this scenario is that the industry can only maintain its operating profit in absolute dollars after the standard takes effect.

A comparison of industry financial impacts under the two scenarios is presented in section V.B.2.a of this document.

3. Manufacturer Interviews

DOE interviewed manufacturers representing approximately 81 percent of domestic refrigerator, refrigerator-freezer, and freezer shipments. Participants included domestic-based and foreign-based original equipment manufacturers (''OEMs'') as well as importers. Participants included manufacturers with a wide range of market shares and a variety of product class offerings.

In interviews, DOE asked manufacturers to describe their major concerns regarding potential more stringent energy conservation standards

[59] The gross margin percentages of 21 percent and 29 percent are based on manufacturer markups of 1.26 and 1.40 percent, respectively.

for refrigerators, refrigerator-freezers, and freezers. The following section highlights manufacturer concerns that helped inform the projected potential impacts of an amended standard on the industry. Manufacturer interviews are conducted under nondisclosure agreements (''NDAs''), so DOE does not document these discussions in the same way that it does public comments in the comment summaries and DOE's responses throughout the rest of this document.

a. Specialty Doors and Multiple Door Designs

Some manufacturers recommended DOE consider specialty door and multi-door designs in the NOPR analysis by creating new product classes or allowances for the additional energy consumption associated with implementing these features. These manufacturers stated that their market research indicates that multi-door, door-in-door, and transparent door designs provide utility to the consumer. For instance, manufacturers stated that multi-door configurations allow for the added climate control options, which can aid better food preservation. For transparent doors, manufacturers noted that some consumers enjoy the aesthetics as well as the ability to view the contents of the refrigerator without opening the door. These manufacturers asserted that the increasing prevalence of alternative door designs further supports that these features provide added value to consumers. Some manufacturers expressed concern that more stringent standards would limit their ability to offer these consumer features. These manufacturers stated that they currently must pair alternative door designs with high-efficiency technology options, such as variable-speed compressors and VIPs, just to meet the current DOE baseline. Manufacturers noted that more stringent standards would be particularly problematic for freestanding and built-in versions of both bottom-mount (French door) and side-by-side configurations. Some manufacturers also noted that high-end compact refrigerators, which are typically fully integrated into kitchen cabinetry (sometimes referred to as ''undercounter'' refrigerators) have transparent door designs.

b. Viability of Low-Cost Standard-Size Refrigerator-Freezers

Several manufacturers stated that adopting more stringent standards for certain product classes would increase upfront costs and negatively impact low-income consumers. These manufacturers had concerns about more stringent standards for standard-size top-mount refrigerator-freezers (product class 3). Manufacturers stated that top-mounts are typically the most affordable standard-size refrigerator-freezer option, and as a result, are often purchased by cost-conscious consumers. Specifically, manufacturers noted that efficiency levels requiring the use of variable-speed compressors or VIPs would make maintaining a range of entry-level price points very challenging. These manufacturers suggested that the higher upfront cost could impact consumers' purchasing decisions. For example, in lieu of purchasing a new refrigerator-freezer, consumers may opt to repair their existing standard-size refrigerator-freezer, turn to the pre-owned market, participate in a rent-to-own program, or purchase multiple compact refrigerator-freezer models. Multiple manufacturers supported including a 5-percent ''gap fill'' efficiency level for standard-size top-mount products, which would require minimal redesign effort.

c. Built-in Product Classes

Some manufacturers urged DOE to conduct a separate analysis for built-in product classes. These manufacturers asserted that built-in products face design constraints related to standardized installation dimensions and restricted airflow. These manufacturers stated that because of these differences, freestanding products cannot be used as proxies for built-in products. Some manufacturers also noted that built-in products appeal to a niche consumer segment and have notably different price points compared to their freestanding counterparts.

d. Supply Chain Constraints

In interviews, some manufacturers expressed concerns about the ongoing supply chain constraints related to sourcing high-quality components (*e.g.,* variable-speed compressors, VIPs), microprocessors and electronics, and hydrofluoro-olefin (''HFO'') foam. More stringent standards, particularly at TSLs requiring a large-scale implementation of variable-speed compressors, would require that industry source more high-efficiency compressors and electronic components, which are already difficult to secure. As standards get more stringent, some manufacturers also indicated they would try to source higher-performance foam for insulation, which would increase demand for certain blowing agents. If these supply constraints continue through the end of the conversion period, industry could face production capacity constraints.

4. Discussion of MIA Comments

In response to the October 2021 Preliminary Analysis, Sub-Zero detailed some of the challenges they face as a smaller manufacturer of major appliances. Sub-Zero noted that they offer a wide range of products in order to compete and match product offerings of larger, global appliance companies. Sub-Zero further noted that the redesign effort required to meet more stringent standards does not scale with production volumes. As a result, smaller manufacturers with lower staffing levels must work almost exclusively on redesigning products to meet amended standards, which impedes their ability to design products to meet other consumer requirements. (Sub-Zero, No. 34 at p. 2)

DOE understands that the level of effort required to redesign a model is independent of production volume. DOE's product conversion cost estimates reflect this feedback, which are based on aggregated manufacturer feedback from confidential interviews and unique basic model listings. Furthermore, DOE explores impacts of potential amended standards on the domestic LVM subgroup in section V.B.2.d of this document.

Sub-Zero noted that regulations restricting the use of certain refrigerants and blowing agents necessitated significant capital investment to update manufacturing equipment and production facilities for refrigerators, freezers, and miscellaneous refrigeration products. The commenter stated the timing of different regulations increased the burden. (Sub-Zero, No. 34 at pp. 2–3)

In NOPR interviews, most manufacturers stated that they have transitioned their consumer refrigeration products to make use of alternative refrigerants (*e.g.,* R–600a) and low-global warming potential (''GWP'') blowing agents (*e.g.,* HFO or cyclopentane), in accordance with regulations enacted by states.[60] However, some manufacturers of built-in products noted that they are still in the process of transitioning their products to make use of alternative

[60] Shortly after the D.C. Circuit partially vacated the SNAP Rule 20 (see *Mexichem Fluor, Inc.* v. *EPA,* 866 F.3d 451, 464 (D.C. Cir. 2017)), the same court issued a similar partial vacatur for portions of the SNAP Rule 21. See *Mexichem Fluor, Inc.* v. *EPA,* 760 Fed. Appx. 6 (Mem) (per curiam) (D.C. Cir. 2019). In lieu of a national ban on HFC refrigerants, the California Air Resources Board (CARB) adopted an agency regulation for new refrigeration equipment that implemented the majority of the HFC prohibitions in SNAP Rules 20 and 21. Several states have since also adopted SNAP-like prohibitions for certain substances in refrigeration and foam end-uses.

refrigerants, namely R–600a. These manufacturers stated that they aim to complete the transition by January 1, 2023, due to State regulations restricting the use of high-GWP refrigerants in built-in products.[61]

As described in section IV.J.2.c of this document, DOE expects that all conversion-related investments occur between the year of publication of the final rule and the year by which manufacturers must comply with the new standard. DOE estimates issuance of a final rule by the end of 2023. Therefore, for purposes of its analysis, DOE used 2027 as the first year of compliance with any amended standards for refrigerators, refrigerator-freezers, and freezers. Therefore, DOE expects that industry would have fully transitioned the products covered by this proposed rulemaking to make use of R–600a prior to any publication of a final rule. See section IV.A.2 for additional details on how DOE considered the treatment of R–600a as a design option in the NOPR analysis.

Regarding the timing of this energy conservation rulemakings, DOE has statutory requirements under EPCA. For refrigerators, refrigerator-freezers, and freezers, EPCA requires that not later than 6 years after issuance of any final rule establishing or amending a standard, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a notice of proposed rulemaking including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m))

K. Emissions Analysis

The emissions analysis consists of two components. The first component estimates the effect of potential energy conservation standards on power sector and site (where applicable) combustion emissions of CO_2, NO_X, SO_2, and Hg. The second component estimates the impacts of potential standards on emissions of two additional greenhouse gases, CH_4 and N_2O, as well as the reductions to emissions of other gases due to ''upstream'' activities in the fuel production chain. These upstream activities comprise extraction, processing, and transporting fuels to the site of combustion.

The analysis of electric power sector emissions of CO_2, NO_X, SO_2, and Hg uses emissions factors intended to represent the marginal impacts of the change in electricity consumption associated with amended or new standards. The methodology is based on results published for the *AEO,* including a set of side cases that implement a variety of efficiency-related policies. The methodology is described in appendix 13A in the NOPR TSD. The analysis presented in this notice uses projections from *AEO2022.* Power sector emissions of CH_4 and N_2O from fuel combustion are estimated using Emission Factors for Greenhouse Gas Inventories published by the Environmental Protection Agency (EPA).[62]

FFC upstream emissions, which include emissions from fuel combustion during extraction, processing, and transportation of fuels, and ''fugitive'' emissions (direct leakage to the atmosphere) of CH_4 and CO_2, are estimated based on the methodology described in chapter 15 of the NOPR TSD.

The emissions intensity factors are expressed in terms of physical units per MWh or MMBtu of site energy savings. For power sector emissions, specific emissions intensity factors are calculated by sector and end use. Total emissions reductions are estimated using the energy savings calculated in the NIA.

1. Air Quality Regulations Incorporated in DOE's Analysis

DOE's no-new-standards case for the electric power sector reflects the *AEO,* which incorporates the projected impacts of existing air quality regulations on emissions. *AEO2022* generally represents current legislation and environmental regulations, including recent government actions, that were in place at the time of preparation of *AEO2022,* including the emissions control programs discussed in the following paragraphs.[63]

SO_2 emissions from affected electric generating units (''EGUs'') are subject to nationwide and regional emissions cap-and-trade programs. Title IV of the Clean Air Act sets an annual emissions cap on SO_2 for affected EGUs in the 48 contiguous States and the District of Columbia (DC). (42 U.S.C. 7651 *et seq.*) SO_2 emissions from numerous states in the eastern half of the United States are also limited under the Cross-State Air Pollution Rule (''CSAPR''). 76 FR 48208 (Aug. 8, 2011). CSAPR requires these states to reduce certain emissions, including annual SO_2 emissions, and went into effect as of January 1, 2015.[64] *AEO2022* incorporates implementation of CSAPR, including the update to the CSAPR ozone season program emission budgets and target dates issued in 2016. 81 FR 74504 (Oct. 26, 2016). Compliance with CSAPR is flexible among EGUs and is enforced through the use of tradable emissions allowances. Under existing EPA regulations, any excess SO_2 emissions allowances resulting from the lower electricity demand caused by the adoption of an efficiency standard could be used to permit offsetting increases in SO_2 emissions by another regulated EGU.

However, beginning in 2016, SO_2 emissions began to fall as a result of the Mercury and Air Toxics Standards (''MATS'') for power plants. 77 FR 9304 (Feb. 16, 2012). In the MATS final rule, EPA established a standard for hydrogen chloride as a surrogate for acid gas hazardous air pollutants (''HAP''), and also established a standard for SO_2 (a non-HAP acid gas) as an alternative equivalent surrogate standard for acid gas HAP. The same controls are used to reduce HAP and non-HAP acid gas; thus, SO_2 emissions are being reduced as a result of the control technologies installed on coal-fired power plants to comply with the MATS requirements for acid gas. In order to continue operating, coal power plants must have either flue gas desulfurization or dry sorbent injection systems installed. Both technologies, which are used to reduce acid gas emissions, also reduce SO_2 emissions. Because of the emissions reductions under the MATS, it is unlikely that excess SO_2 emissions allowances resulting from the lower electricity demand would be needed or

[61] California adopted regulations prohibiting the use of certain substances in refrigeration and foam end-uses. Specifically, California, among other states, will prohibit the use of certain refrigerants in built-in residential consumer refrigeration products as of January 1, 2023. *See* California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 10 Climate Change, Article 4, under Section 95374 Table 2. Available at: *ww2.arb.ca.gov/sites/default/files/barcu/regact/2020/hfc2020/frorevised.pdf.*

[62] Available at *www.epa.gov/sites/production/files/2021–04/documents/emission-factors_apr2021.pdf* (last accessed July 12, 2021).

[63] For further information, see the Assumptions to *AEO2022* report that sets forth the major assumptions used to generate the projections in the Annual Energy Outlook. Available at *www.eia.gov/outlooks/aeo/assumptions/* (last accessed June 22, 2022).

[64] CSAPR requires states to address annual emissions of SO_2 and NO_X, precursors to the formation of fine particulate matter ($PM_{2.5}$) pollution, in order to address the interstate transport of pollution with respect to the 1997 and 2006 $PM_{2.5}$ National Ambient Air Quality Standards (''NAAQS''). CSAPR also requires certain states to address the ozone season (May-September) emissions of NO_X, a precursor to the formation of ozone pollution, in order to address the interstate transport of ozone pollution with respect to the 1997 ozone NAAQS. 76 FR 48208 (Aug. 8, 2011). EPA subsequently issued a supplemental rule that included an additional five states in the CSAPR ozone season program; 76 FR 80760 (Dec. 27, 2011) (Supplemental Rule).

used to permit offsetting increases in SO_2 emissions by another regulated EGU. Therefore, energy conservation standards that decrease electricity generation would generally reduce SO_2 emissions. DOE estimated SO_2 emissions reduction using emissions factors based on *AEO2022.*

CSAPR also established limits on NO_X emissions for numerous states in the eastern half of the United States. Energy conservation standards would have little effect on NO_X emissions in those states covered by CSAPR emissions limits if excess NO_X emissions allowances resulting from the lower electricity demand could be used to permit offsetting increases in NO_X emissions from other EGUs. In such case, NOx emissions would remain near the limit even if electricity generation goes down. A different case could possibly result, depending on the configuration of the power sector in the different regions and the need for allowances, such that NO_X emissions might not remain at the limit in the case of lower electricity demand. In this case, energy conservation standards might reduce NOx emissions in covered states. Despite this possibility, DOE has chosen to be conservative in its analysis and has maintained the assumption that standards will not reduce NO_X emissions in states covered by CSAPR. Energy conservation standards would be expected to reduce NO_X emissions in the states not covered by CSAPR. DOE used *AEO2022* data to derive NO_X emissions factors for the group of states not covered by CSAPR.

The MATS limit mercury emissions from power plants, but they do not include emissions caps and, as such, DOE's energy conservation standards would be expected to slightly reduce Hg emissions. DOE estimated mercury emissions reduction using emissions factors based on *AEO2022,* which incorporates the MATS.

L. Monetizing Emissions Impacts

As part of the development of this proposed rule, for the purpose of complying with the requirements of Executive Order 12866, DOE considered the estimated monetary benefits from the reduced emissions of CO_2, CH_4, N_2O, NO_X, and SO_2 that are expected to result from each of the TSLs considered. In order to make this calculation analogous to the calculation of the NPV of consumer benefit, DOE considered the reduced emissions expected to result over the lifetime of products shipped in the projection period for each TSL. This section summarizes the basis for the values used for monetizing the emissions benefits and presents the values considered in this NOPR.

On March 16, 2022, the Fifth Circuit Court of Appeals (No. 22–30087) granted the Federal government's emergency motion for stay pending appeal of the February 11, 2022, preliminary injunction issued in *Louisiana* v. *Biden,* No. 21–cv–1074–JDC–KK (W.D. La.). As a result of the Fifth Circuit's order, the preliminary injunction is no longer in effect, pending resolution of the Federal government's appeal of that injunction or a further court order. Among other things, the preliminary injunction enjoined the defendants in that case from ''adopting, employing, treating as binding, or relying upon'' the interim estimates of the social cost of greenhouse gases—which were issued by the Interagency Working Group on the Social Cost of Greenhouse Gases on February 26, 2021—to monetize the benefits of reducing greenhouse gas emissions. As reflected in this proposed rule, DOE has reverted to its approach prior to the injunction and presents monetized greenhouse gas abatement benefits where appropriate and permissible under law.

DOE requests comment on how to address the climate benefits and other non-monetized effects of the proposal.

1. Monetization of Greenhouse Gas Emissions

DOE estimates the monetized benefits of the reductions in emissions of CO_2, CH_4, and N_2O by using a measure of the SC of each pollutant (*e.g.,* SC–CO_2). These estimates represent the monetary value of the net harm to society associated with a marginal increase in emissions of these pollutants in a given year, or the benefit of avoiding that increase. These estimates are intended to include (but are not limited to) climate-change-related changes in net agricultural productivity, human health, property damages from increased flood risk, disruption of energy systems, risk of conflict, environmental migration, and the value of ecosystem services.

DOE exercises its own judgment in presenting monetized climate benefits as recommended by applicable executive orders and DOE would reach the same conclusion presented in this proposed rulemaking in the absence of the social cost of greenhouse gases, including the February 2021 Interim Estimates presented by the Interagency Working Group on the Social Cost of Greenhouse Gases. DOE estimated the global social benefits of CO_2, CH_4, and N_2O reductions (*i.e.,* SC–GHGs) using the estimates presented in the Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990, published in February 2021 by the IWG. The SC–GHGs is the monetary value of the net harm to society associated with a marginal increase in emissions in a given year, or the benefit of avoiding that increase. In principle, SC–GHGs includes the value of all climate change impacts, including (but not limited to) changes in net agricultural productivity, human health effects, property damage from increased flood risk and natural disasters, disruption of energy systems, risk of conflict, environmental migration, and the value of ecosystem services. The SC–GHGs therefore, reflects the societal value of reducing emissions of the gas in question by one metric ton. The SC–GHGs is the theoretically appropriate value to use in conducting benefit-cost analyses of policies that affect CO_2, N_2O, and CH_4 emissions. As a member of the IWG involved in the development of the February 2021 SC–GHG TSD, DOE agrees that the interim SC–GHG estimates represent the most appropriate estimate of the SC–GHG until revised estimates have been developed reflecting the latest, peer reviewed science.

The SC–GHGs estimates presented here were developed over many years, using transparent process, peer reviewed methodologies, the best science available at the time of that process, and with input from the public. Specifically, in 2009, the IWG, that included the DOE and other executive branch agencies and offices was established to ensure that agencies were using the best available science and to promote consistency in the social cost of carbon (SC–CO_2) values used across agencies. The IWG published SC–CO_2 estimates in 2010 that were developed from an ensemble of three widely cited integrated assessment models (IAMs) that estimate global climate damages using highly aggregated representations of climate processes and the global economy combined into a single modeling framework. The three IAMs were run using a common set of input assumptions in each model for future population, economic, and CO_2 emissions growth, as well as equilibrium climate sensitivity—a measure of the globally averaged temperature response to increased atmospheric CO_2 concentrations. These estimates were updated in 2013 based on new versions of each IAM. In August 2016 the IWG published estimates of the social cost of methane (SC–CH_4) and nitrous oxide (SC–N_2O) using methodologies that are consistent with

the methodology underlying the SC–CO_2 estimates. The modeling approach that extends the IWG SC–CO_2 methodology to non-CO_2 GHGs has undergone multiple stages of peer review. The SC–CH_4 and SC–N_2O estimates were developed by Marten *et al.*[65] and underwent a standard double-blind peer review process prior to journal publication. In 2015, as part of the response to public comments received to a 2013 solicitation for comments on the SC–CO_2 estimates, the IWG announced a National Academies of Sciences, Engineering, and Medicine review of the SC–CO_2 estimates to offer advice on how to approach future updates to ensure that the estimates continue to reflect the best available science and methodologies. In January 2017, the National Academies released their final report, Valuing Climate Damages: Updating Estimation of the Social Cost of Carbon Dioxide, and recommended specific criteria for future updates to the SC–CO_2 estimates, a modeling framework to satisfy the specified criteria, and both near-term updates and longer-term research needs pertaining to various components of the estimation process (National Academies, 2017).[66] Shortly thereafter, in March 2017, President Trump issued Executive Order 13783, which disbanded the IWG, withdrew the previous TSDs, and directed agencies to ensure SC–CO_2 estimates used in regulatory analyses are consistent with the guidance contained in OMB's Circular A–4, ''including with respect to the consideration of domestic versus international impacts and the consideration of appropriate discount rates'' (Executive Order (''E.O.'') 13783, section 5(c)). Benefit-cost analyses following E.O. 13783 used SC–GHG estimates that attempted to focus on the U.S.-specific share of climate change damages as estimated by the models and were calculated using two discount rates recommended by Circular A–4, 3 percent and 7 percent. All other methodological decisions and model versions used in SC–GHG calculations remained the same as those used by the IWG in 2010 and 2013, respectively.

On January 20, 2021, President Biden issued Executive Order 13990, which re-established the IWG and directed it to ensure that the U.S. Government's estimates of the social cost of carbon and other greenhouse gases reflect the best available science and the recommendations of the National Academies (2017). The IWG was tasked with first reviewing the SC–GHG estimates currently used in Federal analyses and publishing interim estimates within 30 days of the E.O. that reflect the full impact of GHG emissions, including by taking global damages into account. The interim SC–GHG estimates published in February 2021 are used here to estimate the climate benefits for this proposed rulemaking. The E.O. instructs the IWG to undertake a fuller update of the SC–GHG estimates by January 2022 that takes into consideration the advice of the National Academies (2017) and other recent scientific literature. The February 2021 SC–GHG TSD provides a complete discussion of the IWG's initial review conducted under E.O.13990. In particular, the IWG found that the SC–GHG estimates used under E.O. 13783 fail to reflect the full impact of GHG emissions in multiple ways.

First, the IWG found that the SC–GHG estimates used under E.O. 13783 fail to fully capture many climate impacts that affect the welfare of U.S. citizens and residents, and those impacts are better reflected by global measures of the SC–GHG. Examples of omitted effects from the E.O. 13783 estimates include direct effects on U.S. citizens, assets, and investments located abroad, supply chains, U.S. military assets and interests abroad, and tourism, and spillover pathways such as economic and political destabilization and global migration that can lead to adverse impacts on U.S. national security, public health, and humanitarian concerns. In addition, assessing the benefits of U.S. GHG mitigation activities requires consideration of how those actions may affect mitigation activities by other countries, as those international mitigation actions will provide a benefit to U.S. citizens and residents by mitigating climate impacts that affect U.S. citizens and residents. A wide range of scientific and economic experts have emphasized the issue of reciprocity as support for considering global damages of GHG emissions. If the United States does not consider impacts on other countries, it is difficult to convince other countries to consider the impacts of their emissions on the United States. The only way to achieve an efficient allocation of resources for emissions reduction on a global basis—and so benefit the U.S. and its citizens—is for all countries to base their policies on global estimates of damages. As a member of the IWG involved in the development of the February 2021 SC–GHG TSD, DOE agrees with this assessment and, therefore, in this proposed rule DOE centers attention on a global measure of SC–GHG. This approach is the same as that taken in DOE regulatory analyses from 2012 through 2016. A robust estimate of climate damages that accrue only to U.S. citizens and residents does not currently exist in the literature. As explained in the February 2021 TSD, existing estimates are both incomplete and an underestimate of total damages that accrue to the citizens and residents of the U.S. because they do not fully capture the regional interactions and spillovers discussed above, nor do they include all of the important physical, ecological, and economic impacts of climate change recognized in the climate change literature. As noted in the February 2021 SC–GHG TSD, the IWG will continue to review developments in the literature, including more robust methodologies for estimating a U.S.-specific SC–GHG value, and explore ways to better inform the public of the full range of carbon impacts. As a member of the IWG, DOE will continue to follow developments in the literature pertaining to this issue.

Second, the IWG found that the use of the social rate of return on capital (7 percent under current OMB Circular A–4 guidance) to discount the future benefits of reducing GHG emissions inappropriately underestimates the impacts of climate change for the purposes of estimating the SC–GHG. Consistent with the findings of the National Academies (2017) and the economic literature, the IWG continued to conclude that the consumption rate of interest is the theoretically appropriate discount rate in an intergenerational context,[67]and recommended that

[65] Marten, A.L., E.A. Kopits, C.W. Griffiths, S.C. Newbold, and A. Wolverton. Incremental CH_4 and N_2O mitigation benefits consistent with the U.S. Government's SC–CO_2 estimates. *Climate Policy.* 2015. 15(2): pp. 272–298.

[66] National Academies of Sciences, Engineering, and Medicine. *Valuing Climate Damages: Updating Estimation of the Social Cost of Carbon Dioxide.* 2017. The National Academies Press: Washington, DC.

[67] Interagency Working Group on Social Cost of Carbon. *Social Cost of Carbon for Regulatory Impact Analysis under Executive Order 12866.* 2010. United States Government. (Last accessed April 15, 2022.) *www.epa.gov/sites/default/files/2016-12/documents/scc_tsd_2010.pdf;* Interagency Working Group on Social Cost of Carbon. *Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866.* 2013. (Last accessed April 15, 2022.) *www.federalregister.gov/documents/2013/11/26/2013-28242/technical-support-document-technical-update-of-the-social-cost-of-carbon-for-regulatory-impact;* Interagency Working Group on Social Cost of Greenhouse Gases, United States Government. Technical Support Document: Technical Update on the Social Cost of Carbon for Regulatory Impact Analysis-Under Executive Order 12866. August 2016. (Last accessed January 18, 2022.) *www.epa.gov/sites/default/files/2016-12/documents/sc_co2_tsd_august_2016.pdf*; Interagency Working Group on Social Cost of Greenhouse Gases, United States Government.

Continued

discount rate uncertainty and relevant aspects of intergenerational ethical considerations be accounted for in selecting future discount rates.

Furthermore, the damage estimates developed for use in the SC–GHG are estimated in consumption-equivalent terms, and so an application of OMB Circular A–4's guidance for regulatory analysis would then use the consumption discount rate to calculate the SC–GHG. DOE agrees with this assessment and will continue to follow developments in the literature pertaining to this issue. DOE also notes that while OMB Circular A–4, as published in 2003, recommends using 3 percent and 7 percent discount rates as ''default'' values, Circular A–4 also reminds agencies that ''different regulations may call for different emphases in the analysis, depending on the nature and complexity of the regulatory issues and the sensitivity of the benefit and cost estimates to the key assumptions.'' On discounting, Circular A–4 recognizes that ''special ethical considerations arise when comparing benefits and costs across generations,'' and Circular A–4 acknowledges that analyses may appropriately ''discount future costs and consumption benefits . . . at a lower rate than for intragenerational analysis.'' In the 2015 Response to Comments on the Social Cost of Carbon for Regulatory Impact Analysis, OMB, DOE, and the other IWG members recognized that ''Circular A–4 is a living document'' and ''the use of 7 percent is not considered appropriate for intergenerational discounting. There is wide support for this view in the academic literature, and it is recognized in Circular A–4 itself.'' Thus, DOE concludes that a 7 percent discount rate is not appropriate to apply to value the social cost of greenhouse gases in the analysis presented in this analysis. In this analysis, to calculate the present and annualized values of climate benefits, DOE uses the same discount rate as the rate used to discount the value of damages from future GHG emissions, for internal consistency. That approach to discounting follows the same approach that the February 2021 TSD recommends ''to ensure internal consistency—*i.e.,* future damages from climate change using the SC–GHG at 2.5 percent should be discounted to the base year of the analysis using the same 2.5 percent rate.'' DOE has also consulted the National Academies' 2017 recommendations on how SC–GHG estimates can ''be combined in RIAs with other cost and benefits estimates that may use different discount rates.'' The National Academies reviewed ''several options,'' including ''presenting all discount rate combinations of other costs and benefits with [SC–GHG] estimates.''

As a member of the IWG involved in the development of the February 2021 SC–GHG TSD, DOE agrees with this assessment and will continue to follow developments in the literature pertaining to this issue. While the IWG works to assess how best to incorporate the latest, peer reviewed science to develop an updated set of SC–GHG estimates, it set the interim estimates to be the most recent estimates developed by the IWG prior to the group being disbanded in 2017. The estimates rely on the same models and harmonized inputs and are calculated using a range of discount rates. As explained in the February 2021 SC–GHG TSD, the IWG has recommended that agencies to revert to the same set of four values drawn from the SC–GHG distributions based on three discount rates as were used in regulatory analyses between 2010 and 2016 and subject to public comment. For each discount rate, the IWG combined the distributions across models and socioeconomic emissions scenarios (applying equal weight to each) and then selected a set of four values recommended for use in benefit-cost analyses: an average value resulting from the model runs for each of three discount rates (2.5 percent, 3 percent, and 5 percent), plus a fourth value, selected as the 95th percentile of estimates based on a 3 percent discount rate. The fourth value was included to provide information on potentially higher-than-expected economic impacts from climate change. As explained in the February 2021 SC–GHG TSD, and DOE agrees, this update reflects the immediate need to have an operational SC–GHG for use in regulatory benefit-cost analyses and other applications that was developed using a transparent process, peer reviewed methodologies, and the science available at the time of that process. Those estimates were subject to public comment in the context of dozens of proposed rulemakings as well as in a dedicated public comment period in 2013.

There are a number of limitations and uncertainties associated with the SC–GHG estimates. First, the current scientific and economic understanding of discounting approaches suggests discount rates appropriate for intergenerational analysis in the context of climate change are likely to be less than 3 percent, near 2 percent or lower.[68] Second, the IAMs used to produce these interim estimates do not include all of the important physical, ecological, and economic impacts of climate change recognized in the climate change literature and the science underlying their ''damage functions''—*i.e.,* the core parts of the IAMs that map global mean temperature changes and other physical impacts of climate change into economic (both market and nonmarket) damages—lags behind the most recent research. For example, limitations include the incomplete treatment of catastrophic and non-catastrophic impacts in the IAMs, their incomplete treatment of adaptation and technological change, the incomplete way in which inter-regional and intersectoral linkages are modeled, uncertainty in the extrapolation of damages to high temperatures, and inadequate representation of the relationship between the discount rate and uncertainty in economic growth over long time horizons. Likewise, the socioeconomic and emissions scenarios used as inputs to the models do not reflect new information from the last decade of scenario generation or the full range of projections. The modeling limitations do not all work in the same direction in terms of their influence on the SC–CO_2 estimates. However, as discussed in the February 2021 TSD, the IWG has recommended that, taken together, the limitations suggest that the interim SC–GHG estimates used in this final rule likely underestimate the damages from GHG emissions. DOE concurs with this assessment.

DOE's derivations of the SC–GHG (SC–CO_2, SC–N_2O, and SC–CH_4) values used for this NOPR are discussed in the following sections, and the results of DOE's analyses estimating the benefits of the reductions in emissions of these GHGs are presented in section V.B.6 of this document.

a. Social Cost of Carbon

The SC–CO_2 values used for this NOPR were generated using the values presented in the 2021 update from the IWG's February 2021 SC–GHG TSD.

Addendum to Technical Support Document on Social Cost of Carbon for Regulatory Impact Analysis under Executive Order 12866: Application of the Methodology to Estimate the Social Cost of Methane and the Social Cost of Nitrous Oxide. August 2016. (Last accessed January 18, 2022.) *www.epa.gov/sites/default/files/2016-12/documents/addendum_to_sc-ghg_tsd_august_2016.pdf.*

[68] Interagency Working Group on Social Cost of Greenhouse Gases (IWG). 2021. Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990. February. United States Government. Available at: *<https://www.whitehouse.gov/briefing-room/blog/2021/02/26/a-return-to-science-evidence-based-estimates-of-the-benefits-of-reducing-climate-pollution/.*

Table IV.15 shows the updated sets of SC–CO_2 estimates from the latest interagency update in 5-year increments from 2020 to 2050. The full set of annual values used is presented in appendix 14–A of the NOPR TSD. For purposes of capturing the uncertainties involved in regulatory impact analysis, DOE has determined it is appropriate include all four sets of SC–CO_2 values, as recommended by the IWG.[69]

TABLE IV.15—ANNUAL SC–CO_2 VALUES FROM 2021 INTERAGENCY UPDATE, 2020–2050

[2020$ per metric ton CO_2]

Year	Discount rate and statistic			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
2020	14	51	76	152
2025	17	56	83	169
2030	19	62	89	187
2035	22	67	96	206
2040	25	73	103	225
2045	28	79	110	242
2050	32	85	116	260

For 2051 to 2070, DOE used SC–CO2 estimates published by EPA, adjusted to 2020$. These estimates are based on methods, assumptions, and parameters identical to the 2020–2050 estimates published by the IWG. DOE expects additional climate benefits to accrue for any longer-life refrigerators, refrigerator-freezers, and freezers after 2070, but a lack of available SC–CO_2 estimates for emissions years beyond 2070 prevents DOE from monetizing these potential benefits in this analysis.

DOE multiplied the CO_2 emissions reduction estimated for each year by the SC–CO_2 value for that year in each of the four cases. DOE adjusted the values to 2021$ using the implicit price deflator for gross domestic product (''GDP'') from the Bureau of Economic Analysis. To calculate a present value of the stream of monetary values, DOE discounted the values in each of the four cases using the specific discount rate that had been used to obtain the SC–CO_2 values in each case.

b. Social Cost of Methane and Nitrous Oxide

The SC–CH_4 and SC–N_2O values used for this NOPR were based on the values developed for the February 2021 TSD. Table IV.16IV. shows the updated sets of SC–CH_4 and SC–N_2O estimates from the latest interagency update in 5-year increments from 2020 to 2050. The full set of annual values used is presented in appendix 14–A of the NOPR TSD. To capture the uncertainties involved in regulatory impact analysis, DOE has determined it is appropriate to include all four sets of SC–CH_4 and SC–N_2O values, as recommended by the IWG. DOE derived values after 2050 using the approach described above for the SC–CO_2.

TABLE IV.16—ANNUAL SC–CH_4 AND SC–N_2O VALUES FROM 2021 INTERAGENCY UPDATE, 2020–2050

[2020$ per metric ton]

Year	SC–CH_4				SC–N_2O			
	Discount rate and statistic				Discount rate and statistic			
	5%	3%	2.5%	3%	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile	Average	Average	Average	95th percentile
2020	670	1500	2000	3900	5800	18000	27000	48000
2025	800	1700	2200	4500	6800	21000	30000	54000
2030	940	2000	2500	5200	7800	23000	33000	60000
2035	1100	2200	2800	6000	9000	25000	36000	67000
2040	1300	2500	3100	6700	10000	28000	39000	74000
2045	1500	2800	3500	7500	12000	30000	42000	81000
2050	1700	3100	3800	8200	13000	33000	45000	88000

DOE multiplied the CH_4 and N_2O emissions reduction estimated for each year by the SC–CH_4 and SC–N_2O estimates for that year in each of the cases. DOE adjusted the values to 2021$ using the implicit price deflator for gross domestic product (''GDP'') from the Bureau of Economic Analysis. To calculate a present value of the stream of monetary values, DOE discounted the values in each of the cases using the specific discount rate that had been used to obtain the SC–CH_4 and SC–N_2O estimates in each case.

2. Monetization of Other Emissions Impacts

For the NOPR, DOE estimated the monetized value of NO_X and SO_2 emissions reductions from electricity generation using the latest benefit-per-ton estimates for that sector from the EPA's Benefits Mapping and Analysis

[69] For example, the February 2021 TSD discusses how the understanding of discounting approaches suggests that discount rates appropriate for intergenerational analysis in the context of climate change may be lower than 3 percent.

Program.[70] DOE used EPA's values for $PM_{2.5}$-related benefits associated with NO_X and SO_2 and for ozone-related benefits associated with NO_X for 2025 2030, and 2040, calculated with discount rates of 3 percent and 7 percent. DOE used linear interpolation to define values for the years not given in the 2025 to 2040 period; for years beyond 2040 the values are held constant. DOE derived values specific to the sector for refrigerators, refrigerator-freezers, and freezers using a method described in appendix 14B of the NOPR TSD.

DOE multiplied the site emissions reduction (in tons) in each year by the associated $/ton values, and then discounted each series using discount rates of 3 percent and 7 percent as appropriate.

M. Utility Impact Analysis

The utility impact analysis estimates the changes in installed electrical capacity and generation projected to result for each considered TSL. The analysis is based on published output from the NEMS associated with *AEO2022.* NEMS produces the *AEO* reference case, as well as a number of side cases that estimate the economy-wide impacts of changes to energy supply and demand. For the current analysis, impacts are quantified by comparing the levels of electricity sector generation, installed capacity, fuel consumption and emissions in the *AEO2022* Reference case and various side cases. Details of the methodology are provided in the appendices to chapters 13 and 15 of the NOPR TSD.

The output of this analysis is a set of time-dependent coefficients that capture the change in electricity generation, primary fuel consumption, installed capacity and power sector emissions due to a unit reduction in demand for a given end use. These coefficients are multiplied by the stream of electricity savings calculated in the NIA to provide estimates of selected utility impacts of potential new or amended energy conservation standards.

N. Employment Impact Analysis

DOE considers employment impacts in the domestic economy as one factor in selecting a proposed standard. Employment impacts from new or amended energy conservation standards include both direct and indirect impacts. Direct employment impacts are any changes in the number of employees of manufacturers of the products subject to standards, their suppliers, and related service firms. The MIA addresses those impacts. Indirect employment impacts are changes in national employment that occur due to the shift in expenditures and capital investment caused by the purchase and operation of more efficient appliances. Indirect employment impacts from standards consist of the net jobs created or eliminated in the national economy, other than in the manufacturing sector being regulated, caused by (1) reduced spending by consumers on energy, (2) reduced spending on new energy supply by the utility industry, (3) increased consumer spending on the products to which the new standards apply and other goods and services, and (4) the effects of those three factors throughout the economy.

One method for assessing the possible effects on the demand for labor of such shifts in economic activity is to compare sector employment statistics developed by the Labor Department's Bureau of Labor Statistics (''BLS''). BLS regularly publishes its estimates of the number of jobs per million dollars of economic activity in different sectors of the economy, as well as the jobs created elsewhere in the economy by this same economic activity. Data from BLS indicate that expenditures in the utility sector generally create fewer jobs (both directly and indirectly) than expenditures in other sectors of the economy.[71] There are many reasons for these differences, including wage differences and the fact that the utility sector is more capital-intensive and less labor intensive than other sectors. Energy conservation standards have the effect of reducing consumer utility bills. Because reduced consumer expenditures for energy likely lead to increased expenditures in other sectors of the economy, the general effect of efficiency standards is to shift economic activity from a less labor-intensive sector (*i.e.,* the utility sector) to more labor-intensive sectors (*e.g.,* the retail and service sectors). Thus, the BLS data suggest that net national employment may increase due to shifts in economic activity resulting from energy conservation standards.

DOE estimated indirect national employment impacts for the standard levels considered in this NOPR using an input/output model of the U.S. economy called Impact of Sector Energy Technologies version 4 (''ImSET'').[72] ImSET is a special-purpose version of the ''U.S. Benchmark National Input-Output'' (''I–O'') model, which was designed to estimate the national employment and income effects of energy saving technologies. The ImSET software includes a computer-based I–O model having structural coefficients that characterize economic flows among 187 sectors most relevant to industrial, commercial, and residential building energy use.

DOE notes that ImSET is not a general equilibrium forecasting model, and that the uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Because ImSET does not incorporate price changes, the employment effects predicted by ImSET may overestimate actual job impacts over the long run for this rule. Therefore, DOE used ImSET only to generate results for near-term timeframes (2027–2031), where these uncertainties are reduced. For more details on the employment impact analysis, see chapter 16 of the NOPR TSD.

V. Analytical Results and Conclusions

The following section addresses the results from DOE's analyses with respect to the considered energy conservation standards for refrigerators, refrigerator-freezers, and freezers. It addresses the TSLs examined by DOE, the projected impacts of each of these levels if adopted as energy conservation standards for refrigerators, refrigerator-freezers, and freezers, and the standards levels that DOE is proposing to adopt in this NOPR. Additional details regarding DOE's analyses are contained in the NOPR TSD supporting this document.

A. Trial Standard Levels

In general, DOE typically evaluates potential amended standards for products and equipment by grouping individual efficiency levels for each class into TSLs. Use of TSLs allows DOE to identify and consider manufacturer cost interactions between the product classes, to the extent that there are such interactions, and market cross elasticity from consumer purchasing decisions that may change when different standard levels are set.

In the analysis conducted for this NOPR, DOE analyzed the benefits and burdens of six TSLs for refrigerators, refrigerator-freezers, and freezers. DOE

[70] *Estimating the Benefit per Ton of Reducing $PM_{2.5}$ Precursors from 21 Sectors. www.epa.gov/benmap/estimating-benefit-ton-reducing-pm25-precursors-21-sectors.*

[71] *See* U.S. Department of Commerce–Bureau of Economic Analysis. *Regional Multipliers: A User Handbook for the Regional Input-Output Modeling System (RIMS II).* 1997. U.S. Government Printing Office: Washington, DC. Available at *www.bea.gov/scb/pdf/regional/perinc/meth/rims2.pdf* (last accessed July 26, 2022).

[72] Livingston, O.V., S.R. Bender, M.J. Scott, and R.W. Schultz. *ImSET 4.0: Impact of Sector Energy Technologies Model Description and User Guide.* 2015. Pacific Northwest National Laboratory: Richland, WA. PNNL–24563.

developed TSLs that combine efficiency levels for each analyzed product class. These TSLs were developed by combining specific efficiency levels for each of the refrigerator, refrigerator-freezer, and freezer product classes analyzed by DOE. TSL 1 represents a modest increase in efficiency, corresponding to the lowest analyzed efficiency level above the baseline for each analyzed product class. TSL 2 represents an increase in efficiency of 10% across the product classes analyzed, consistent with ENERGY STAR® requirements, except for product class 10, for which a majority of consumers would experience a net cost at all considered ELs. Efficiency improvements for product class 10 were considered only for TSL 1 and max-tech TSL 6. TSL 3 increases the stringency for product classes 5, 5A, 7, 11A, and 18 and increases NES while keeping economic impacts on consumers relatively modest. TSL 4 increases the proposed standard level for product classes 3 and 5A, as well as the expected NES, while average LCC savings are positive for every product class. TSL 5 increases the proposed standard level for product class 7, as well as the expected NES, while average LCC savings remain positive for every product class. TSL 6 represents max-tech. DOE presents the results for the TSLs in this document, while the results for all efficiency levels that DOE analyzed are in the NOPR TSD.

Table V.1 presents the TSLs and the corresponding efficiency levels that DOE has identified for potential amended energy conservation standards for refrigerators, refrigerator-freezers, and freezers.

TABLE V.1—TRIAL STANDARD LEVELS FOR REFRIGERATORS, REFRIGERATOR-FREEZERS, AND FREEZERS

	PC 3	PC 5	PC 5–BI	PC 5A	PC 7	PC 9	PC 10	PC 11A	PC 17	PC 18
TSL 1	EL 1	EL 1	EL 1	EL 1	EL 1	EL 1	EL 1	EL 1	EL 1	EL 1.
TSL 2	EL 2	EL 1	EL 1	EL 1	EL 2	EL 1	EL 0*	EL 1	EL 1	EL 1.
TSL 3	EL 2	EL 2	EL 1	EL 2	EL 3	EL 1	EL 0*	EL 2	EL 1	EL 2.
TSL 4	EL 3	EL 2	EL 1	EL 3	EL 3	EL 1	EL 0*	EL 2	EL 1	EL 2.
TSL 5	EL 3	EL 2	EL 1	EL 3	EL 4	EL 1	EL 0*	EL 2	EL 1	EL 2.
TSL 6	EL 5	EL 4	EL 3	EL 3	EL 5	EL 4	EL 4	EL 4	EL 3	EL 4.

*DOE did not consider efficiency levels above baseline for PC 10 for TSLs 2–5.

Table V.2 shows the design options determined to be required for representative products of each analyzed class as a function of the TSLs.

TABLE V.2—DESIGN OPTIONS ADDED AS COMPARED TO BASELINE BY TRIAL STANDARD LEVELS

Product class	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
PC 3	Higher-EER Compressor.	Variable Defrost; Higher-EER Compressor		Variable-speed compressor system		VIP side walls and doors.
PC 5	BLDC Evaporator Fan Motor; Variable-speed compressor system or higher-efficiency compressor		Highest-EER Variable-speed Compressor; some use of VIPs			VIP side walls and doors.
PC 5–BI	Variable-speed compressor system; 43% of Max-tech VIP					VIP side walls and doors.
PC 5A	Variable-speed compressor system		Highest-EER Variable-speed Compressor; 42% of Max-tech VIP.	VIP side walls and doors.		
PC 7	Highest-EER Compressor.	BLDC Evaporator Fan Motor; Variable-speed compressor system.	38% of Max-tech VIP		Highest-EER Variable-speed Compressor; 75% of Max-tech VIP.	VIP side walls and doors.
PC 9	Highest-EER Compressor; Switch to forced-convection condenser; BLDC fans					VIP side walls and door; Highest-EER Variable-speed compressor system.
PC 10	Variable-speed compressor system.	N/A				Wall thickness increase; VIP door; Variable-speed compressor system.
PC 11A	Higher-EER Compressor		Wall thickness increase			Variable Speed Compressor System; VIP side walls and door.
PC 17	Highest-EER Variable Speed Compressor System; Variable Defrost					VIP side walls and door panels.
PC 18	Higher-EER Compressor; Variable Defrost		Wall thickness increase			Variable Speed Compressor System; VIP door.

Note: Design options are cumulative (*i.e.,* added as TSL's increase), except for PC 10, for which the efficiency level is baseline for TSL's 2 through 5.

B. Economic Justification and Energy Savings

1. Economic Impacts on Individual Consumers

DOE analyzed the economic impacts on refrigerator, refrigerator-freezer, and freezer consumers by looking at the effects that potential amended standards at each TSL would have on the LCC and PBP. DOE also examined the impacts of potential standards on selected consumer subgroups. These analyses are discussed in the following sections.

a. Life-Cycle Cost and Payback Period

In general, higher-efficiency products affect consumers in two ways: (1) purchase price increases and (2) annual operating costs decrease. Inputs used for calculating the LCC and PBP include total installed costs and operating costs (*i.e.,* annual energy use, energy prices, energy price trends, and repair costs). The LCC calculation also uses product lifetime and a discount rate. Chapter 8 of the NOPR TSD provides detailed information on the LCC and PBP analyses.

Table V.3 through Table V.22 show the LCC and PBP results for the TSLs considered for each product class. In the first of each pair of tables, the simple payback is measured relative to the baseline product. In the second table, impacts are measured relative to the efficiency distribution in the no-new-standards case in the compliance year (see section IV.F.9 of this document). Because some consumers purchase products with higher efficiency in the no-new-standards case, the average savings are less than the difference between the average LCC of the baseline product and the average LCC at each TSL. The savings refer only to consumers who are affected by a standard at a given TSL. Those who already purchase a product with efficiency at or above a given TSL are not affected. Consumers for whom the LCC increases at a given TSL experience a net cost.

TABLE V.3—AVERAGE LCC AND PBP RESULTS FOR PRODUCT CLASS 3

TSL	Efficiency level	Average costs (2021$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Baseline	919.87	66.62	934.76	1,854.63	.....	14.8
1	1	924.28	63.47	899.27	1,823.55	1.4	14.8
2–3	2	945.28	60.33	866.82	1,812.10	4.0	14.8
4–5	3	969.73	57.18	835.00	1,804.74	5.3	14.8
	4	1,017.85	54.04	807.53	1,825.38	7.8	14.8
6	5	1,071.89	49.13	760.78	1,832.67	8.7	14.8

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V.4—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR PRODUCT CLASS 3

TSL	Efficiency level	Life-Cycle cost savings	
		Average LCC savings* (2021$)	Percent of consumers that experience net cost
1	1	32.16	2.2
2–3	2	42.18	10.8
4–5	3	36.04	36.2
	4	15.40	59.7
6	5	8.09	63.6

* The savings represent the average LCC for affected consumers.

TABLE V.5—AVERAGE LCC AND PBP RESULTS FOR PRODUCT CLASS 5

TSL	Efficiency level	Average Costs (2021$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Baseline	1,347.67	103.18	1,449.02	2,796.70	.....	14.8
1–2	1	1,379.42	95.90	1,370.03	2,749.46	4.4	14.8
3–5	2	1,403.48	91.60	1,324.36	2,727.83	4.8	14.8
	3	1,458.23	87.29	1,284.39	2,742.62	7.0	14.8
6	4	1,485.38	85.31	1,266.25	2,751.63	7.7	14.8

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V.6—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR PRODUCT CLASS 5

TSL	Efficiency level	Life-Cycle cost savings	
		Average LCC savings*(2021$)	Percent of consumers that experience net cost
1–2	1	47.15	8.9
3–5	2	49.73	23.4
	3	28.47	52.2
6	4	19.14	58.3

*The savings represent the average LCC for affected consumers.

TABLE V.7—AVERAGE LCC AND PBP RESULTS FOR PRODUCT CLASS 5BI

TSL	Efficiency level	Average costs (2021$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Baseline	1,775.38	106.96	1,572.50	3,347.88	.....	14.8
1–5	1	1,822.41	98.71	1,485.14	3,307.54	5.7	14.8
	2	1,873.04	93.56	1,434.47	3,307.52	7.3	14.8
6	3	1,880.13	92.53	1,423.78	3,303.91	7.3	14.8

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V.8—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR PRODUCT CLASS 5BI

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings*(2021$)	Percent of consumers that experience net cost
1–5	1	39.94	10.1
	2	15.40	45.4
6	3	18.97	43.9

*The savings represent the average LCC for affected consumers.

TABLE V.9—AVERAGE LCC AND PBP RESULTS FOR PRODUCT CLASS 5A

TSL	Efficiency level	Average Costs*2021$*				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Baseline	1,533.04	122.16	1,704.73	3,237.77	.....	14.8
1–2	1	1,557.91	109.72	1,564.48	3,122.39	2.0	14.8
3	2	1,610.23	103.62	1,503.13	3,113.37	4.2	14.8
4–6	3	1,675.39	97.40	1,442.83	3,118.22	5.7	14.8

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V.10—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR PRODUCT CLASS 5A

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings*(2021$)	Percent of consumers that experience net cost
1–2	1	115.32	1.0
3	2	121.98	16.6
4–6	3	115.76	33.2

*The savings represent the average LCC for affected consumers.

TABLE V.11—AVERAGE LCC AND PBP RESULTS FOR PRODUCT CLASS 7

TSL	Efficiency level	Average costs (2021$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Baseline	1,324.08	106.37	1,464.94	2,789.02	.....	14.8
1	1	1,327.60	101.34	1,407.81	2,735.42	0.7	14.8
2	2	1,350.17	96.31	1,354.21	2,704.37	2.6	14.8
3–4	3	1,382.07	91.28	1,302.32	2,684.40	3.8	14.8
5	4	1,424.36	86.25	1,252.36	2,676.72	5.0	14.8
6	5	1,449.23	84.24	1,233.84	2,683.07	5.7	14.8

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V.12—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR PRODUCT CLASS 7

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings* (2021$)	Percent of consumers that experience net cost
1	1	53.56	0.0
2	2	78.56	5.1
3–4	3	95.26	15.8
5	4	101.33	28.5
6	5	94.68	35.7

* The savings represent the average LCC for affected consumers.

TABLE V.13—AVERAGE LCC AND PBP RESULTS FOR PRODUCT CLASS 9

TSL	Efficiency level	Average costs (2021$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Baseline	976.09	70.94	1,148.82	2,124.90	.....	20.6
1–5	1	1,002.24	64.25	1,052.68	2,054.91	3.9	20.6
	2	1,044.75	60.90	1,007.73	2,052.48	6.8	20.6
	3	1,081.93	57.56	962.22	2,044.15	7.9	20.6
6	4	1,126.10	54.21	917.45	2,043.56	9.0	20.6

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V.14—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR PRODUCT CLASS 9

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings*(2021$)	Percent of consumers that experience net cost
1–5	1	69.26	10.5
	2	55.78	40.7
	3	63.68	45.6
6	4	63.71	51.1

* The savings represent the average LCC for affected consumers.

TABLE V.15—AVERAGE LCC AND PBP RESULTS FOR PRODUCT CLASS 10

TSL	Efficiency level	Average costs (2021$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Baseline	1,030.90	41.71	714.28	1,745.18	.....	20.6
1	1	1,071.75	37.89	663.11	1,734.85	10.7	20.6
	2	1,109.39	35.98	639.34	1,748.73	13.7	20.6
	3	1,112.40	34.07	611.91	1,724.32	10.7	20.6

TABLE V.15—AVERAGE LCC AND PBP RESULTS FOR PRODUCT CLASS 10—Continued

TSL	Efficiency level	Average costs (2021$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
6	4	1,148.80	29.86	554.72	1,703.51	10.0	20.6

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V.16—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR PRODUCT CLASS 10

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings* (2021$)	Percent of consumers that experience net cost
1	1	10.20	52.7
	2	−4.30	68.5
	3	20.11	55.8
6	4	40.91	52.1

* The savings represent the average LCC for affected consumers.

TABLE V.17—AVERAGE LCC AND PBP RESULTS FOR PRODUCT CLASS 11A

TSL	Efficiency level	Average costs (2021$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
Residential							
	Baseline	354.75	35.30	255.84	610.59	.....	7.7
1–2	1	361.59	31.95	233.59	595.18	2.0	7.7
3–5	2	365.13	30.27	222.50	587.62	2.1	7.7
	3	394.05	28.59	212.60	606.65	5.9	7.7
6	4	413.92	24.74	187.62	601.54	5.6	7.7
Commercial							
	Baseline	354.64	25.05	165.33	519.97	.....	7.7
1–2	1	361.48	22.90	152.77	514.25	3.2	7.7
3–5	2	365.01	21.82	146.51	511.53	3.2	7.7
	3	393.93	20.74	141.33	535.26	9.1	7.7
6	4	413.79	18.26	127.42	541.21	8.7	7.7

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V.18—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR PRODUCT CLASS 11A

TSL	Efficiency Level	Life-cycle cost savings	
		Average LCC savings* (2021$)	Percent of consumers that experience net cost
Residential			
1–2	1	16.78	0.7
3–5	2	9.97	8.3
	3	−9.08	60.9
6	4	−3.35	50.9
Commercial			
1–2	1	6.97	1.6
3–5	2	3.42	17.2
	3	−19.90	75.0
6	4	−23.47	73.2

* The savings represent the average LCC for affected consumers.

TABLE V.19—AVERAGE LCC AND PBP RESULTS FOR PRODUCT CLASS 17

TSL	Efficiency level	Average costs (2021$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Baseline	424.76	65.71	646.11	1,070.86	.....	10.7
1–5	1	457.41	59.21	592.27	1,049.68	5.0	10.7
	2	489.85	55.95	567.53	1,057.38	6.7	10.7
6	3	522.28	52.69	542.79	1,065.08	7.5	10.7

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V.20—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR PRODUCT CLASS 17

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings* (2021$)	Percent of consumers that experience net cost
1–5	1	21.90	12.3
	2	2.41	50.9
6	3	−5.74	66.3

* The savings represent the average LCC for affected consumers.

TABLE V.21—AVERAGE LCC AND PBP RESULTS FOR PRODUCT CLASS 18

TSL	Efficiency level	Average costs (2021$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Baseline	399.82	31.49	303.92	703.74	.....	10.7
1–2	1	403.79	28.55	278.34	682.13	1.3	10.7
3–5	2	418.21	27.08	266.48	684.69	4.2	10.7
	3	438.60	25.61	254.91	693.51	6.6	10.7
6	4	479.02	22.71	232.22	711.24	9.0	10.7

Note: The results for each TSL are calculated assuming that all consumers use products at that efficiency level. The PBP is measured relative to the baseline product.

TABLE V.22—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR PRODUCT CLASS 18

TSL	Efficiency level	Life-cycle cost savings	
		Average LCC savings* (2021$)	Percent of consumers that experience net cost
1–2	1	21.57	0.6
3–5	2	17.59	21.8
	3	8.76	48.2
6	4	-9.06	69.9

* The savings represent the average LCC for affected consumers.

b. Consumer Subgroup Analysis

In the consumer subgroup analysis, DOE estimated the impact of the considered TSLs on low-income households. Table V.23 compares the average LCC savings and PBP at each trial standard level for the low-income consumer subgroup with similar metrics for the entire consumer sample for product classes 3, 7, 9, and 10 (see section IV.I of this document for an explanation of why other product classes are excluded). Table V.24 provides a similar comparison for product class 11A for the small business subgroup. In most cases, the average LCC savings and PBP for low-income households at the considered efficiency levels are improved (*i.e.,* higher LCC savings and lower payback period) from the average for all households. The LCC savings and payback period results for the small business subgroup for product class 11A are similar to those for all businesses. Chapter 11 of the NOPR TSD presents the complete LCC and PBP results for the subgroups.

TABLE V.23—COMPARISON OF LCC SAVINGS AND PBP FOR LOW-INCOME CONSUMER SUBGROUP AND ALL CONSUMERS

TSL	Average LCC savings* (2021$)		Simple payback (years)	
	Low-income households	All households	Low-income households	All households
Product Class 3:				
1	34.97	32.16	0.6	1.4
2–3	61.49	42.18	1.6	4.0
4–5	69.19	36.04	2.1	5.3
6	125.31	8.09	3.4	8.7
Product Class 7:				
1	55.46	53.56	0.5	0.7
2	88.12	78.56	1.9	2.6
3–4	115.06	95.26	2.8	3.8
5	134.54	101.33	3.7	5.0
6	135.73	94.68	4.2	5.7
Product Class 9:				
1–5	79.17	69.26	2.7	3.9
6	116.06	63.71	6.2	9.0
Product Class 10:				
1	27.22	10.20	6.9	10.7
2–5	N/A	N/A	N/A	N/A
6	88.95	40.91	6.4	10.0

*The savings represent the average LCC for affected consumers.

TABLE V.24—COMPARISON OF LCC SAVINGS AND PBP FOR SMALL BUSINESS CONSUMER SUBGROUP AND ALL CONSUMERS

TSL	Average LCC savings* (2021$)		Simple payback (years)	
	Small businesses	All businesses	Small businesses	All businesses
Product Class 11A:				
1–2	6.13	6.97	3.1	3.2
3–5	2.86	3.42	3.2	3.2
6	−25.12	−23.47	8.6	8.7

c. Rebuttable Presumption Payback

As discussed in section IV.F.10 of this document, EPCA establishes a rebuttable presumption that an energy conservation standard is economically justified if the increased purchase cost for a product that meets the standard is less than three times the value of the first-year energy savings resulting from the standard. In calculating a rebuttable presumption payback period for each of the considered TSLs, DOE used discrete values, and, as required by EPCA, based the energy use calculation on the DOE test procedure for refrigerators, refrigerator-freezers, and freezers. In contrast, the PBPs presented in section V.B.1.a of this document were calculated using distributions that reflect the range of energy use in the field.

Table V.25 presents the rebuttable-presumption payback periods for the considered TSLs for refrigerators, refrigerator-freezers, and freezers. While DOE examined the rebuttable-presumption criterion, it considered whether the standard levels considered for the NOPR are economically justified through a more detailed analysis of the economic impacts of those levels, pursuant to 42 U.S.C. 6295(o)(2)(B)(i), that considers the full range of impacts to the consumer, manufacturer, Nation, and environment. The results of that analysis serve as the basis for DOE to definitively evaluate the economic justification for a potential standard level, thereby supporting or rebutting the results of any preliminary determination of economic justification.

TABLE V.25—REBUTTABLE-PRESUMPTION PAYBACK PERIODS

Efficiency level	Rebuttable payback period (years)										
	PC 3	PC 5	PC 5BI	PC 5A	PC 7	PC 9	PC 10	PC 11A (res)	PC 11A (com)	PC 17	PC 18
1	1.6	5.0	6.5	2.3	0.8	3.9	10.6	2.0	3.0	4.8	1.3
2	4.6	5.5	8.3	4.7	3.0	6.7	13.5	2.0	3.0	6.4	4.1
3	6.0	7.9	8.3	6.5	4.5	7.8	10.6	5.7	8.5	7.2	6.4
4	8.8	8.8	.....	.....	5.8	8.8	9.9	5.5	8.2	.....	8.8
5	9.8	.....	6.3	.....	.....	.....	.....	.....	.....	.....	.....

2. Economic Impacts on Manufacturers

DOE performed an MIA to estimate the impact of amended energy conservation standards on manufacturers of refrigerators, refrigerator-freezers, and freezers. The following section describes the expected impacts on manufacturers at each considered TSL. Chapter 12 of the

NOPR TSD explains the analysis in further detail.

a. Industry Cash Flow Analysis Results

In this section, DOE provides GRIM results from the analysis, which examines changes in the industry that would result from a standard. The following tables summarize the estimated financial impacts (represented by changes in INPV) of potential amended energy conservation standards on manufacturers of refrigerators, refrigerator-freezers, and freezers, as well as the conversion costs that DOE estimates manufacturers of refrigerators, refrigerator-freezers, and freezers would incur at each TSL.

The impact of potential amended energy conservation standards was analyzed under two scenarios: (1) the preservation of gross margin percentage; and (2) the preservation of operating profit, as discussed in section IV.J.2.d of this document. The preservation of gross margin percentages applies a ''gross margin percentage'' of 21 percent for all freestanding product classes and 29 percent for all built-in product classes, across all efficiency levels.[73] This scenario assumes that a manufacturer's per-unit dollar profit would increase as MPCs increase in the standards cases and represents the upper-bound to industry profitability under potential new and amended energy conservation standards.

The preservation of operating profit scenario reflects manufacturers' concerns about their inability to maintain margins as MPCs increase to reach more stringent efficiency levels. In this scenario, while manufacturers make the necessary investments required to convert their facilities to produce compliant products, operating profit does not change in absolute dollars and decreases as a percentage of revenue. The preservation of operating profit scenario results in the lower (or more severe) bound to impacts of potential amended standards on industry.

Each of the modeled scenarios results in a unique set of cash flows and corresponding INPV for each TSL. INPV is the sum of the discounted cash flows to the industry from the base year through the end of the analysis period (2023–2056). The ''change in INPV'' results refer to the difference in industry value between the no-new-standards case and standards case at each TSL. To provide perspective on the short-run cash flow impact, DOE includes a comparison of free cash flow between the no-new-standards case and the standards case at each TSL in the year before amended standards would take effect. This figure provides an understanding of the magnitude of the required conversion costs relative to the cash flow generated by the industry in the no-new-standards case.

Conversion costs are one-time investments for manufacturers to bring their manufacturing facilities and product designs into compliance with potential amended standards. As described in section IV.J.2.c of this document, conversion cost investments occur between the year of publication of the final rule and the year by which manufacturers must comply with the new standard. The conversion costs can have a significant impact on the short-term cash flow on the industry and generally result in lower free cash flow in the period between the publication of the final rule and the compliance date of potential amended standards. Conversion costs are independent of the manufacturer markup scenarios and are not presented as a range in this analysis.

TABLE V.26—MANUFACTURER IMPACT ANALYSIS RESULTS FOR REFRIGERATORS, REFRIGERATOR-FREEZERS, AND FREEZERS

	Unit	No-new-standards case	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
INPV	*2021$ Million*	4,966.4	4,908.2 to 4,944.5.	4,867.7 to 4,920.2.	4,475.6 to 4,619.8.	4,366.5 to 4,554.0.	3,965.2 to 4,173.5.	3,255.9 to 3,688.2.
Change in INPV	%		(1.2) to (0.4)	(2.0) to (0.9)	(9.9) to (7.0)	(12.1) to (8.3)	(20.2) to (16.0).	(34.4) to (25.7).
Free Cash Flow (2026)	*2021$ Million*	428.7	401.2	380.4	167.9	110.1	(118.7)	(509.7).
Change in Free Cash Flow (2026).	%		(6.4)	(11.3)	(60.8)	(74.3)	(127.7)	(218.9).
Conversion Costs	*2021$ Million*		77.8	135.7	653.1	793.0	1,323.6	2,251.7.

* Parentheses denote negative (-) values.

The following cash flow discussion refers to product classes as defined in Table I.1 in section I of this document and the efficiency levels and design options as detailed in Table IV.5 through Table IV.7 in section IV.C.3 of this document.

At TSL 1, the standard represents a modest increase in efficiency, corresponding to the lowest analyzed efficiency level above the baseline for each analyzed product class. The change in INPV is expected to range from –1.2 to –0.4 percent. At this level, free cash flow is estimated to decrease by 6.4 percent compared to the no-new-standards case value of $428.7 million in the year 2026, the year before the standards year.[74] Currently, approximately 36 percent of domestic refrigerator, refrigerator-freezer, and freezer shipments meet the efficiencies required at TSL 1.

The design options DOE analyzed included implementing more efficient single-speed compressors, among other design options, for most of the directly analyzed product classes. For product classes 5A, 5–BI, 10, and 17, the design options analyzed included implementing variable-speed compressors. Additionally, for product class 5–BI, DOE expects manufacturers would implement some VIPs (though DOE notes that 70 percent of PC 5–BI shipments already meet TSL 1). At this level, capital conversion costs are minimal since most manufacturers can achieve TSL 1 efficiencies with relatively minor component changes. Product conversion costs may be necessary for developing, qualifying, sourcing, and testing new components. DOE expects industry to incur some re-flooring costs as manufacturers redesign baseline products to meet the efficiency levels required by TSL 1. DOE estimates capital conversion costs of $10.2 million and product conversion costs of $67.6 million. Conversion costs total $77.8 million.

[73] The gross margin percentages of 21 percent and 29 percent are based on manufacturer markups of 1.26 and 1.40 percent, respectively.

[74] DOE estimates issuance of a final rule by the end of 2023. Therefore, for purposes of its analysis, DOE used 2027 as the first year of compliance with any amended standards for refrigerators, refrigerator-freezers, and freezers.

At TSL 1, the shipment-weighted average MPC for all refrigerators, refrigerator-freezers, and freezers is expected to increase by 1.2 percent relative to the no-new-standards case shipment-weighted average MPC for all refrigerators, refrigerator-freezers, and freezers in 2027. In the preservation of gross margin percentage scenario, the minor increase in cashflow from the higher MSP is slightly outweighed by the $77.8 million in conversion costs, causing a negligible change in INPV at TSL 1 under this scenario. Under the preservation of operating profit scenario, manufacturers earn the same per-unit operating profit as would be earned in the no-new-standards case, but manufacturers do not earn additional profit from their investments. In this scenario, the manufacturer markup decreases in 2028, the year after the analyzed compliance year. This reduction in the manufacturer markup and the $77.8 million in conversion costs incurred by manufacturers cause a slightly negative change in INPV at TSL 1 under the preservation of operating profit scenario.

At TSL 2, the standard represents an increase in efficiency of 10 percent across all analyzed product classes, consistent with ENERGY STAR® requirements, except for product class 10. The change in INPV is expected to range from –2.0 to –0.9 percent. At this level, free cash flow is estimated to decrease by 11.3 percent compared to the no-new-standards case value of $428.7 million in the year 2026, the year before the standards year. Currently, approximately 38 percent of domestic refrigerator, refrigerator-freezer, and freezer shipments meet the efficiencies required at TSL 2.

The design options DOE analyzed include implementing similar design options as TSL 1, such as more efficient compressors, brushless-DC (''BLDC'') fans, and variable defrost. For product classes 7, the design options analyzed included implementing variable-speed compressors. For product classes 3 and 7, TSL 2 corresponds to EL 2. For product class 10, TSL 2 corresponds to baseline efficiency. For the remaining product classes, the efficiencies required at TSL 2 are the same as TSL 1. The increase in conversion costs from the prior TSL is entirely due to the increased efficiencies required for product classes 3 and 7. Capital conversion costs may be necessary for updated tooling and additional stations to test more variable-speed compressors. Product conversion costs may be necessary for developing, qualifying, sourcing, and testing variable-speed compressors and associated electronics. DOE expects industry to incur slightly more re-flooring costs compared to TSL 1. DOE estimates capital conversion costs of $21.0 million and product conversion costs of $114.7 million. Conversion costs total $135.7 million.

At TSL 2, the shipment-weighted average MPC for all refrigerators, refrigerator-freezers, and freezers is expected to increase by 1.7 percent relative to the no-new-standards case shipment-weighted average MPC for all refrigerators, refrigerator-freezers, and freezers in 2027. In the preservation of gross margin percentage scenario, the slight increase in cashflow from the higher MSP is outweighed by the $135.7 million in conversion costs, causing a negative change in INPV at TSL 2 under this scenario. Under the preservation of operating profit scenario, the manufacturer markup decreases in 2028, the year after the analyzed compliance year. This reduction in the manufacturer markup and the $135.7 million in conversion costs incurred by manufacturers cause a negative change in INPV at TSL 2 under the preservation of operating profit scenario.

At TSL 3, the standard represents an increased stringency for product classes 5, 5A, 7, 11A, and 18 and increased NES while keeping economic impacts on consumers modest. The change in INPV is expected to range from –9.9 to –7.0 percent. At this level, free cash flow is estimated to decrease by 60.8 percent compared to the no-new-standards case value of $428.7 million in the year 2026, the year before the standards year. Currently, approximately 26 percent of domestic refrigerator, refrigerator-freezer, and freezer shipments meet the efficiencies required at TSL 1.

In addition to the design options DOE analyzed at TSL 2, the design options analyzed for product class 5 include implementing variable-speed compressors. Furthermore, for product classes 5A and 7, DOE expects manufacturers would also incorporate some VIPs. Additionally, for the compact-size product classes 11A and 18, DOE expects manufacturers may need to increase cabinet wall thickness. For product classes 5, 5A, 11A, and 18, TSL 3 corresponds to EL 2. For product class 7, TSL 3 corresponds to EL 3. For the remaining product classes, the efficiencies required at TSL 3 are the same as TSL 2. The increase in conversion costs from the prior TSL are driven by the efficiencies required for product classes 5A and 7, due to their large market share (together, these product classes account for approximately 21 percent of total shipments) and the design options required to meet this level. Capital conversion costs may be necessary for new tooling for VIP placement as well as new testing stations for high-efficiency components. Product conversion costs may be necessary for developing, qualifying, sourcing, and testing new components. For products implementing VIPs, product conversion costs may be necessary for prototyping and testing for VIP placement, design, and sizing. DOE expects industry to incur re-flooring costs as manufacturers redesign their products to meet the efficiency levels required by TSL 3. DOE estimates capital conversion costs of $356.5 million and product conversion costs of $296.7 million. Conversion costs total $653.1 million.

At TSL 3, the shipment-weighted average MPC for all refrigerators, refrigerator-freezers, and freezers is expected to increase by 4.5 percent relative to the no-new-standards case shipment-weighted average MPC for all refrigerators, refrigerator-freezers, and freezers in 2027. In the preservation of gross margin percentage scenario, the slight increase in cashflow from the higher MSP is outweighed by the $653.1 million in conversion costs, causing a negative change in INPV at TSL 3 under this scenario. Under the preservation of operating profit scenario, the manufacturer markup decreases in 2028, the year after the analyzed compliance year. This reduction in the manufacturer markup and the $653.1 million in conversion costs incurred by manufacturers cause a negative change in INPV at TSL 3 under the preservation of operating profit scenario.

At TSL 4, the standard represents an increased stringency for product classes 3 and 5A, as well as the expected NES, while maintaining positive average LCC savings for every analyzed product class. The change in INPV is expected to range from –12.1 to –8.3 percent. At this level, free cash flow is estimated to decrease by 74.3 percent compared to the no-new-standards case value of $428.7 million in the year 2026, the year before the standards year. Currently, approximately 18 percent of domestic refrigerator, refrigerator-freezer, and freezer shipments meet the efficiencies required at TSL 4.

In addition to the design options DOE analyzed at TSL 3, the design options analyzed for product class 3 include implementing variable-speed compressors. Furthermore, for product class 5A, DOE also expects manufacturers would incorporate VIPs on roughly half the cabinet surface (side walls and doors). For product classes 3 and 5A, TSL 4 corresponds to EL 3. For the remaining product classes, the efficiencies required at TSL 4 are the

same as TSL 3. At this level, the increase in conversion costs is entirely driven by the higher efficiency levels required for product classes 3 and 5A, which together account for approximately 35 percent of current industry shipments. Many manufacturers of these product classes would need to redesign their platforms to integrate variable-speed compressors and extensive VIPs. Some manufacturers noted the potential need to adopt thicker sidewalls in conjunction or as an alternative to VIP. DOE expects industry to incur more re-flooring costs compared to TSL 3. DOE estimates capital conversion costs of $450.5 million and product conversion costs of $342.5 million. Conversion costs total $793.0 million.

At TSL 4, the shipment-weighted average MPC for all refrigerator, refrigerator-freezers, and freezers is expected to increase by 5.9 percent relative to the no-new-standards case shipment-weighted average MPC for all refrigerators, refrigerator-freezers, and freezers in 2027. In the preservation of gross margin percentage scenario, the increase in cashflow from the higher MSP is outweighed by the $793.0 million in conversion costs, causing a negative change in INPV at TSL 4 under this scenario. Under the preservation of operating profit scenario, the manufacturer markup decreases in 2028, the year after the analyzed compliance year. This reduction in the manufacturer markup and the $793.0 million in conversion costs incurred by manufacturers cause a negative change in INPV at TSL 4 under the preservation of operating profit scenario.

At TSL 5, the standard represents the maximum NPV. The change in INPV is expected to range from –20.2 to –16.0 percent. At this level, free cash flow is estimated to decrease by 127.7 percent compared to the no-new-standards case value of $428.7 million in the year 2026, the year before the standards year. Currently, approximately 18 percent of domestic refrigerator, refrigerator-freezer, and freezer shipments meet the efficiencies required at TSL 5.

In addition to the design options DOE analyzed at TSL 4, the design options analyzed for product class 7 include implementing VIPs on roughly half the cabinet surface (side walls and doors). For product class 7, TSL 5 corresponds to EL 4. For the remaining product classes, the efficiencies required at TSL 5 are the same as TSL 4. The increase in conversion costs compared to the prior TSL is entirely driven by the higher efficiency level required for product class 7, which likely necessitates incorporating VIPs on roughly half the cabinet surface (side walls and doors). In interviews, some manufacturers stated that their existing product class 7 platforms cannot reach this efficiency level and would require a platform redesign, which would likely mean new cases, liners, and fixtures. DOE expects slightly more re-flooring costs compared to the prior TSL as manufacturers redesign products to meet the required efficiencies. DOE estimates capital conversion costs of $891.2 million and product conversion costs of $432.4 million. Conversion costs total $1.32 billion.

At TSL 5, the large conversion costs result in a free cash flow dropping below zero in the years before the standards year. The increase in conversion costs at TSL 5 compared to TSL 4 is associated with implementing more VIPs into product class 7 designs. The negative free cash flow calculation indicates manufacturers may need to access cash reserves or outside capital to finance conversion efforts.

At TSL 5, the shipment-weighted average MPC for all refrigerators, refrigerator-freezers, and freezers is expected to increase by 6.5 percent relative to the no-new-standards case shipment-weighted average MPC for all refrigerators, refrigerator-freezers, and freezers in 2027. In the preservation of gross margin percentage scenario, the increase in cashflow from the higher MSP is outweighed by the $1.32 billion in conversion costs, causing a negative change in INPV at TSL 5 under this scenario. Under the preservation of operating profit scenario, the manufacturer markup decreases in 2028, the year after the analyzed compliance year. This reduction in the manufacturer markup and the $1.32 billion in conversion costs incurred by manufacturers cause a notable decrease in INPV at TSL 5 under the preservation of operating profit scenario.

At TSL 6, the standard reflects max-tech for all product classes. The change in INPV is expected to range from –34.4 to –25.7 percent. At this level, free cash flow is estimated to decrease by 218.9 percent compared to the no-new-standards case value of $428.7 million in the year 2026, the year before the standards year. Currently, approximately 1 percent of domestic refrigerator, refrigerator-freezer, and freezer shipments meet the efficiencies required at TSL 6.

At max-tech levels, manufacturers would likely need to implement VIPs for roughly half the cabinet surface (typically side walls and doors for an upright cabinet), the best-available-efficiency variable-speed compressor, forced-convection heat exchangers with multi-speed BLDC fans, variable defrost, and increase in cabinet wall thickness for some classes (*e.g.,* compact refrigerators and both standard-size and compact chest freezers). At TSL 6, only a few manufacturers offer any products that meet the efficiencies required. For PC 3, which accounts for approximately 25 percent of annual shipments, no OEMs currently offer products that meet the efficiency level required. For PC 5, which accounts for approximately 21 percent of annual shipments, DOE estimates that only one out of 23 OEMs currently offers products that meet the efficiency level required. For PC 7, which accounts for approximately 11 percent of annual shipments, only one out of the 11 OEMs currently offers products that meet the efficiency level required.

The efficiencies required by TSL 6 could require a major renovation of existing facilities and completely new refrigerator, refrigerator-freezer, and freezer platforms for many OEMs. In interviews, some manufacturers stated that they are physically constrained at their current production location and would therefore need to expand their existing production facility or move to an entirely new facility. These manufacturers stated that their current manufacturing locations are at capacity and cannot accommodate the additional labor required to implement VIPs. DOE expects industry to incur more re-flooring costs compared to TSL 5 as all display models below max-tech efficiency would need to be replaced due the more stringent standard. DOE estimates capital conversion costs of $1.58 billion and product conversion costs of $670.6 million. Conversion costs total $2.25 billion.

At TSL 6, the large conversion costs result in a free cash flow dropping below zero in the years before the standards year. The negative free cash flow calculation indicates manufacturers may need to access cash reserves or outside capital to finance conversion efforts.

At TSL 6, the shipment-weighted average MPC for all refrigerators, refrigerator-freezers, and freezers is expected to increase by 13.7 percent relative to the no-new-standards case shipment-weighted average MPC for all refrigerators, refrigerator-freezers, and freezers in 2027. In the preservation of gross margin percentage scenario, the increase in cashflow from the higher MSP is outweighed by the $2.25 billion in conversion costs, causing a large negative change in INPV at TSL 6 under this scenario. Under the preservation of operating profit scenario, the manufacturer markup decreases in 2028,

the year after the analyzed compliance year. This reduction in the manufacturer markup and the $2.25 billion in conversion costs incurred by manufacturers cause a significant decrease in INPV at TSL 6 under the preservation of operating profit scenario.

DOE seeks comments, information, and data on the capital conversion costs and product conversion costs estimated for each TSL.

b. Direct Impacts on Employment

To quantitatively assess the potential impacts of amended energy conservation standards on direct employment in the refrigerator, refrigerator-freezer, and freezer industry, DOE used the GRIM to estimate the domestic labor expenditures and number of direct employees in the no-new-standards case and in each of the standards cases during the analysis period. DOE calculated these values using statistical data from the 2020 *ASM,*[75] BLS employee compensation data,[76] results of the engineering analysis, and manufacturer interviews.

Labor expenditures related to product manufacturing depend on the labor intensity of the product, the sales volume, and an assumption that wages remain fixed in real terms over time. The total labor expenditures in each year are calculated by multiplying the total MPCs by the labor percentage of MPCs. The total labor expenditures in the GRIM were then converted to total production employment levels by dividing production labor expenditures by the average fully burdened wage multiplied by the average number of hours worked per year per production worker. To do this, DOE relied on the *ASM* inputs: Production Workers Annual Wages, Production Workers Annual Hours, Production Workers for Pay Period, and Number of Employees. DOE also relied on the BLS employee compensation data to determine the fully burdened wage ratio. The fully burdened wage ratio factors in paid leave, supplemental pay, insurance, retirement and savings, and legally required benefits.

The number of production employees is then multiplied by the U.S. labor percentage to convert total production employment to total domestic production employment. The U.S. labor percentage represents the industry fraction of domestic manufacturing production capacity for the covered product. This value is derived from manufacturer interviews, product database analysis, and publicly available information. DOE estimates that 28 percent of refrigerators, refrigerator-freezers, and freezers are produced domestically.

The domestic production employees estimate covers production line workers, including line supervisors, who are directly involved in fabricating and assembling products within the OEM facility. Workers performing services that are closely associated with production operations, such as materials handling tasks using forklifts, are also included as production labor. DOE's estimates only account for production workers who manufacture the specific products covered by this proposed rulemaking.

Non-production workers account for the remainder of the direct employment figure. The non-production employees estimate covers domestic workers who are not directly involved in the production process, such as sales, engineering, human resources, and management. Using the amount of domestic production workers calculated above, non-production domestic employees are extrapolated by multiplying the ratio of non-production workers in the industry compared to production employees. DOE assumes that this employee distribution ratio remains constant between the no-new-standards case and standards cases.

Using the GRIM, DOE estimates in the absence of new energy conservation standards there would be 6,515 domestic workers for refrigerators, refrigerator-freezers, and freezers in 2027. Table V.27 shows the range of the impacts of energy conservation standards on U.S. manufacturing employment in the refrigerator, refrigerator-freezer, and freezer industry. The following discussion provides a qualitative evaluation of the range of potential impacts presented in Table V.27.

TABLE V.27—DOMESTIC DIRECT EMPLOYMENT IMPACTS FOR REFRIGERATOR, REFRIGERATOR-FREEZER, AND FREEZER MANUFACTURERS IN 2027

	No-new-standards case	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
Direct Employment in 2027 (Production Workers + Non-Production Workers)	6,515	6,528	6,530	6,695	6,786	6,897	7,637
Potential Changes in Direct Employment Workers in 2027*		(5,737) to 12	(5,737) to 13	(5,737) to 159	(5,737) to 239	(5,737) to 337	(5,737) to 988

* DOE presents a range of potential employment impacts. Numbers in parentheses denote negative values.

The direct employment impacts shown in Table V.27 represent the potential domestic employment changes that could result following the compliance date for the refrigerator, refrigerator-freezer, and freezer product classes in this proposal. The upper bound estimate corresponds to an increase in the number of domestic workers that would result from amended energy conservation standards if manufacturers continue to produce the same scope of covered products within the United States after compliance takes effect. The lower bound estimate represents the maximum decrease in production workers if manufacturing moved to lower labor-cost countries. Most manufacturers currently produce at least a portion of their refrigerators, refrigerator-freezers, and freezers in countries with lower labor costs. Adopting an amended standard that necessitates large increases in labor content or large expenditures to re-tool facilities could cause manufacturers to reevaluate domestic production siting options. DOE seeks comments on domestic labor expenditures and decisions related to expanding domestic production in light of the proposed standard levels.

Additional detail on the analysis of direct employment can be found in chapter 12 of the NOPR TSD.

[75] U.S. Census Bureau, *Annual Survey of Manufactures.* ''Summary Statistics for Industry Groups and Industries in the U.S (2020).'' Available at: *www.census.gov/data/tables/time-series/econ/asm/2018-2020-asm.html* (Last accessed July 15, 2022).

[76] U.S. Bureau of Labor Statistics. *Employer Costs for Employee Compensation.* June 16, 2022. Available at: *www.bls.gov/news.release/pdf/ecec.pdf* (Last accessed August 1, 2022).

Additionally, the employment impacts discussed in this section are independent of the employment impacts from the broader U.S. economy, which are documented in chapter 16 of the NOPR TSD.

c. Impacts on Manufacturing Capacity

In interviews, some manufacturers noted potential capacity concerns related to implementing VIPs, particularly for high-volume product lines (*i.e.,* product classes 3, 5, 5A, and 7). These manufacturers noted that incorporating VIPs (or additional VIPs) is labor intensive. Implementing VIPs requires additional labor associated with initial quality control inspections, placement, and post-foam inspections. These manufacturers noted they are physically constrained at some factories and do not have the ability to extend production lines to accommodate additional labor content. As discussed in section V.B.2.a of this document, some manufacturers noted that the only way to maintain current production levels would be to expand the existing footprint, build a mezzanine, or move to a new production facility. In interviews, some manufacturers expressed concerns at the max-tech efficiencies for top-mount (TSL 6), bottom-mount (TSL 4), and side-by-side (TSL 6) standard-size refrigerator-freezers, and stated that the 3-year period between the announcement of the final rule and the compliance date of the amended energy conservation standard might be insufficient to update existing plants or build new facilities to accommodate the additional labor required to manufacture the necessary number of products to meet demand.

DOE seeks comment on whether manufacturers expect manufacturing capacity constraints would limit product availability to consumers in the timeframe of the amended standard compliance date (2027). In particular, DOE requests information on the product classes and associated efficiency levels that would delay manufacturer's ability to comply with a standard due to the extent of factory investments associated with VIP.

In both manufacturer interviews and written comments, manufacturer made statements about the impacts of VSC availability. GEA noted ''if DOE were to increase energy efficiency requirements to a level that VSCs would be required for nearly all products, a significant supply shortage of VSCs would be created in an already supply constrained market'' (GEA, No. 38, p.3) AHAM strongly opposed any standard that requires VSCs to comply with the standard (AHAM, No. 31, p.10). In contrast, Samsung stated its understanding that more than one third of the US refrigerator market incorporates VSC compressors. Additionally, Samsung noted that the increased adoption of VSC technology has led to improved accessibility and lowered costs. (Samsung, No.32, p.2).

DOE requests data on the availability of VSCs in the timeframe of the standard (2027). Additionally, DOE requests comment on the impact of international regulations on availability of VSCs for the domestic refrigerator, refrigerator-freezer, and freezer market.

d. Impacts on Subgroups of Manufacturers

Using average cost assumptions to develop industry cash-flow estimates may not capture the differential impacts among subgroups of manufacturers. Small manufacturers, niche players, or manufacturers exhibiting a cost structure that differs substantially from the industry average could be affected disproportionately. DOE investigated small businesses as a manufacturer subgroup that could be disproportionally impacted by energy conservation standards and could merit additional analysis. DOE also identified the domestic LVM subgroup as a potential manufacturer subgroup that could be adversely impacted by energy conservation standards based on the results of the industry characterization.

Small Businesses

DOE analyzes the impacts on small businesses in a separate analysis in section VI.B of this document as part of the Regulatory Flexibility Analysis. In summary, the SBA defines a ''small business'' as having 1,500 employees or less for NAICS 335220, ''Major Household Appliance Manufacturing.'' Based on this classification, DOE identified one domestic OEM that qualifies as a small business. For a discussion of the impacts on the small business manufacturer subgroup, see the Regulatory Flexibility Analysis in section VI.B of this document and chapter 12 of the NOPR TSD.

Domestic, Low-Volume Manufacturers

In addition to the small business subgroup, DOE identified domestic LVMs as a manufacturer subgroup that may experience differential impacts due to potential amended standards. DOE identified three domestic LVMs of refrigerators, refrigerator-freezers, and freezers that would potentially face more challenges with meeting amended standards than other larger OEMs of the covered products.

Although these LVMs do not qualify as small businesses according to the SBA criteria previously discussed (*i.e.,* employee count exceeds 1,500), these manufacturers are significantly smaller in terms of annual revenues than the larger, diversified manufacturers selling refrigerators, refrigerator-freezers, and freezers in the United States. The domestic LVM subgroup consists of refrigerator, refrigerator-freezer, and freezer manufacturers that primarily sell high-end, built-in or fully integrated consumer refrigeration products (''undercounter'' and standard-size) as well as commercial refrigeration equipment and cooking products. Specifically, manufacturers indicated during confidential interviews that the fully integrated compact (''undercounter'') products produced by the domestic LVMs are niche products and are more expensive to produce (and, therefore, have higher selling prices) than the majority of the compact products sold in the United States.

Table V.28 lists the range of product offerings and total company annual revenue for the three domestic LVMs identified. These three manufacturers account for approximately 1 percent of the overall domestic refrigerator, refrigerator-freezer, and freezer shipments. This table also contains the range of total company annual revenue for the five largest appliance manufacturers selling refrigerators, refrigerator-freezers, and freezers in the U.S. market. These five appliance manufacturers account for approximately 95 percent of the overall domestic refrigerator, refrigerator-freezer, and freezer shipments.

TABLE V.28—REVENUES AND PRODUCT OFFERINGS OF LOW-VOLUME MANUFACTURERS AND LARGE MANUFACTURERS OF REFRIGERATORS, REFRIGERATOR-FREEZERS, AND FREEZERS.

Manufacturer type	Estimated range of annual company revenue* (2021$ Millions)	Refrigerator, refrigerator-freezer, and freezer poduct offerings
Domestic LVMs	$186 to $2,510	High-end, built-in or fully integrated ''undercounter'' or standard-size refrigeration products (*e.g.,* product classes 5–BI, 13A, 14).
Large Appliance Manufacturers	$14,650 to $174,550	Wide range of freestanding, standard-size refrigerator-freezers and freezers. (*e.g.,* product classes 3, 5, 5A, 7, 10) Most also offer premium brands for standard-size built-in products.

* Revenue estimates refer to the total annual company revenue of the parent company and any associated subsidiaries.

LVMs may be disproportionately affected by conversion costs. Product redesign, testing, and certification costs tend to be fixed per basic model and do not scale with sales volume. Both large manufacturers and LVMs must make investments in R&D to redesign their products, but LVMs lack the sales volumes to sufficiently recoup these upfront investments without substantially marking up their products' selling prices. LVMs may also face challenges related to purchasing power and a less robust supply chain for key technologies or components, as compared to larger manufacturers. DOE notes that domestic LVMs have access to the same technology options as larger appliance manufacturers, the challenge with redesigning products to meet amended standards relates to scale and their ability to recover investments necessitated by more stringent standards.

Although domestic, low-volume manufacturers would likely face additional challenges meeting potential standards for the built-in and compact (''undercounter'') refrigerator, refrigerator-freezer, and freezer product classes compared to other refrigerator, refrigerator-freezer, and freezer manufacturers, some of the proposed amendments may be beneficial for domestic LVMs. As discussed in IV.A.1 of this document, DOE is proposing to incorporate certain energy use allowances for products with specialty doors and multi-door designs. A review of the three domestic LVM's product offerings and information gathered in confidential interviews indicates transparent door designs are particularly prevalent in their products.

See section IV.A.1 for additional details on energy use allowances for products with specialty doors and multi-door designs.

DOE requests comment on the potential impacts on domestic, low-volume manufacturers at the TSLs presented in this NOPR.

e. Cumulative Regulatory Burden

One aspect of assessing manufacturer burden involves looking at the cumulative impact of multiple DOE standards and the product-specific regulatory actions of other Federal agencies that affect the manufacturers of a covered product or equipment. While any one regulation may not impose a significant burden on manufacturers, the combined effects of several existing or impending regulations may have serious consequences for some manufacturers, groups of manufacturers, or an entire industry. Assessing the impact of a single regulation may overlook this cumulative regulatory burden. In addition to energy conservation standards, other regulations can significantly affect manufacturers' financial operations. Multiple regulations affecting the same manufacturer can strain profits and lead companies to abandon product lines or markets with lower expected future returns than competing products. For these reasons, DOE conducts an analysis of cumulative regulatory burden as part of its rulemakings pertaining to appliance efficiency.

TABLE V.29—COMPLIANCE DATES AND EXPECTED CONVERSION EXPENSES OF FEDERAL ENERGY CONSERVATION STANDARDS AFFECTING REFRIGERATOR, REFRIGERATOR-FREEZER, AND FREEZER ORIGINAL EQUIPMENT MANUFACTURERS

Federal energy conservation standard	Number of OEMs *	Number of OEMs affected from today's rule **	Approx. standards year	Industry conversion costs *(millions $)*	Industry conversion costs/product revenue *** (%)
Portable Air Conditioners 85 FR 1378 (January 10, 2020)	11	2	2025	$320.9 (2015$)	6.7
Room Air Conditioners † 87 FR 20608 (April 7, 2022)	8	4	2026	22.8 (2020$)	0.5
Commercial Water Heating Equipment † 87 FR 30610 (May 19, 2022)	14	1	2026	34.6 (2020$)	4.7
Consumer Furnaces † 87 FR 40590 (July 7, 2022)	15	1	2029	150.6 (2020$)	1.4
Consumer Clothes Dryers † 87 FR 51734 (August 23, 2022)	15	11	2027	149.7 (2020$)	1.8
Microwave Ovens † 87 FR 52282 (August 24, 2022)	18	11	2026	46.1 (2021$)	0.7
Consumer Conventional Cooking Products † 88 FR 6818 (February 1, 2023)	34	12	2027	183.4 (2021$)	1.2
Residential Clothes Washers †‡	19	12	2027	690.8 (2021$)	5.2

* This column presents the total number of OEMs identified in the energy conservation standard rule contributing to cumulative regulatory burden.

** This column presents the number of OEMs producing refrigerators, refrigerator-freezers, and freezers that are also listed as OEMs in the identified energy conservation standard contributing to cumulative regulatory burden.

*** This column presents industry conversion costs as a percentage of product revenue during the conversion period. Industry conversion costs are the upfront investments manufacturers must make to sell compliant products/equipment. The revenue used for this calculation is the revenue from just the covered product/equipment associated with each row. The conversion period is the time frame over which conversion costs are made and lasts from the publication year of the final rule to the compliance year of the final rule. The conversion period typically ranges from 3 to 5 years, depending on the energy conservation standard.

† These rulemakings are in the NOPR stage and all values are subject to change until finalized.

‡ At the time of issuance of this refrigerator, refrigerator-freezer, and freezer proposed rule, the residential clothes washer proposed rule has been issued and is pending publication in the **Federal Register**. Once published, the proposed rule pertaining to residential clothes washers will be available at: *www.regulations.gov/docket/EERE-2017-BT-STD-0014.*

In addition to the rulemakings listed in Table V.29, DOE has ongoing rulemakings for other products or equipment that refrigerator, refrigerator-freezer, and freezer manufacturers produce, including but not limited to miscellaneous refrigeration products; [77] dehumidifiers; [78] and dishwashers.[79] If DOE proposes or finalizes any energy conservation standards for these products or equipment prior to finalizing energy conservation standards for refrigerators, refrigerator-freezers, and freezers, DOE will include the energy conservation standards for these other products or equipment as part of the cumulative regulatory burden for the refrigerators, refrigerator-freezers, and freezers final rule.

DOE requests information regarding the impact of cumulative regulatory burden on manufacturers of refrigerators, refrigerator-freezers, and freezers associated with multiple DOE standards or product-specific regulatory actions of other Federal agencies.

3. National Impact Analysis

This section presents DOE's estimates of the NES and the NPV of consumer benefits that would result from each of the TSLs considered as potential amended standards.

a. Significance of Energy Savings

To estimate the energy savings attributable to potential amended standards for refrigerators, refrigerator-freezers, and freezers, DOE compared their energy consumption under the no-new-standards case to their anticipated energy consumption under each TSL. The savings are measured over the entire lifetime of products purchased in the 30-year period that begins in the year of anticipated compliance with amended standards (2027–2056). Table V.30 Cumulative National Energy Savings for Freestanding Refrigerators, Refrigerator-Freezers, and Freezers; 30 Years of Shipments (2027–2056) presents DOE's projections of the NES for each TSL considered for freestanding consumer refrigerators, refrigerator-freezers, and freezers. Table V.30 presents DOE's projections of the NES for each TSL considered for built-in consumer refrigerators, refrigerator-freezers, and freezers. The savings were calculated using the approach described in section IV.H.2 of this document.

TABLE V.30—CUMULATIVE NATIONAL ENERGY SAVINGS FOR FREESTANDING REFRIGERATORS, REFRIGERATOR-FREEZERS, AND FREEZERS; 30 YEARS OF SHIPMENTS

[2027–2056]

	TSL	Standard size refrigerator-freezers				Standard size freezers		Compact		Total
		Top mount (PC 1, 1A, 2, 3, 3A, 3I, and 6)	Bottom mount (PC 5 and 5I)	Bottom mount with TTD (PC 5A)	Side-by-side (PC 4, 4I, and 7)	Upright (PC 8 and 9)	Chest (PC 10 and 10A)	Refrigerators (PC 11, 11A, 12, 13, 13A, 14, and 15)	Freezers (PC 16, 17, and 18)	
		quads								
Primary Energy:										
	1	0.292	0.355	0.696	0.316	0.312	0.161	0.047	0.056	2.237
	2	0.600	0.355	0.696	0.672	0.293	0.000	0.047	0.056	2.721
	3	0.600	0.744	1.046	1.044	0.293	0.000	0.072	0.082	3.881
	4	1.054	0.744	1.405	1.044	0.293	0.000	0.072	0.082	4.694
	5	1.054	0.744	1.405	1.421	0.293	0.000	0.072	0.082	5.072
	6	2.204	1.391	1.405	1.573	0.925	0.521	0.262	0.175	8.455
FFC:										
	1	0.303	0.369	0.724	0.328	0.325	0.167	0.049	0.058	2.324
	2	0.624	0.369	0.724	0.698	0.305	0.000	0.049	0.058	2.827
	3	0.624	0.774	1.086	1.084	0.305	0.000	0.075	0.085	4.032
	4	1.095	0.774	1.460	1.084	0.305	0.000	0.075	0.085	4.877
	5	1.095	0.774	1.460	1.477	0.305	0.000	0.075	0.085	5.269
	6	2.290	1.445	1.460	1.634	0.961	0.541	0.273	0.182	8.784

[77] *www.regulations.gov/docket/EERE-2020-BT-STD-0039.*

[78] *www.regulations.gov/docket/EERE-2019-BT-STD-0043.*

[79] *www.regulations.gov/docket/EERE-2019-BT-STD-0039.*

TABLE V.31—CUMULATIVE NATIONAL ENERGY SAVINGS FOR BUILT-IN REFRIGERATORS, REFRIGERATOR-FREEZERS, AND FREEZERS; 30 YEARS OF SHIPMENTS

[2027–2056]

TSL	Built-in				Total
	All refrigerator (PC 3A–BI)	Bottom-mount refrigerator (PC 5–BI, 5I–BI)	Side-by-side refrigerator-freezers (PC 4–BI, 4I–BI, and 7–BI)	Upright freezers (PC 9–BI)	
	quads				
Primary Energy:					
1	0.000	0.006	0.000	0.000	0.006
2	0.004	0.006	0.005	0.000	0.015
3	0.004	0.006	0.011	0.000	0.021
4	0.009	0.006	0.011	0.000	0.025
5	0.009	0.006	0.017	0.000	0.031
6	0.025	0.016	0.019	0.001	0.062
FFC:					
1	0.000	0.006	0.000	0.000	0.006
2	0.004	0.006	0.005	0.000	0.016
3	0.004	0.006	0.011	0.000	0.022
4	0.009	0.006	0.011	0.000	0.026
5	0.009	0.006	0.017	0.000	0.032
6	0.026	0.017	0.020	0.002	0.065

OMB Circular A–4 [80] requires agencies to present analytical results, including separate schedules of the monetized benefits and costs that show the type and timing of benefits and costs. Circular A–4 also directs agencies to consider the variability of key elements underlying the estimates of benefits and costs. For this rulemaking, DOE undertook a sensitivity analysis using 9 years, rather than 30 years, of product shipments. The choice of a 9-year period is a proxy for the timeline in EPCA for the review of certain energy conservation standards and potential revision of and compliance with such revised standards.[81] The review timeframe established in EPCA is generally not synchronized with the product lifetime, product manufacturing cycles, or other factors specific to consumer refrigerators, refrigerator-freezers, and freezers. Thus, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology. The NES sensitivity analysis results based on a 9-year analytical period are presented in Table V.32 and Table V.33 of this document. The impacts are counted over the lifetime of consumer refrigerators, refrigerator-freezers, and freezers purchased in 2027–2035.

TABLE V.32—CUMULATIVE NATIONAL ENERGY SAVINGS FOR FREESTANDING REFRIGERATORS, REFRIGERATOR-FREEZERS, AND FREEZERS; 9 YEARS OF SHIPMENTS

[2027–2035]

TSL	Standard size refrigerator-freezers				Standard size freezers		Compact		Total
	Top mount (PC 1, 1A, 2, 3, 3A, 3I, and 6)	Bottom mount (PC 5 and 5I)	Bottom mount with TTD (PC 5A)	Side-by-side (PC 4, 4I, and 7)	Upright (PC 8 and 9)	Chest (PC 10 and 10A)	Refrigerators (PC 11, 11A, 12, 13, 13A, 14, and 15)	Freezers (PC 16, 17, and 18)	
				quads					
Primary Energy:									
1	0.080	0.097	0.190	0.086	0.087	0.045	0.012	0.015	0.612
2	0.164	0.097	0.190	0.183	0.082	0.000	0.012	0.015	0.743
3	0.164	0.203	0.285	0.285	0.082	0.000	0.018	0.022	1.059
4	0.288	0.203	0.384	0.285	0.082	0.000	0.018	0.022	1.281
5	0.288	0.203	0.384	0.388	0.082	0.000	0.018	0.022	1.384
6	0.599	0.379	0.384	0.429	0.257	0.145	0.065	0.046	2.304
FFC:									
1	0.083	0.101	0.198	0.090	0.091	0.047	0.012	0.015	0.636
2	0.170	0.101	0.198	0.191	0.085	0.000	0.012	0.015	0.772
3	0.170	0.211	0.297	0.296	0.085	0.000	0.018	0.023	1.100
4	0.299	0.211	0.399	0.296	0.085	0.000	0.018	0.023	1.331

[80] U.S. Office of Management and Budget. *Circular A–4: Regulatory Analysis.* September 17, 2003. *www.whitehouse.gov/omb/circulars_a004_a-4/* (last accessed July 26, 2022).

[81] Section 325(m) of EPCA requires DOE to review its standards at least once every 6 years, and requires, for certain products, a 3-year period after any new standard is promulgated before compliance is required, except that in no case may any new standards be required within 6 years of the compliance date of the previous standards. While adding a 6-year review to the 3-year compliance period adds up to 9 years, DOE notes that it may undertake reviews at any time within the 6-year period and that the 3-year compliance date may yield to the 6-year backstop. A 9-year analysis period may not be appropriate given the variability that occurs in the timing of standards reviews and the fact that for some products, the compliance period is 5 years rather than 3 years.

TABLE V.32—CUMULATIVE NATIONAL ENERGY SAVINGS FOR FREESTANDING REFRIGERATORS, REFRIGERATOR-FREEZERS, AND FREEZERS; 9 YEARS OF SHIPMENTS—Continued

[2027–2035]

TSL	Standard size refrigerator-freezers				Standard size freezers		Compact		Total
	Top mount (PC 1, 1A, 2, 3, 3A, 3I, and 6)	Bottom mount (PC 5 and 5I)	Bottom mount with TTD (PC 5A)	Side-by-side (PC 4, 4I, and 7)	Upright (PC 8 and 9)	Chest (PC 10 and 10A)	Refrigerators (PC 11, 11A, 12, 13, 13A, 14, and 15)	Freezers (PC 16, 17, and 18)	
5	0.299	0.211	0.399	0.403	0.085	0.000	0.018	0.023	1.438
6	0.623	0.394	0.399	0.446	0.267	0.151	0.067	0.048	2.395

TABLE V.33—CUMULATIVE NATIONAL ENERGY SAVINGS FOR BUILT-IN REFRIGERATORS, REFRIGERATOR-FREEZERS, AND FREEZERS; 9 YEARS OF SHIPMENTS

[2027–2035]

TSL	Built-in				Total
	All refrigerator (PC 3A–BI)	Bottom-mount refrigerator (PC 5–BI, 5I–BI)	Side-by-side refrigerator-freezers (PC 4–BI, 4I–BI, and 7–BI)	Upright freezers (PC 9–BI)	
	quads				
Primary Energy:					
1	0.000	0.002	0.000	0.000	0.002
2	0.001	0.002	0.001	0.000	0.004
3	0.001	0.002	0.003	0.000	0.006
4	0.002	0.002	0.003	0.000	0.007
5	0.002	0.002	0.005	0.000	0.008
6	0.007	0.004	0.005	0.000	0.017
FFC:					
1	0.000	0.002	0.000	0.000	0.002
2	0.001	0.002	0.001	0.000	0.004
3	0.001	0.002	0.003	0.000	0.006
4	0.002	0.002	0.003	0.000	0.007
5	0.002	0.002	0.005	0.000	0.009
6	0.007	0.005	0.005	0.000	0.018

b. Net Present Value of Consumer Costs and Benefits

DOE estimated the cumulative NPV of the total costs and savings for consumers that would result from the TSLs considered for refrigerators, refrigerator-freezers, and freezers. In accordance with OMB's guidelines on regulatory analysis,[82] DOE calculated NPV using both a 7-percent and a 3-percent real discount rate. Table V.34 and Table V.35 show the consumer NPV results with impacts counted over the lifetime of products purchased in 2027–2056.

TABLE V.34—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR FREESTANDING REFRIGERATORS, REFRIGERATOR-FREEZERS, AND FREEZERS; 30 YEARS OF SHIPMENTS

[2027–2056]

Discount rate	TSL	Standard size refrigerator-freezers				Standard size freezers		Compact		Total
		Top mount (PC 1, 1A, 2, 3, 3A, 3I, and 6)	Bottom mount (PC 5 and 5I)	Bottom mount With TTD (PC 5A)	Side-by-side (PC 4, 41, and 7)	Upright (PC 8 and 9)	Chest (PC 10 and 10A)	Refrigerators (PC 11, 11A, 12, 13, 13A, 14, and 15)	Freezers (PC 16, 17, and 18)	
		(Billion $2021)								
3 percent ...	1	1.85	1.97	4.12	2.01	1.46	0.41	0.10	0.34	12.26
	2	2.79	1.97	4.12	3.77	1.40	0.00	0.10	0.34	14.49
	3	2.79	3.64	4.70	4.84	1.40	0.00	0.21	0.35	17.93
	4	4.34	3.64	4.90	4.84	1.40	0.00	0.21	0.35	19.68
	5	4.34	3.64	4.90	5.45	1.40	0.00	0.21	0.35	20.29
	6	3.55	2.95	4.90	5.33	2.53	1.19	−0.53	0.27	20.20
7 percent ...	1	0.74	0.71	1.63	0.82	0.48	0.07	0.02	0.14	4.61
	2	0.99	0.71	1.63	1.45	0.47	0.00	0.02	0.14	5.41
	3	0.99	1.25	1.68	1.74	0.47	0.00	0.07	0.13	6.31
	4	1.41	1.25	1.51	1.74	0.47	0.00	0.07	0.13	6.57
	5	1.41	1.25	1.51	1.78	0.47	0.00	0.07	0.13	6.61

[82] U.S. Office of Management and Budget. *Circular A–4: Regulatory Analysis.* September 17, 2003. *www.whitehouse.gov/omb/circulars_a004_a-4/* (last accessed July 26, 2022).

TABLE V.34—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR FREESTANDING REFRIGERATORS, REFRIGERATOR-FREEZERS, AND FREEZERS; 30 YEARS OF SHIPMENTS—Continued

[2027–2056]

Discount rate	TSL	Standard size refrigerator-freezers				Standard size freezers		Compact		Total
		Top mount (PC 1, 1A, 2, 3, 3A, 3I, and 6)	Bottom mount (PC 5 and 5I)	Bottom mount With TTD (PC 5A)	Side-by-side (PC 4, 41, and 7)	Upright (PC 8 and 9)	Chest (PC 10 and 10A)	Refrigerators (PC 11, 11A, 12, 13, 13A, 14, and 15)	Freezers (PC 16, 17, and 18)	
	(Billion $2021)									
	6	0.09	0.34	1.51	1.60	0.46	0.18	−0.42	0.01	3.77

TABLE V.35—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR BUILT-IN REFRIGERATORS, REFRIGERATOR-FREEZERS, AND FREEZERS; 30 YEARS OF SHIPMENTS

[2027–2056]

Discount rate	TSL	Built-in				Total
		All refrigerator (PC 3A–BI)	Bottom-mount refrigerator (PC 5–BI, 5I–BI)	Side-by-side refrigerator-freezers (PC 4–BI, 4I–BI, and 7–BI)	Upright freezers (PC 9–BI)	
	(Billion $2021)					
3 percent	1	0.00	0.03	0.00	0.00	0.03
	2	0.01	0.03	0.02	0.00	0.06
	3	0.01	0.03	0.04	0.00	0.08
	4	0.02	0.03	0.04	0.00	0.09
	5	0.02	0.03	0.06	0.00	0.11
	6	0.02	0.04	0.06	0.00	0.12
7 percent	1	0.00	0.01	0.00	0.00	0.01
	2	0.00	0.01	0.01	0.00	0.02
	3	0.00	0.01	0.01	0.00	0.02
	4	0.01	0.01	0.01	0.00	0.03
	5	0.01	0.01	0.02	0.00	0.03
	6	−0.01	0.01	0.01	0.00	0.01

The NPV results based on the aforementioned 9-year analytical period are presented in Table V.36 and Table V.37. The impacts are counted over the lifetime of products purchased in 2027–2035. As mentioned previously, such results are presented for informational purposes only and are not indicative of any change in DOE's analytical methodology or decision criteria.

TABLE V.36—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR CONSUMER BENEFITS FOR FREESTANDING REFRIGERATORS, REFRIGERATOR-FREEZERS, AND FREEZERS; 9 YEARS OF SHIPMENTS

[2027–2035]

Discount rate	TSL	Standard size refrigerator-freezers				Standard Size Freezers		Compact		Total
		Top mount (PC 1, 1A, 2, 3, 3A, 3I, and 6)	Bottom mount (PC 5 and 5I)	Bottom mount with TTD (PC 5A)	Side-by-side (PC 4, 4I, and 7)	Upright (PC 8 and 9)	Chest (PC 10 and 10A)	Refrigerators (PC 11, 11A, 12, 13, 13A, 14, and 15)	Freezers (PC 16, 17, and 18)	
	(Billion $2021)									
3 percent	1	0.67	0.63	1.42	0.73	0.52	0.10	0.01	0.12	4.19
	2	0.95	0.63	1.42	1.27	0.50	0.00	0.01	0.12	4.90
	3	0.95	1.17	1.57	1.60	0.50	0.00	0.04	0.11	5.96
	4	1.33	1.17	1.55	1.60	0.50	0.00	0.04	0.11	6.32
	5	1.33	1.17	1.55	1.75	0.50	0.00	0.04	0.11	6.46
	6	0.65	0.69	1.55	1.66	0.75	0.34	−0.29	0.03	5.38
7 percent	1	0.36	0.30	0.76	0.40	0.23	0.01	0.00	0.07	2.11
	2	0.45	0.30	0.76	0.66	0.22	0.00	0.00	0.07	2.45
	3	0.45	0.53	0.74	0.77	0.22	0.00	0.02	0.06	2.79
	4	0.56	0.53	0.61	0.77	0.22	0.00	0.02	0.06	2.76
	5	0.56	0.53	0.61	0.75	0.22	0.00	0.02	0.06	2.74
	6	−0.31	−0.05	0.61	0.63	0.13	0.04	−0.26	−0.03	0.77

TABLE V.37—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR CONSUMER BENEFITS FOR BUILT-IN REFRIGERATORS, REFRIGERATOR-FREEZERS, AND FREEZERS; 9 YEARS OF SHIPMENTS

[2027–2035]

TSL	Built-In				Total
	All refrigerator (PC 3A–BI)	Bottom-mount refrigerator (PC 5–BI, 5I–BI)	Side-by-side refrigerator-freezers (PC 4–BI, 4I–BI, and 7–BI)	Upright freezers (PC 9–BI)	
	(Billion $2021)				
3 percent					
1	0.00	0.01	0.00	0.00	0.01
2	0.00	0.01	0.01	0.00	0.02
3	0.00	0.01	0.01	0.00	0.02
4	0.01	0.01	0.01	0.00	0.03
5	0.01	0.01	0.02	0.00	0.03
6	0.00	0.01	0.02	0.00	0.03
7 percent					
1	0.00	0.00	0.00	0.00	0.00
2	0.00	0.00	0.00	0.00	0.01
3	0.00	0.00	0.01	0.00	0.01
4	0.00	0.00	0.01	0.00	0.01
5	0.00	0.00	0.01	0.00	0.01
6	−0.01	0.00	0.01	0.00	0.00

The previous results reflect the use of a default trend to estimate the change in price for consumer refrigerators, refrigerator-freezers, and freezers over the analysis period (see section IV.H.3 of this document). DOE also conducted a sensitivity analysis that considered one scenario with a lower rate of price decline than the reference case and one scenario with a higher rate of price decline than the reference case. The results of these alternative cases are presented in appendix 10C of the NOPR TSD. In the high-price-decline case, the NPV of consumer benefits is higher than in the default case. In the low-price-decline case, the NPV of consumer benefits is lower than in the default case.

c. Indirect Impacts on Employment

It is estimated that that amended energy conservation standards for refrigerators, refrigerator-freezers, and freezers would reduce energy expenditures for consumers of those products, with the resulting net savings being redirected to other forms of economic activity. These expected shifts in spending and economic activity could affect the demand for labor. As described in section IV.N of this document, DOE used an input/output model of the U.S. economy to estimate indirect employment impacts of the TSLs that DOE considered. There are uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Therefore, DOE generated results for near-term timeframes (2027–2031), where these uncertainties are reduced.

The results suggest that the proposed standards would be likely to have a negligible impact on the net demand for labor in the economy. The net change in jobs is so small that it would be imperceptible in national labor statistics and might be offset by other, unanticipated effects on employment. Chapter 16 of the NOPR TSD presents detailed results regarding anticipated indirect employment impacts.

4. Impact on Utility or Performance of Products

As discussed in section III.E.1.d of this document, DOE has tentatively concluded that the standards proposed in this NOPR would not lessen the utility or performance of the refrigerators, refrigerator-freezers, and freezers under consideration in this rulemaking. Manufacturers of these products currently offer units that meet or exceed the proposed standards.

DOE's analysis for this proposed rule includes wall thickness increases over baseline only for product classes 10, 11A, and 18. Thickness increases were assumed to impact the external dimensions of the aforementioned product classes rather than internal volume. Thus, the expected useable, refrigerated volume would not be impacted and would remain similar to commercially available models today. DOE only considered an incremental increase in external dimensions for those three product classes that are consistent with commercially available product dimensions currently on the market. DOE does not believe such incremental increases that are consistent with currently available product dimensions will have an adverse impact on consumer utility because these products will not likely be installed within cabinetry.

DOE seeks comment on its analysis of wall thickness increases for product classes 10, 11A, and 18 along with its preliminary conclusions that consumer utility will not be impacted.

5. Impact of Any Lessening of Competition

DOE considered any lessening of competition that would be likely to result from new or amended standards. As discussed in section III.E.1.e of this document, the Attorney General determines the impact, if any, of any lessening of competition likely to result from a proposed standard, and transmits such determination in writing to the Secretary, together with an analysis of the nature and extent of such impact. To assist the Attorney General in making this determination, DOE has provided DOJ with copies of this NOPR and the accompanying TSD for review. DOE will consider DOJ's comments on the proposed rule in determining whether to proceed to a final rule. DOE will publish and respond to DOJ's comments in that document. DOE invites comment from the public regarding the competitive impacts that are likely to result from this proposed rule. In addition, stakeholders may also provide comments separately to DOJ regarding

these potential impacts. *See* the **ADDRESSES** section for information to send comments to DOJ.

6. Need of the Nation To Conserve Energy

Enhanced energy efficiency, where economically justified, improves the Nation's energy security, strengthens the economy, and reduces the environmental impacts (costs) of energy production. Reduced electricity demand due to energy conservation standards is also likely to reduce the cost of maintaining the reliability of the electricity system, particularly during peak-load periods. Chapter 15 in the NOPR TSD presents the estimated impacts on electricity generating capacity, relative to the no-new-standards case, for the TSLs that DOE considered in this proposed rule.

Energy conservation resulting from potential energy conservation standards for refrigerators, refrigerator-freezers, and freezers is expected to yield environmental benefits in the form of reduced emissions of certain air pollutants and greenhouse gases. Table V.38 provides DOE's estimate of cumulative emissions reductions expected to result from the TSLs considered in this rulemaking. The emissions were calculated using the multipliers discussed in section IV.K of this document. DOE reports annual emissions reductions for each TSL in chapter 13 of the NOPR TSD.

TABLE V.38—CUMULATIVE EMISSIONS REDUCTION FOR REFRIGERATORS, REFRIGERATOR-FREEZERS, AND FREEZERS SHIPPED IN 2027–2056

	Trial standard level					
	1	2	3	4	5	6
Power Sector Emissions						
CO_2 (*million metric tons*)	73.10	89.28	127.39	154.09	166.62	277.77
CH_4 (*thousand tons*)	5.76	7.04	10.05	12.16	13.15	21.90
N_2O (*thousand tons*)	0.81	0.99	1.41	1.70	1.84	3.07
NO_X (*thousand tons*)	36.66	44.81	63.96	77.37	83.66	139.34
SO_2 (*thousand tons*)	36.07	44.06	62.87	76.05	82.24	137.05
Hg (*tons*)	0.24	0.29	0.41	0.50	0.54	0.90
Upstream Emissions						
CO_2 (*million metric tons*)	5.53	6.75	9.62	11.64	12.59	21.00
CH_4 (*thousand tons*)	523.58	638.80	911.11	1,101.96	1,191.52	1,988.67
N_2O (*thousand tons*)	0.03	0.03	0.05	0.06	0.06	0.10
NO_X (*thousand tons*)	83.81	102.25	145.84	176.40	190.73	318.32
SO_2 (*thousand tons*)	0.38	0.46	0.66	0.80	0.86	1.44
Hg (*tons*)	0.00	0.00	0.00	0.00	0.00	0.00
Total FFC Emissions						
CO_2 (*million metric tons*)	78.63	96.03	137.01	165.73	179.20	298.78
CH_4 (*thousand tons*)	529.34	645.84	921.16	1,114.12	1,204.67	2,010.57
N_2O (*thousand tons*)	0.83	1.02	1.46	1.76	1.90	3.17
NO_X (*thousand tons*)	120.46	147.06	209.80	253.77	274.39	457.66
SO_2 (*thousand tons*)	36.45	44.53	63.53	76.85	83.10	138.49
Hg (*tons*)	0.24	0.29	0.41	0.50	0.54	0.90

Negative values refer to an increase in emissions.

As part of the analysis for this proposed rule, DOE estimated monetary benefits likely to result from the reduced emissions of CO_2 that DOE estimated for each of the considered TSLs for refrigerators, refrigerator-freezers, and freezers. Section IV.L of this document discusses the SC–CO_2 values that DOE used. Table V.39 presents the value of CO_2 emissions reduction at each TSL for each of the SC–CO_2 cases. The time-series of annual values is presented for the proposed TSL in chapter 14 of the NOPR TSD.

TABLE V.39—PRESENT MONETIZED VALUE OF CO_2 EMISSIONS REDUCTION FOR REFRIGERATORS, REFRIGERATOR-FREEZERS, AND FREEZERS SHIPPED IN 2027–2056

TSL	SC–CO_2 case Discount rate and statistics			
	5% Average	3% Average	2.5% Average	3% 95th percentile
	(billion 2021$)			
1	0.66	2.89	4.56	8.77
2	0.81	3.57	5.62	10.82
3	1.16	5.10	8.04	15.49
4	1.40	6.18	9.73	18.75
5	1.52	6.68	10.53	20.28
6	2.50	11.04	17.39	33.48

As discussed in section IV.L.1 of this document, DOE estimated the climate benefits likely to result from the reduced emissions of methane and N_2O that DOE estimated for each of the considered TSLs for refrigerators, refrigerator-freezers, and freezers. Table V.40 presents the value of the CH_4 emissions reduction at each TSL, and Table V.41 presents the value of the N_2O emissions reduction at each TSL. The time-series of annual values is presented for the proposed TSL in chapter 14 of the NOPR TSD.

TABLE V.40—PRESENT MONETIZED VALUE OF METHANE EMISSIONS REDUCTION FOR REFRIGERATORS, REFRIGERATOR-FREEZERS, AND FREEZERS SHIPPED IN 2027–2056

TSL	SC–CH_4 case discount rate and statistics			
	5% Average	3% Average	2.5% Average	3% 95th percentile
	(billion 2021$)			
1	0.20	0.62	0.88	1.65
2	0.25	0.77	1.08	2.03
3	0.36	1.10	1.55	2.91
4	0.43	1.33	1.87	3.52
5	0.47	1.44	2.02	3.81
6	0.77	2.38	3.35	6.30

TABLE V.41—PRESENT MONETIZED VALUE OF NITROUS OXIDE EMISSIONS REDUCTION FOR REFRIGERATORS, REFRIGERATOR-FREEZERS, AND FREEZERS SHIPPED IN 2027–2056

TSL	SC–N_2O case discount rate and statistics			
	5% Average	3% Average	2.5% Average	3% 95th percentile
	(billion 2021$)			
1	0.00	0.01	0.02	0.03
2	0.00	0.01	0.02	0.04
3	0.00	0.02	0.03	0.05
4	0.01	0.02	0.04	0.06
5	0.01	0.03	0.04	0.07
6	0.01	0.04	0.07	0.11

On March 16, 2022, the Fifth Circuit Court of Appeals (No. 22–30087) granted the Federal government's emergency motion for stay pending appeal of the February 11, 2022, preliminary injunction issued in *Louisiana* v. *Biden,* No. 21–cv–1074–JDC–KK (W.D. La.). As a result of the Fifth Circuit's order, the preliminary injunction is no longer in effect, pending resolution of the Federal government's appeal of that injunction or a further court order. Among other things, the preliminary injunction enjoined the defendants in that case from ''adopting, employing, treating as binding, or relying upon'' the interim estimates of the social cost of greenhouse gases—which were issued by the Interagency Working Group on the Social Cost of Greenhouse Gases on February 26, 2021—to monetize the benefits of reducing greenhouse gas emissions. As reflected in this rule, DOE has reverted to its approach prior to the injunction and presents monetized greenhouse gas abatement benefits where appropriate and permissible under law.

DOE is well aware that scientific and economic knowledge about the contribution of CO_2 and other GHG emissions to changes in the future global climate and the potential resulting damages to the global and U.S. economy continues to evolve rapidly. DOE, together with other Federal agencies, will continue to review methodologies for estimating the monetary value of reductions in CO_2 and other GHG emissions. This ongoing review will consider the comments on this subject that are part of the public record for this and other rulemakings, as well as other methodological assumptions and issues. DOE notes that the proposed standards would be economically justified even without inclusion of monetized benefits of reduced GHG emissions.

DOE also estimated the monetary value of the health benefits associated with NO_X and SO_2 emissions reductions anticipated to result from the considered TSLs for refrigerators, refrigerator-freezers, and freezers. The dollar-per-ton values that DOE used are discussed in section IV.L of this document. Table V.42 presents the present value for NO_X emissions reduction for each TSL calculated using 7-percent and 3-percent discount rates, and Table V.43 presents similar results for SO_2 emissions reductions. The results in these tables reflect application of EPA's low dollar-per-ton values, which DOE used to be conservative. The time-series of annual values is presented for the proposed TSL in chapter 14 of the NOPR TSD.

TABLE V.42—PRESENT MONETIZED VALUE OF NO_X EMISSIONS REDUCTION FOR REFRIGERATORS, REFRIGERATOR-FREEZERS, AND FREEZERS SHIPPED IN 2027–2056

TSL	3% Discount rate	7% Discount rate
	(million 2021$)	
1	4,368.08	1,612.82
2	5,376.87	1,999.06
3	7,692.46	2,866.91
4	9,310.10	3,471.24
5	10,069.16	3,754.82
6	16,660.11	6,171.74

TABLE V.43—PRESENT MONETIZED VALUE OF SO_2 EMISSIONS REDUCTION FOR REFRIGERATORS, REFRIGERATOR-FREEZERS, AND FREEZERS SHIPPED IN 2027–2056

TSL	3% Discount rate	7% Discount rate
	(million 2021$)	
1	1,789.12	677.21
2	2,203.60	839.89
3	3,153.20	1,204.76
4	3,816.49	1,458.78
5	4,127.73	1,577.98
6	6,824.58	2,591.74

DOE has not considered the monetary benefits of the reduction of Hg for this proposed rule. Not all the public health and environmental benefits from the reduction of greenhouse gases, NOx, and SO_2 are captured in the values above, and additional unquantified benefits from the reductions of those pollutants as well as from the reduction of Hg, direct PM, and other co-pollutants may be significant.

7. Other Factors

The Secretary of Energy, in determining whether a standard is economically justified, may consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII)) No other factors were considered in this analysis.

8. Summary of Economic Impacts

Table V.44 presents the NPV values that result from adding the estimates of the potential economic benefits resulting from reduced GHG and NO_X and SO_2 emissions to the NPV of consumer benefits calculated for each TSL considered in this proposed rule. The consumer benefits are domestic U.S. monetary savings that occur as a result of purchasing the covered refrigerators, refrigerator-freezers, and freezers, and are measured for the lifetime of products shipped in 2027–2056. The climate benefits associated with reduced GHG emissions resulting from the adopted standards are global benefits, and are also calculated based on the lifetime of refrigerators, refrigerator-freezers, and freezers shipped in 2027–2056.

TABLE V.44—CONSUMER NPV COMBINED WITH PRESENT VALUE OF MONETIZED CLIMATE BENEFITS AND HEALTH BENEFITS

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
3% discount rate for Consumer NPV and Health Benefits (billion 2021$)						
5% Average SC–GHG case	19.3	23.2	30.4	34.7	36.6	47.1
3% Average SC–GHG case	22.0	26.5	35.1	40.4	42.7	57.3
2.5% Average SC–GHG case	23.9	28.8	38.5	44.5	47.2	64.6
3% 95th percentile SC–GHG case	28.9	35.0	47.3	55.2	58.7	83.7
7% discount rate for Consumer NPV and Health Benefits (billion 2021$)						
5% Average SC–GHG case	7.8	9.3	11.9	13.4	14.0	15.8
3% Average SC–GHG case	10.4	12.6	16.6	19.1	20.1	26.0
2.5% Average SC–GHG case	12.4	15.0	20.0	23.2	24.6	33.3
3% 95th percentile SC–GHG case	17.4	21.2	28.9	33.9	36.1	52.4

C. Conclusion

When considering new or amended energy conservation standards, the standards that DOE adopts for any type (or class) of covered product must be designed to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) In determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering the seven statutory factors discussed previously.

(42 U.S.C. 6295(o)(2)(B)(i)) The new or amended standard must also result in significant conservation of energy. (42 U.S.C. 6295(o)(3)(B))

For this NOPR, DOE considered the impacts of amended standards for refrigerators, refrigerator-freezers, and freezers at each TSL, beginning with the maximum technologically feasible level, to determine whether that level was economically justified. Where the max-tech level was not justified, DOE then considered the next most efficient level and undertook the same evaluation until it reached the highest efficiency level that is both technologically feasible and economically justified and saves a significant amount of energy.

To aid the reader as DOE discusses the benefits and/or burdens of each TSL, tables in this section present a summary of the results of DOE's quantitative analysis for each TSL. In addition to the quantitative results presented in the tables, DOE also considers other burdens and benefits that affect economic justification. These include the impacts on identifiable subgroups of consumers who may be disproportionately affected by a national standard and impacts on employment.

DOE also notes that the economics literature provides a wide-ranging discussion of how consumers trade off upfront costs and energy savings in the absence of government intervention. Much of this literature attempts to explain why consumers appear to undervalue energy efficiency improvements.[83] There is evidence that consumers undervalue future energy savings as a result of (1) a lack of information or informational asymmetries, (2) a lack of sufficient salience of the long-term or aggregate benefits, (3) a lack of sufficient personal financial savings to warrant delaying or altering purchases, (4) excessive focus on the short term, in the form of inconsistent weighting of future energy cost savings relative to available returns on other investments, due to loss aversion, myopia, inattention, or other factors, (5) computational or other difficulties associated with the evaluation of relevant tradeoffs, and (6) a divergence in incentives (for example, between renters and owners, or builders and purchasers, or between current and subsequent owners). Having less than perfect foresight and a high degree of uncertainty about the future, consumers may trade off these types of investments at a higher-than-expected rate between current consumption and uncertain future energy cost savings.

In addition to the demand-side market failures, an expanding set of studies highlight the need to recognize the importance of market failure on the supply side.[84] These market failures are associated primarily with innovation and imperfect competition. Underinvestment in innovation as a source of market failure emerges if there is underinvestment in R&D relative to the social optimum due to the positive externalities associated with increased knowledge.[85] [86] Findings suggest that if appliance manufacturers were induced to innovate in the direction of increased energy efficiency by standards, the stock of knowledge in that direction would increase, thereby facilitating even more innovation in that direction in the future.[87] [88] Imperfect competition in the appliance market in the U.S. is another source of market failure that standards can address. Ronnen,[89] one of the first papers investigating minimum quality standards (MQS) in an imperfect competition setting, provides most of the intuition for this result. He showed that a MQS can be welfare improving because they effectively limit firms' ability to differentiate their products. This, in turn, limits the ability of the firm to screen customers with heterogeneous preferences over the regulated quality dimension (such as energy efficiency). As a result, firms can no longer charge an exaggerated premium for quality to customers with a high willingness to pay by suppressing quality targeted to customers with a low willingness to pay. A more recent study that looked at the U.S. clothes washer market and focused on how price changed following the revision of minimum standards found a similar pattern.[90] The findings show that mid-low efficiency products had a large decrease in price level together with a downward break in price trend exactly at the time more stringent standards became effective. This is the effect predicted when the market is made up of price-discriminating firms who want to continue to serve customers previously targeted with the products that were eliminated by the standard.

In DOE's current regulatory analysis, potential changes in the benefits and costs of a regulation due to changes in consumer purchase decisions are included in two ways. First, if consumers forgo the purchase of a product in the standards case, this decreases sales for product manufacturers, and the impact on manufacturers attributed to lost revenue is included in the MIA. Second, DOE accounts for energy savings attributable only to products actually used by consumers in the standards case; if a standard decreases the number of products purchased by consumers, this decreases the potential energy savings from an energy conservation standard. DOE provides estimates of shipments and changes in the volume of product purchases in chapter 9 of the NOPR TSD. However, DOE's current analysis does not explicitly control for heterogeneity in consumer preferences, preferences across subcategories of products or specific features, or consumer price sensitivity variation according to household income.[91]

While DOE is not prepared at present to provide a fuller quantifiable framework for estimating the benefits and costs of changes in consumer purchase decisions due to an energy conservation standard, DOE is committed to developing a framework that can support empirical quantitative tools for improved assessment of the consumer welfare impacts of appliance standards. DOE has posted a paper that discusses the issue of consumer welfare impacts of appliance energy conservation standards, and potential enhancements to the methodology by which these impacts are defined and estimated in the regulatory process.[92] DOE welcomes comments on how to more fully assess the potential impact of energy conservation standards on

[83] Thaler, R.H., and Sunstein, C.R. (2008). Nudge: Improving Decisions on Health, Wealth, and Happiness. New Haven, CT: Yale University Press.

[84] Houde, S., and Spurlock, C.A. (2016). ''Minimum Energy Efficiency Standards for Appliances: Old and New Economic Rationales,'' Economics of Energy & Environmental Policy, 5(2).

[85] Jaffe, A.B., R.G. Newell, and R.N. Stavins (2003). ''Technological change and the environment,'' *Handbook of Environmental Economics,* 1,461–516.

[86] Spence, M. (1984). ''Cost reduction, competition, and industry performance,'' *Econometrica: Journal of the Econometric Society,* 101–121.

[87] Newell, R.G., A.B. Jaffe, and R.N. Stavins (1999). ''The Induced Innovation Hypothesis and Energy Saving Technological Change,'' *Quarterly Journal of Economics,* 114(458), 907–940.

[88] Popp, D. (2002). ''Induced Innovation and energy prices,'' *American Economic Review,* 92(1), 160–180.

[89] Ronnen, U. (1991). ''Minimum quality standards, fixed costs, and competition,'' *The RAND Journal of Economics,* 490–504.

[90] Spurlock, C.A. (2013). ''Appliance Efficiency Standards and Price Discrimination,'' Lawrence Berkeley National Laboratory Report, LBNL–6283E. *https://escholarship.org/uc/item/6wh9838j.*

[91] P.C. Reiss and M.W. White. Household Electricity Demand, Revisited. *Review of Economic Studies.* 2005. 72(3): pp. 853–883. doi: *10.1111/0034–6527.00354.*

[92] Sanstad, A.H. *Notes on the Economics of Household Energy Consumption and Technology Choice.* 2010. Lawrence Berkeley National Laboratory. *www1.eere.energy.gov/buildings/appliance_standards/pdfs/consumer_ee_theory.pdf* (last accessed July 26, 2022).

consumer choice and how to quantify this impact in its regulatory analysis in future rulemakings.

1. Benefits and Burdens of TSLs Considered for Refrigerator, Refrigerator-Freezer, and Freezer Standards

Table V.45 and Table V.46 summarize the quantitative impacts estimated for each TSL for refrigerators, refrigerator-freezers, and freezers. There are also other important unquantified effects not presented in these tables, including certain unquantified climate benefits, unquantified public health benefits from the reduction of toxic air pollutants and other emissions, unquantified energy security benefits, and distributional effects, among others. The national impacts are measured over the lifetime of refrigerators, refrigerator-freezers, and freezers purchased in the 30-year period that begins in the anticipated year of compliance with amended standards (2027–2056). The energy savings, emissions reductions, and value of emissions reductions refer to full-fuel-cycle results. The efficiency levels contained in each TSL are described in section V.A of this document.

TABLE V.45—SUMMARY OF ANALYTICAL RESULTS FOR CONSUMER REFRIGERATORS, REFRIGERATOR-FREEZERS, AND FREEZERS TSLS: NATIONAL IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
Cumulative FFC National Energy Savings						
Quads	2.330	2.842	4.054	4.903	5.302	8.849
Cumulative FFC Emissions Reduction						
CO_2 (*million metric tons*)	78.63	96.03	137.01	165.73	179.20	298.78
CH_4 (*thousand tons*)	529.34	645.84	921.16	1,114.12	1,204.67	2,010.57
N_2O (*thousand tons*)	0.83	1.02	1.46	1.76	1.90	3.17
NO_X (*thousand tons*)	120.46	147.06	209.80	253.77	274.39	457.66
SO_2 (*thousand tons*)	36.45	44.53	63.53	76.85	83.10	138.49
Hg (*tons*)	0.24	0.29	0.41	0.50	0.54	0.90
Present Monetized Value of Benefits and Costs (3% discount rate, billion 2021$)						
Consumer Operating Cost Savings	14.79	18.11	25.57	30.47	32.71	52.41
Climate Benefits*	3.53	4.35	6.22	7.53	8.15	13.46
Health Benefits**	6.16	7.58	10.85	13.13	14.20	23.48
Total Benefits†	24.47	30.04	42.63	51.13	55.06	89.35
Consumer Incremental Product Costs	2.50	3.56	7.55	10.70	12.32	32.09
Consumer Net Benefits	12.29	14.55	18.01	19.77	20.40	20.31
Total Net Monetized Benefits	21.97	26.48	35.08	40.43	42.74	57.26
Present Monetized Value of Benefits and Costs (7% discount rate, billion 2021$)						
Consumer Operating Cost Savings	6.06	7.47	10.58	12.62	13.55	21.59
Climate Benefits*	3.53	4.35	6.22	7.53	8.15	13.46
Health Benefits**	2.29	2.84	4.07	4.93	5.33	8.76
Total Benefits†	11.88	14.66	20.87	25.08	27.03	43.81
Consumer Incremental Product Costs	1.44	2.05	4.24	6.02	6.91	17.81
Consumer Net Benefits	4.62	5.43	6.34	6.60	6.64	3.78
Total Net Monetized Benefits	10.44	12.61	16.63	19.06	20.12	26.00

Note: This table presents the costs and benefits associated with consumer refrigerators, refrigerator-freezers, and freezers shipped in 2027–2056. These results include benefits to consumers which accrue after 2056 from the products shipped in 2027–2056.

*Climate benefits are calculated using four different estimates of the SC–CO_2, SC–CH_4 and SC–N_2O. Together, these represent the global SC–GHG. For presentational purposes of this table, the climate benefits associated with the average SC–GHG at a 3 percent discount rate are shown, but the Department does not have a single central SC–GHG point estimate. On March 16, 2022, the Fifth Circuit Court of Appeals (No. 22–30087) granted the Federal government's emergency motion for stay pending appeal of the February 11, 2022, preliminary injunction issued in *Louisiana* v. *Biden,* No. 21–cv–1074–JDC–KK (W.D. La.). As a result of the Fifth Circuit's order, the preliminary injunction is no longer in effect, pending resolution of the Federal government's appeal of that injunction or a further court order. Among other things, the preliminary injunction enjoined the defendants in that case from ''adopting, employing, treating as binding, or relying upon'' the interim estimates of the social cost of greenhouse gases—which were issued by the Interagency Working Group on the Social Cost of Greenhouse Gases on February 26, 2021—to monetize the benefits of reducing greenhouse gas emissions. As reflected in this rule, DOE has reverted to its approach prior to the injunction and presents monetized greenhouse gas abatement benefits where appropriate and permissible under law.

**Health benefits are calculated using benefit-per-ton values for NO_X and SO_2. DOE is currently only monetizing (for NO_X and SO_2) $PM_{2.5}$ precursor health benefits and (for NO_X) ozone precursor health benefits, but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct $PM_{2.5}$ emissions. The health benefits are presented at real discount rates of 3 and 7 percent. See section IV.L of this document for more details.

†Total and net benefits include consumer, climate, and health benefits. For presentation purposes, total and net benefits for both the 3-percent and 7-percent cases are presented using the average SC–GHG with 3-percent discount rate, but the Department does not have a single central SC–GHG point estimate. DOE emphasizes the importance and value of considering the benefits calculated using all four SC–GHG estimates.

TABLE V.46—SUMMARY OF ANALYTICAL RESULTS FOR REFRIGERATOR, REFRIGERATOR-FREEZER, AND FREEZER TSLS: MANUFACTURER AND CONSUMER IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5	TSL 6
Manufacturer Impacts						
Industry NPV (*million 2021$*) (No-new-standards case INPV = $4,966.4)	4,908.2 to 4,944.5	4,867.7 to 4,920.2	4,475.6 to 4,619.8	4,366.5 to 4,554.0	3,965.2 to 4,173.5	3,255.9 to 3,688.2
Industry NPV (*% change*)	(1.2) to (0.4)	(2.0) to (0.9)	(9.9) to (7.0)	(12.1) to (8.3)	(20.2) to (16.0)	(34.4) to (25.7)
Consumer Average LCC Savings (2021$)						
PC 3	32.16	42.18	42.18	36.04	36.04	8.09
PC 5	47.15	47.15	49.73	49.73	49.73	19.14
PC 5BI	39.94	39.94	39.94	39.94	39.94	18.97
PC 5A	115.32	115.32	121.98	115.76	115.76	115.76
PC 7	53.56	78.56	95.26	95.26	101.33	94.68
PC 9	69.26	69.26	69.26	69.26	69.26	63.71
PC 10	10.20	N/A	N/A	N/A	N/A	40.91
PC 11A (residential)	16.78	16.78	9.97	9.97	9.97	(3.35)
PC 11A (commercial)	6.97	6.97	3.42	3.42	3.42	(23.47)
PC 17	21.90	21.90	21.90	21.90	21.90	(5.74)
PC 18	21.57	21.57	17.59	17.59	17.59	(9.06)
Shipment-Weighted Average *	48.75	57.83	61.26	58.58	59.43	39.97
Consumer Simple PBP (years)						
PC 3	1.4	4.0	4.0	5.3	5.3	8.7
PC 5	4.4	4.4	4.8	4.8	4.8	7.7
PC 5BI	5.7	5.7	5.7	5.7	5.7	7.3
PC 5A	2.0	2.0	4.2	5.7	5.7	5.7
PC 7	0.7	2.6	3.8	3.8	5.0	5.7
PC 9	3.9	3.9	3.9	3.9	3.9	9.0
PC 10	10.7	N/A	N/A	N/A	N/A	10.0
PC 11A (residential)	2.0	2.0	2.1	2.1	2.1	5.6
PC 11A (commercial)	3.2	3.2	3.2	3.2	3.2	8.7
PC 17	5.0	5.0	5.0	5.0	5.0	7.5
PC 18	1.3	1.3	4.2	4.2	4.2	9.0
Shipment-Weighted Average *	2.9	3.5	4.2	4.7	4.9	7.7
Percent of Consumers that Experience a Net Cost						
PC 3	2.2	10.8	10.8	36.2	36.2	63.6
PC 5	8.9	8.9	23.4	23.4	23.4	58.3
PC 5BI	10.1	10.1	10.1	10.1	10.1	43.9
PC 5A	1.0	1.0	16.6	33.2	33.2	33.2
PC 7	0.0	5.1	15.8	15.8	28.5	35.7
PC 9	10.5	10.5	10.5	10.5	10.5	51.1
PC 10	52.7	N/A	N/A	N/A	N/A	52.1
PC 11A (residential)	0.7	0.7	8.3	8.3	8.3	50.9
PC 11A (commercial)	1.6	1.6	17.2	17.2	17.2	73.2
PC 17	12.3	12.3	12.3	12.3	12.3	66.3
PC 18	0.6	0.6	21.8	21.8	21.8	69.9
Shipment-Weighted Average *	7.2	7.6	15.7	25.7	27.5	53.3

Parentheses indicate negative (−) values. The entry "N/A" means not applicable because there is no change in the standard at certain TSLs.
* Weighted by shares of each product class in total projected shipments in 2027.

DOE first considered TSL 6, which represents the max-tech efficiency levels. At this level, DOE expects that all product classes would require VIPs and most would require VSCs. For most product classes, this represents the use of VIPs for roughly half the cabinet surface (typically side walls and doors for an upright cabinet), the best-available-efficiency variable-speed compressor, forced-convection heat exchangers with multi-speed BLDC fans, variable defrost, and increase in cabinet wall thickness for some classes (*e.g.,* compact refrigerators and both standard-size and compact chest freezers). DOE estimates that approximately 1 percent of annual shipments across all refrigerator, refrigerator-freezer, and freezer product classes currently meet the max-tech efficiencies required. TSL 6 would save an estimated 8.85 quads of energy, an amount DOE considers significant. Under TSL 6, the NPV of consumer benefit would be $3.78 billion using a discount rate of 7 percent, and $20.31 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 6 are 299 Mt of CO_2, 138 thousand tons of SO_2, 458 thousand tons of NO_X, 0.90 tons of Hg, 2,011 thousand tons of CH_4, and 3.17 thousand tons of N_2O. The estimated monetary value of the climate benefits from reduced GHG emissions (associated with the average SC–GHG at a 3-percent discount rate) at TSL 6 is $13.46 billion. The estimated monetary value of the health benefits from reduced SO_2 and NO_X emissions at TSL 6 is $8.76 billion using a 7-percent discount rate and $23.48 billion using a 3-percent discount rate.

Using a 7-percent discount rate for consumer benefits and costs, health benefits from reduced SO_2 and NO_X emissions, and the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated total NPV at TSL 6 is $26.00 billion. Using a 3-percent discount rate for all benefits and costs, the estimated total NPV at TSL 6 is $57.26 billion. The estimated total NPV is provided for additional information, however DOE primarily relies upon the NPV of consumer benefits when determining whether a proposed standard level is economically justified.

At TSL 6, for the largest product classes, which are 3, 5, 5A, and 7 and together account for approximately 67 percent of annual shipments, there is a life cycle cost savings of $8.09, $19.14, $115.76, and $94.68 and a payback period of 8.7 years, 7.7 years, 5.7 years and 5.7 years, respectively. However, for these product classes, the fraction of customers experiencing a net LCC cost is 63.6 percent, 58.3 percent, 33.2 percent and 35.7 percent due to increases in first cost of $152.02, $137.71, $142.35, and $125.15, respectively. Overall, a majority of refrigerators, refrigerator-freezers, and freezers consumers (53.3 percent) would experience a net cost and the average LCC savings would be negative for PC 11A, PC 17, and PC 18. Additionally, 29 percent of low-income households with a side-by-side refrigerator-freezer (represented by PC 7 and used by 19 percent of low-income households) would experience a net cost.

At TSL 6, the projected change in INPV ranges from a decrease of $1.71 billion to a decrease of $1.23 billion, which correspond to decreases of 34.4 percent and 25.7 percent, respectively. Industry conversion costs could reach $2.25 billion as manufacturers work to redesign their portfolio of model offerings and re-tool entire factories to comply with amended standards at TSL 6.

DOE estimates that approximately 1 percent of refrigerator, refrigerator-freezer, and freezer current annual shipments meet the max-tech levels. At TSL 6, only a few manufacturers offer any standard-size products that meet the efficiencies required. For PC 3, which accounts for approximately 25 percent of annual shipments, no OEMs currently offer products that meet the efficiency level required. For PC 5, which accounts for approximately 21 percent of annual shipments, DOE estimates that only one out of 23 OEMs currently offers products that meet the efficiency level required. For PC 7, which accounts for approximately 11 percent of annual shipments, only one out of the 11 OEMs currently offers products that meet the efficiency level required.

At max-tech, manufacturers would likely need to implement all of the most efficient design options in the engineering analysis. In interviews, manufacturer indicated they would redesign all product platforms and dramatically update manufacturing facilities to meet max-tech for all approximately 16.7 million annual shipments of refrigerators, refrigerator-freezers, and freezers.

In particular, increased incorporation of VIPs could increase the expense of adapting manufacturing plants. As discussed in section IV.J.2.c of this document, DOE expects manufacturers would need to adopt VIP technology to improve thermal insulation while minimizing loss to the interior volume for their products. Extensive incorporation of VIPs requires significant capital expenditures due to the need for more careful product handling and conveyor, increased warehousing requirements, investments in tooling necessary for the VIP installation process, and adding production line capacity to compensate for more time-intensive manufacturing associated with VIPs. Manufacturers with facilities that have limited space and few options to expand may consider greenfield projects. In interviews, several manufacturers expressed concerns about their ability to produce sufficient quantities of refrigerators, refrigerator-freezers, and freezers at max-tech given the required scale of investment, redesign effort, and 3-year compliance timeline.

The Secretary tentatively concludes that at TSL 6 for refrigerators, refrigerator-freezers, and freezers, the benefits of energy savings, positive NPV of consumer benefits, emission reductions, and the estimated monetary value of the emissions reductions would be outweighed by the economic burden on many consumers, and the impacts on manufacturers, including the large potential reduction in INPV and the lack of manufacturers currently offering products meeting the efficiency levels required at this TSL. At TSL 6, a majority of refrigerator, refrigerator-freezer, and freezers consumer (53.3 percent) would experience a net cost and the average LCC savings would be negative for PC 11A, PC 17, and PC 18. Additionally, manufacturers would need to make significant upfront investments to update product lines and manufacturing facilities. Manufacturers expressed concern that they would not be able to complete product and production line updates within the 3-year conversion period. Consequently, the Secretary has tentatively concluded that TSL 6 is not economically justified.

DOE then considered TSL 5 for refrigerators, refrigerator-freezers, and freezers. For classes other than refrigerator-freezers with bottom-mounted freezers and through-the-door ice service (PC 5A), this TSL represents efficiency levels less than max-tech. TSL 5 represents similar design option as max-tech, but generally incorporates the use of high-efficiency rather than maximum-efficiency VSCs, incorporates VIPs in fewer product classes, and incorporates less VIP surface area for the product classes requiring the use of VIPs as compared to TSL 6. TSL 5 would save an estimated 5.30 quads of energy, an amount DOE considers significant. Under TSL 5, the NPV of consumer benefit would be $6.64 billion using a discount rate of 7 percent, and $20.40 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 5 are 179 Mt of CO_2, 83.1 thousand tons of SO_2, 274 thousand tons of NO_X, 0.54 tons of Hg, 1,205 thousand tons of CH_4, and 1.90 thousand tons of N_2O. The estimated monetary value of the climate benefits from reduced GHG emissions (associated with the average SC–GHG at a 3-percent discount rate) at TSL 5 is $8.15 billion. The estimated monetary value of the health benefits from reduced SO_2 and NO_X emissions at TSL 5 is $5.33 billion using a 7-percent discount rate and $14.20 billion using a 3-percent discount rate.

Using a 7-percent discount rate for consumer benefits and costs, health benefits from reduced SO_2 and NO_X emissions, and the 3-percent discount rate case for climate benefits from reduced GHG emissions, the estimated total NPV at TSL 5 is $20.12 billion. Using a 3-percent discount rate for all benefits and costs, the estimated total NPV at TSL 5 is $42.74 billion. The estimated total NPV is provided for additional information, however DOE primarily relies upon the NPV of consumer benefits when determining whether a proposed standard level is economically justified.

At TSL 5, for the largest product classes, which are 3, 5, 5A, and 7, there is a life cycle cost savings of $36.04, $49.73, $115.76, and $101.33 and a payback period of 5.3 years, 4.8 years, 5.7 years and 5.0 years, respectively. For these product classes, the fraction of customers experiencing a net LCC cost is 36.2 percent, 23.4 percent, 33.2 percent and 28.5 percent due to increases in first cost of $49.86, $55.81, $142.35, and $100.28, respectively. Overall, 27.5 percent of refrigerators, refrigerator-freezers, and freezers consumers would experience a net cost and the average LCC savings are positive for all product classes.

At TSL 5, an estimated 12 percent of all low-income households experience a net cost, including less than 10 percent of low-income households with a top-mount or single-door refrigerator-freezer (represented by PC 3 and used by 72 percent of low-income households) and 23 percent of low-income households with a side-by-side refrigerator-freezer (represented by PC 7 and used by 19 percent of low-income households).

While 23 percent of low-income PC 7 consumers experience a net cost at TSL5, more than half of those consumers experience a net cost of $30 or less and low-income PC 7 consumers experience an average LCC savings of $134.54, larger average LCC savings than at any lower TSL. Further, across all consumers, TSL 5 represents the largest average LCC savings for PC 7 of any TSL.

At TSL 5, the projected change in INPV ranges from a decrease of $1.0 billion to a decrease of $792.8 million, which correspond to decreases of 20.2 percent and 16.0 percent, respectively. DOE estimates that industry must invest $1.32 billion to comply with standards set at TSL 5.

DOE estimates that approximately 18 percent of refrigerator, refrigerator-freezer, and freezer annual shipments meet the TSL 5 efficiencies. For standard-size refrigerator-freezers, which account for approximately 70 percent of total annual shipments, approximately 5 percent of shipments meet the efficiencies required at TSL 5. Compared to max-tech, more manufacturers offer standard-size refrigerator-freezer products that meet the required efficiencies, however, many manufacturers do not offer products that meet this level. Of the 23 OEMs offering PC 3 products, two offer models that meet the efficiency level required. Of the 23 OEMs offering PC 5 products, 13 offer models that meet the efficiency level required. Of the 11 OEMs offering PC 7 products, one offers models that meet the efficiency level required.

The manufacturers that do not currently offer models that meet TSL 5 efficiencies would need to develop new product platforms. Updates could include incorporating variable defrost, BLDC evaporator fan motors, and high-efficiency VSCs. Additionally, some product classes—notably, high-volume PCs 5, 5A, and 7—could require the use of VIPs. As discussed in section IV.J.2.c of this document, the inclusion of VIPs in product design necessitates large investments in tooling and significant changes to production plants. Furthermore, given that only 5 percent of current standard-size refrigerator-freezer shipments meet TSL 5 efficiency levels, the manufacturers that are currently able to meet TSL 5 would need to scale up manufacturing capacity of compliant models. DOE anticipates conversion costs as high as $1.32 billion as the majority of product platforms in the industry would require redesign and investment.

DOE requests data on manufacturers' ability to complete investments necessary to adapt product designs and production facilities within the 3-year compliance timeline at TSL 5. Further, DOE requests comment on the specific limitations, including specific financial impacts on manufacturers, that would limit industry's ability to adapt to amended standards at TSL 5.

Some stakeholders raised concerns about the availability of VSCs necessary to meet TSL 5. (GE, No.38 at p.3; AHAM, No.31 at p.10) In particular, those stakeholders worried that current supply constraints on VSCs would continue through the compliance date and those constraints would be exacerbated by amended standards. The concern was not shared by all stakeholders. One manufacturer suggested that more than one-third of the US refrigerator market already uses VSCs and that the technology is becoming more accessible and more affordable (Samsung, No.32 at p.2). Additional information on the VSC supply chain, including current suppliers, current constraints, and the potential impacts of regulation certainty, would help DOE determine the validity of VSC availability concerns at TSL 5.

DOE requests comment on whether regulatory certainty and a 3-year compliance period would allow for manufacturers and suppliers to establish sufficient supply availability of VSCs for the refrigerators, refrigerator-freezers, and freezers industry at TSL 5.

After considering the analysis and weighing the benefits and burdens, the Secretary has tentatively concluded that a standard set at TSL 5 for refrigerators, refrigerator-freezers, and freezers would be economically justified. At this TSL, the average LCC savings are positive for all product classes for which an amended standard is considered. An estimated 27.5 percent of all refrigerator, refrigerator-freezer, and freezer consumers experience a net cost, which is a significantly lower percentage than under TSL 6. An estimated 12 percent of all low-income households experience a net cost, including less than 10 percent of low-income households with a top-mount or single-door refrigerator-freezer (represented by PC 3 and used by 72 percent of low-income households) and 23 percent of low-income households with a side-by-side refrigerator-freezer (represented by PC 7 and used by 19 percent of low-income households). DOE notes that low-income PC 7 consumers experience a greater average net benefit at TSL 5, with larger average LCC savings, than at any lower TSL. Across all consumers, TSL 5 represents the largest average LCC savings for PC 7 of any TSL. The FFC national energy savings are significant and the NPV of consumer benefits is positive at TSL 5 using both a 3-percent and 7-percent discount rate. Notably, the benefits to consumers vastly outweigh the cost to manufacturers. At TSL 5, the NPV of consumer benefits, even measured at the more conservative discount rate of 7 percent is over 6 times higher than the maximum estimated manufacturers' loss in INPV. The standard levels at TSL 5 are economically justified even without weighing the estimated monetary value of emissions reductions. When those emissions reductions are included—representing $8.15 billion in climate benefits (associated with the average SC–GHG at a 3-percent discount rate), and $14.20 billion (using a 3-percent discount rate) or $5.33 billion (using a 7-percent discount rate) in health benefits—the rationale becomes stronger still.

As stated, DOE conducts the walk-down analysis to determine the TSL that represents the maximum improvement in energy efficiency that is technologically feasible and economically justified as required under EPCA. Although DOE has not conducted a comparative analysis to select the proposed energy conservation standards, DOE notes 19 percent of low-income households have a side-by-side refrigerator-freezer (represented by PC 7) and that an estimated 23 percent of low-income PC 7 households experience a net cost at TSL 5, whereas an estimated 14 percent of low-income households with a side-by-side refrigerator-freezer experience a net cost at TSL 4. However, the average LCC savings for low-income PC 7 consumers are $19.48 higher at TSL 5 than at TSL 4. Further, compared to TSL 4, it is estimated that TSL 5 would result in additional FFC national energy savings of 0.40 quads and additional health benefits of $1.07 billion (using a 3-percent discount rate) or $0.40 billion (using a 7-percent discount rate). The national consumer NPV similarly increases at TSL 5, compared to TSL 4, by $0.04 billion using a 7-percent discount rate and $0.63 billion using a 3-percent discount rate. These additional savings and benefits at TSL 5 are significant. DOE considers the impacts to be, as a whole, economically justified at TSL 5.

Although DOE considered proposed amended standard levels for refrigerators, refrigerator-freezers, and freezers by grouping the efficiency levels for each product class into TSLs, DOE evaluates all analyzed efficiency levels in its analysis. For all product classes other than product class 7, the proposed standard level represents the

maximum energy savings that does not result in a large percentage of consumers experiencing a net LCC cost. For product class 7, the proposed standard level represents the maximum energy savings that does not represent a significant potential burden for more than 25 percent of low-income households with side-by-side refrigerator-freezers, and less than 15 percent of all low-income households. The ELs at the proposed standard level result in positive LCC savings for all product classes, significantly reduce the number of consumers experiencing a net cost, and reduce the decrease in INPV and conversion costs to the point where DOE has tentatively concluded they are economically justified, as discussed for TSL 5 in the preceding paragraphs.

Therefore, based on the previous considerations, DOE proposes to adopt the energy conservation standards for refrigerators, refrigerator-freezers, and freezers at TSL 5. The proposed amended energy conservation standards for refrigerators, refrigerator-freezers, and freezers, which are expressed as kWh/year, are shown in Table V.47.

TABLE V.47—PROPOSED AMENDED ENERGY CONSERVATION STANDARDS FOR REFRIGERATORS, REFRIGERATOR-FREEZERS, AND FREEZERS

Product class	Equations for maximum energy use (kWh/yr)	
	Based on AV (ft^3)	Based on AV (L)
1. Refrigerator-freezers and refrigerators other than all-refrigerators with manual defrost.	6.79AV + 191.3	0.240av + 191.3.
1A. All-refrigerators—manual defrost	5.77AV + 164.6	0.204av + 164.6.
2. Refrigerator-freezers—partial automatic defrost	(6.79AV + 191.3)*K2	(0.240av + 191.3)*K2.
3. Refrigerator-freezers—automatic defrost with top-mounted freezer	6.86AV + 198.6 + 28I	0.242av + 198.6 + 28I.
3–BI. Built-in refrigerator-freezer—automatic defrost with top-mounted freezer.	8.24AV + 238.4 + 28I	0.291av + 238.4 + 28I.
3A. All-refrigerators—automatic defrost	(6.01AV + 171.4)*K3A	(0.212av + 171.4)*K3A.
3A–BI. Built-in All-refrigerators—automatic defrost	(7.22AV + 205.7)*K3ABI	(0.255av + 205.7)*K3ABI.
4. Refrigerator-freezers—automatic defrost with side-mounted freezer	6.89AV + 241.2 + 28I	0.243av + 241.2 + 28I.
4–BI. Built-In Refrigerator-freezers—automatic defrost with side-mounted freezer.	8.79AV + 307.4 + 28I	0.310av + 307.4 + 28I.
5. Refrigerator-freezers—automatic defrost with bottom-mounted freezer.	(7.61AV + 272.6)*K5 + 28I	(0.269av + 272.6)*K5 + 28I.
5–BI. Built-In Refrigerator-freezers—automatic defrost with bottom-mounted freezer.	(8.65AV + 309.9)*K5BI + 28I	(0.305av + 309.9)*K5BI + 28I.
5A. Refrigerator-freezer—automatic defrost with bottom-mounted freezer with through-the-door ice service.	(7.26AV + 329.2)*K5A	(0.256av + 329.2)*K5A.
5A–BI. Built-in refrigerator-freezer—automatic defrost with bottom-mounted freezer with through-the-door ice service.	(8.21AV + 370.7)*K5ABI	(0.290av + 370.7)*K5ABI.
6. Refrigerator-freezers—automatic defrost with top-mounted freezer with through-the-door ice service.	7.14AV + 280.0	0.252av + 280.0.
7. Refrigerator-freezers—automatic defrost with side-mounted freezer with through-the-door ice service.	(6.92AV + 305.2)*K7	(0.244av + 305.2)*K7.
7–BI. Built-In Refrigerator-freezers—automatic defrost with side-mounted freezer.	(8.82AV + 384.1)*K7BI	(0.311av + 384.1)*K7BI.
8. Upright freezers with manual defrost	5.57AV + 193.7	0.197av + 193.7.
9. Upright freezers with automatic defrost	7.76AV + 205.5 + 28I	0.274av + 205.5 + 28I.
9–BI. Built-In Upright freezers with automatic defrost	9.37AV + 247.9 + 28I	0.331av + 247.9 + 28I.
10. Chest freezers and all other freezers except compact freezers	7.29AV + 107.8	0.257av + 107.8.
10A. Chest freezers with automatic defrost	10.24AV + 148.1	0.362av + 148.1.
11. Compact refrigerator-freezers and refrigerators other than all-refrigerators with manual defrost.	7.68AV + 214.5	0.271av + 214.5.
11A. Compact all-refrigerators—manual defrost	6.66AV + 186.2	0.235av + 186.2.
12. Compact refrigerator-freezers—partial automatic defrost	(7.68AV + 214.5)*K12	(0.271av + 214.5)*K12.
13. Compact refrigerator-freezers—automatic defrost with top-mounted freezer.	10.62AV + 305.3 + 28I	0.375av + 305.3 + 28I.
13A. Compact all-refrigerators—automatic defrost	(8.25AV + 233.4)*K13A	(0.291av + 233.4)*K13A.
14. Compact refrigerator-freezers—automatic defrost with side-mounted freezer.	6.14AV + 411.2 + 28I	0.217av + 411.2 + 28I.
15. Compact refrigerator-freezers—automatic defrost with bottom-mounted freezer.	10.62AV + 305.3 + 28I	0.375av + 305.3 + 28I.
16. Compact upright freezers with manual defrost	7.35AV + 191.8	0.260av + 191.8.
17. Compact upright freezers with automatic defrost	9.15AV + 316.7	0.323av + 316.7.
18. Compact chest freezers	7.86AV + 107.8	0.278av + 107.8.

AV = Total adjusted volume, expressed in ft^3, as determined in appendices A and B of subpart B of 10 CFR part 430.

av = Total adjusted volume, expressed in Liters.

I = 1 for a product with an automatic icemaker and = 0 for a product without an automatic icemaker. Door Coefficients (*e.g.*, K3A) are as defined in the table below.

TABLE V.48—DESCRIPTION OF DOOR COEFFICIENTS FOR PROPOSED MAXIMUM ENERGY USE EQUATIONS FOR REFRIGERATORS, REFRIGERATOR-FREEZERS, AND FREEZERS

Door coefficient	Products with a transparent door	Products without a transparent door with a door-in-door	Products without a transparent door or door-in-door with added external doors
K2	N/A	N/A	1 + 0.02 * (N_d − 1)
K3A	1.10	N/A	N/A
K3ABI.			
K13A.			
K5		1.06	1 + 0.02 * (N_d − 2)
K5BI.			
K5A			1 + 0.02 * (N_d − 3)
K5ABI.			
K7			1 + 0.02 * (N_d − 2)
K7BI.			
K12	N/A	N/A	1 + 0.02 * (N_d − 1)

N_d is the number of external doors.

2. Annualized Benefits and Costs of the Proposed Standards

The benefits and costs of the proposed standards can also be expressed in terms of annualized values. The annualized net benefit is (1) the annualized national economic value (expressed in 2021$) of the benefits from operating products that meet the proposed standards (consisting primarily of operating cost savings from using less energy, minus increases in product purchase costs, and (2) the annualized monetary value of the climate and health benefits from emission reductions.

Table V.49 shows the annualized values for refrigerators, refrigerator-freezers, and freezers under TSL 5, expressed in 2021$. The results under the primary estimate are as follows.

Using a 7-percent discount rate for consumer benefits and costs and NO_X and SO_2 reduction benefits, and a 3-percent discount rate case for GHG social costs, the estimated cost of the proposed standards for refrigerators, refrigerator-freezers, and freezers is $730.0 million per year in increased equipment costs, while the estimated annual benefits are $1.4317 billion from reduced equipment operating costs, $467.9 million from GHG reductions, and $563.3 million from reduced NO_X and SO_2 emissions. In this case, the net benefit amounts to $1.7329 billion per year.

Using a 3-percent discount rate for all benefits and costs, the estimated cost of the proposed standards for refrigerators, refrigerator-freezers, and freezers is $707.4 million per year in increased equipment costs, while the estimated annual benefits are $1.8786 billion in reduced operating costs, $467.9 million from GHG reductions, and $815.2 million from reduced NO_X and SO_2 emissions. In this case, the net benefit amounts to $2.4543 billion per year.

TABLE V.49—ANNUALIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR REFRIGERATORS, REFRIGERATOR-FREEZERS, AND FREEZERS (TSL 5)

	Million 2021$/year		
	Primary estimate	Low-net-benefits estimate	High-net-benefits estimate
3% discount rate			
Consumer Operating Cost Savings	1,878.6	1,745.5	2,030.6
Climate Benefits *	467.9	453.4	482.4
Health Benefits **	815.2	790.3	840.1
Total Benefits †	3,161.7	2,989.3	3,353.1
Consumer Incremental Product Costs ‡	707.4	774.3	681.3
Net Monetized Benefits	2,454.3	2,215.0	2,671.9
7% discount rate			
Consumer Operating Cost Savings	1,431.7	1,339.6	1,534.2
Climate Benefits * (3% discount rate)	467.9	453.4	482.4
Health Benefits **	563.3	547.4	579.1
Total Benefits †	2,462.9	2,340.4	2,595.7
Consumer Incremental Product Costs	730.0	788.4	706.3

TABLE V.49—ANNUALIZED BENEFITS AND COSTS OF PROPOSED ENERGY CONSERVATION STANDARDS FOR REFRIGERATORS, REFRIGERATOR-FREEZERS, AND FREEZERS (TSL 5)—Continued

	Million 2021$/year		
	Primary estimate	Low-net-benefits estimate	High-net-benefits estimate
Net Monetized Benefits	1,732.9	1,552.0	1,889.4

Note: This table presents the costs and benefits associated with refrigerators, refrigerator-freezers, and freezers shipped in 2027–2056. These results include benefits to consumers which accrue after 2056 from the products shipped in 2027–2056. The Primary, Low Net Benefits, and High Net Benefits Estimates utilize projections of energy prices from the *AEO2022* Reference case, Low Economic Growth case, and High Economic Growth case, respectively. In addition, incremental equipment costs reflect a medium decline rate in the Primary Estimate, a low decline rate in the Low Net Benefits Estimate, and a high decline rate in the High Net Benefits Estimate. The methods used to derive projected price trends are explained in section IV.H.3. Note that the Benefits and Costs may not sum to the Net Benefits due to rounding.

* Climate benefits are calculated using four different estimates of the global SC–GHG (see section IV.L of this notice). For presentational purposes of this table, the climate benefits associated with the average SC–GHG at a 3 percent discount rate are shown, but the Department does not have a single central SC–GHG point estimate, and it emphasizes the importance and value of considering the benefits calculated using all four SC–GHG estimates. On March 16, 2022, the Fifth Circuit Court of Appeals (No. 22–30087) granted the Federal government's emergency motion for stay pending appeal of the February 11, 2022, preliminary injunction issued in *Louisiana* v. *Biden,* No. 21–cv–1074–JDC–KK (W.D. La.). As a result of the Fifth Circuit's order, the preliminary injunction is no longer in effect, pending resolution of the Federal government's appeal of that injunction or a further court order. Among other things, the preliminary injunction enjoined the defendants in that case from ''adopting, employing, treating as binding, or relying upon'' the interim estimates of the social cost of greenhouse gases—which were issued by the Interagency Working Group on the Social Cost of Greenhouse Gases on February 26, 2021—to monetize the benefits of reducing greenhouse gas emissions. As reflected in this rule, DOE has reverted to its approach prior to the injunction and presents monetized greenhouse gas abatement benefits where appropriate and permissible under law.

** Health benefits are calculated using benefit-per-ton values for NO_X and SO_2. DOE is currently only monetizing (for SO_2 and NO_X) $PM_{2.5}$ precursor health benefits and (for NO_X) ozone precursor health benefits, but will continue to assess the ability to monetize other effects such as health benefits from reductions in direct $PM_{2.5}$ emissions. The health benefits are presented at real discount rates of 3 and 7 percent. See section IV.L of this document for more details.

† Total benefits for both the 3-percent and 7-percent cases are presented using the average SC–GHG with 3-percent discount rate, but the Department does not have a single central SC–GHG point estimate.

D. Reporting, Certification, and Sampling Plan

Manufacturers, including importers, must use product-specific certification templates to certify compliance to DOE. For refrigerators, refrigerator-freezers, and freezers, the certification template reflects the general certification requirements specified at 10 CFR 429.12 and the product-specific requirements specified at 10 CFR 429.14. As discussed in the previous paragraphs, DOE is not proposing to amend the product-specific certification requirements for these products.

VI. 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/final 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 is an economically significant regulatory action within the scope of section 3(f)(1) of E.O. 12866. Accordingly, pursuant to section 6(a)(3)(C) of E.O. 12866, DOE has provided to OIRA an assessment, including the underlying analysis, of benefits and costs anticipated from the proposed regulatory action, together with, to the extent feasible, a quantification of those costs; and an assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation, and an explanation why the planned regulatory action is preferable to the identified potential alternatives. These assessments are summarized in this preamble and further detail can be found in the TSD for this rulemaking.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (''IRFA'') for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by E.O. 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19,

2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website (*energy.gov/gc/office-general-counsel*). DOE has prepared the following IRFA for the products that are the subject of this rulemaking.

For manufacturers of refrigerators, refrigerator-freezers, and freezers, the 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 North American Industry Classification System (''NAICS'') code and industry description and are available at *www.sba.gov/document/support--table-size-standards.* Manufacturing of refrigerators, refrigerator-freezers, and freezers is classified under NAICS 335220, ''Major Household Appliance Manufacturing.'' The SBA sets a threshold of 1,500 employees or fewer for an entity to be considered as a small business for this category.

1. Description of Reasons Why Action Is Being Considered

DOE is proposing amended energy conservation standards for refrigerators, refrigerator-freezers, and freezers. EPCA prescribed energy conservation standards for these products (42 U.S.C. 6295(b)(1)–(2)), and directed DOE to conduct three cycles of future rulemakings to whether to amend these standards. (42 U.S.C. 6295(b)(3)(A)(i), (b)(3)(B), and (b)(4)). DOE has completed these rulemakings. EPCA further provides that, not later than 6 years after the issuance of any final rule establishing or amending a standard, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a NOPR including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(1)) This rulemaking is in accordance with DOE's obligations under EPCA.

2. Objectives of, and Legal Basis for, Rule

EPCA authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. Title III, Part B of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles. These products include refrigerators, refrigerator-freezers, and freezers, the subject of this document. (42 U.S.C. 6292(a)(1)) EPCA prescribed energy conservation standards for these products (42 U.S.C. 6295(b)(1)–(2)), and directed. DOE to conduct three cycles of future rulemakings to whether to amend these standards. (42 U.S.C. 6295(b)(3)(A)(i), (b)(3)(B), and (b)(4)). DOE has completed these rulemakings. EPCA further provides that, not later than 6 years after the issuance of any final rule establishing or amending a standard, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a NOPR including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(1))

3. Description on Estimated Number of Small Entities Regulated

DOE reviewed this proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. 68 FR 7990. DOE conducted a market survey to identify potential small manufacturers of refrigerators, refrigerator-freezers, and freezers. DOE began its assessment by reviewing DOE's CCD,[93] California Energy Commission's Modernized Appliance Efficiency Database System (''MAEDbS''),[94] individual company websites, and prior refrigerator, refrigerator-freezer, and freezer rulemakings to identify manufacturers of the covered product. DOE then consulted publicly available data, such as manufacturer websites, manufacturer specifications and product literature, import/export logs (*e.g.,* bills of lading from Panjiva [95]), and basic model numbers, to identify original equipment manufacturers (''OEMs'') of covered refrigerators, refrigerator-freezers, and freezers. DOE further relied on public data and subscription-based market research tools (*e.g.,* Dun & Bradstreet reports [96]) to determine company, location, headcount, and annual revenue. DOE also asked industry representatives if they were aware of any small manufacturers during manufacturer interviews. DOE screened out companies that do not offer products covered by this rulemaking, do not meet the SBA's definition of a ''small business,'' or are foreign-owned and operated.

DOE initially identified 49 OEMs that sell refrigerators, refrigerator-freezers, or freezers in the United States. Of the 49 OEMs identified, DOE tentatively determined that one company qualifies as a small business and is not foreign-owned and operated.

DOE reached out to the small business and invited them to participate in a voluntary interview. The small business did not consent to participate in a formal MIA interview. DOE also requested information about small businesses and potential impacts on small businesses while interviewing larger manufacturers.

4. Description and Estimate of Compliance Requirements Including Differences in Cost, if Any, for Different Groups of Small Entities

The one small business identified has 45 refrigerator, refrigerator-freezer, and freezer models certified in DOE's CCD. Of those 45 models, 43 models are compact-size refrigerators, refrigerator-freezers, or freezers (34 PC 13A models, three PC 15 models, and six PC 17 models). The remaining two models are standard-size built-in refrigerator-freezer models (PC 3A–BI). Of the 34 PC 13A models, 22 models meet the efficiency required at TSL 5. For PC 15, PC 17, and PC 3A–BI, this small manufacturer only offers models at the current DOE baseline efficiency and, therefore, does not offer any products that meet the proposed TSL 5 efficiencies (*i.e.,* 10 percent reduction in energy use from the current DOE baseline). To meet the required efficiencies, DOE expects this small manufacturer would likely need to implement variable defrost and variable-speed compressors, along with other design options across all their product platforms. Some capital conversion costs may be necessary for additional tooling and new stations to test more variable-speed compressors. Product conversion costs may be necessary for developing, qualifying, sourcing, and testing new components. DOE estimated conversion costs for this small manufacturer by using model counts to scale-down the industry conversion costs. DOE estimates that the small manufacturer may incur $400,000 in capital conversion costs and $490,000 in product conversion costs related to redesigning their products to meet proposed amended standards. Based on

[93] U.S. Department of Energy's Compliance Certification Database is available at: *www.regulations.doe.gov/certification-data/#q=Product_Group_s%3A** (Last accessed March 25, 2022).

[94] California Energy Commission's Modernized Appliance Efficiency Database System is available at: *cacertappliances.energy.ca.gov/Pages/ApplianceSearch.aspx* (Last accessed March 25, 2022).

[95] S&P Global. Panjiva Market Intelligence is available at: *panjiva.com/import-export/United-States* (Last accessed May 5, 2022).

[96] D&B Hoovers | Company Information | Industry Information | Lists, *app.dnbhoovers.com/* (Last accessed August 24, 2022).

subscription-based market research reports,[97] the small business has an annual revenue of approximately $85.3 million. The total conversion costs of $890,000 are approximately 0.3 percent of company revenue over the 3-year conversion period.

DOE seeks comments, information, and data on the number of small businesses in the industry, the names of those small businesses, and their market shares by product class. DOE also requests comment on the potential impacts of the proposed standards on small manufacturers.

5. Duplication, Overlap, and Conflict With Other Rules and Regulations

DOE is not aware of any rules or regulations that duplicate, overlap, or conflict with the proposed rule.

6. Significant Alternatives to the Rule

The discussion in the previous section analyzes impacts on small businesses that would result from DOE's proposed rule, represented by TSL 5. In reviewing alternatives to the proposed rule, DOE examined energy conservation standards set at lower efficiency levels. While TSL 1, TSL 2, TSL 3, and TSL 4 would reduce the impacts on small business manufacturers, it would come at the expense of a reduction in energy savings. TSL 1 achieves 56 percent lower energy savings compared to the energy savings at TSL 5. TSL 2 achieves 46 percent lower energy savings compared to the energy savings at TSL 5. TSL 3 achieves 24 percent lower energy savings compared to the energy savings at TSL 5. TSL 4 achieves 8 percent lower energy savings compared to the energy savings at TSL 5.

Based on the presented discussion, establishing standards at TSL 5 balances the benefits of the energy savings at TSL 5 with the potential burdens placed on refrigerator, refrigerator-freezer, and freezer manufacturers, including small business manufacturers. Accordingly, DOE does not propose one of the other TSLs considered in the analysis, or the other policy alternatives examined as part of the regulatory impact analysis and included in chapter 17 of the NOPR TSD.

Additional compliance flexibilities may be available through other means. EPCA provides that a manufacturer whose annual gross revenue from all of its operations does not exceed $8 million may apply for an exemption from all or part of an energy conservation standard for a period not longer than 24 months after the effective date of a final rule establishing the standard. (42 U.S.C. 6295(t)) Additionally, manufacturers subject to DOE's energy efficiency standards may apply to DOE's Office of Hearings and Appeals for exception relief under certain circumstances. Manufacturers should refer to 10 CFR part 430, subpart E, and 10 CFR part 1003 for additional details.

C. Review Under the Paperwork Reduction Act

Manufacturers of refrigerators, refrigerator-freezers, and freezers must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for refrigerators, refrigerator-freezers, and freezers, 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 refrigerators, refrigerator-freezers, and freezers. (See generally 10 CFR part 430). The collection of information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (''PRA''). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

DOE is analyzing this proposed regulation in accordance with the National Environmental Policy Act of 1969 (''NEPA'') and DOE's NEPA implementing regulations (10 CFR part 1021). DOE's regulations include a categorical exclusion for rulemakings that establish energy conservation standards for consumer products or industrial equipment. 10 CFR part 1021, subpart D, appendix B5.1. DOE anticipates that this proposed rulemaking qualifies for categorical exclusion B5.1 because it is a rulemaking that establishes energy conservation standards for consumer products or industrial equipment, none of the exceptions identified in categorical exclusion B5.1(b) apply, no extraordinary circumstances exist that require further environmental analysis, and it otherwise meets the requirements for application of a categorical exclusion. *See* 10 CFR 1021.410. DOE will complete its NEPA review before issuing the final rule.

E. Review Under Executive Order 13132

E.O. 13132, ''Federalism,'' 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has tentatively determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the 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) Therefore, no further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, ''Civil Justice Reform,'' imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct

[97] D&B Hoovers | Company Information | Industry Information | Lists, *app.dnbhoovers.com/* (Last accessed August 24, 2022).

rather than a general standard, and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of E.O. 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any, (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction, (4) specifies the retroactive effect, if any, (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of E.O. 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, section 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 them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at *www.energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf.*

Although this proposed rule does not contain a Federal intergovernmental mandate, it may require expenditures of $100 million or more in any one year by the private sector. Such expenditures may include: (1) investment in research and development and in capital expenditures by refrigerator, refrigerator-freezer, and freezer manufacturers in the years between the final rule and the compliance date for the new standards and (2) incremental additional expenditures by consumers to purchase higher-efficiency refrigerators, refrigerator-freezers, and freezers, starting at the compliance date for the applicable standard.

Section 202 of UMRA authorizes a Federal agency to respond to the content requirements of UMRA in any other statement or analysis that accompanies the proposed rule. (2 U.S.C. 1532(c)) The content requirements of section 202(b) of UMRA relevant to a private sector mandate substantially overlap the economic analysis requirements that apply under section 325(o) of EPCA and Executive Order 12866. The **SUPPLEMENTARY INFORMATION** section of this NOPR and the TSD for this proposed rule respond to those requirements.

Under section 205 of UMRA, the Department is obligated to identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a written statement under section 202 is required. (2 U.S.C. 1535(a)) DOE is required to select from those alternatives the most cost-effective and least burdensome alternative that achieves the objectives of the proposed rule unless DOE publishes an explanation for doing otherwise, or the selection of such an alternative is inconsistent with law. As required by 42 U.S.C. 6295(m), this proposed rule would establish amended energy conservation standards for refrigerators, refrigerator-freezers, and freezers that are designed to achieve the maximum improvement in energy efficiency that DOE has determined to be both technologically feasible and economically justified, as required by 42 U.S.C. 6295(o)(2)(A) and 6295(o)(3)(B). A full discussion of the alternatives considered by DOE is presented in chapter 17 of the TSD for this proposed rule.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

Pursuant to E.O. 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (Mar. 15, 1988), DOE has determined that this proposed rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at *www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf.* DOE has reviewed this NOPR under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

E.O. 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor 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.

DOE has tentatively concluded that this regulatory action, which proposes amended energy conservation standards for refrigerators, refrigerator-freezers, and freezers is not a significant energy action because the proposed standards are not likely to have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects on this proposed rule.

L. Information Quality

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (''OSTP''), issued its Final Information Quality Bulletin for Peer Review (''the Bulletin''). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are ''influential scientific information,'' which the Bulletin defines as ''scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions.'' 70 FR 2664, 2667.

In response to OMB's Bulletin, DOE conducted formal peer reviews of the energy conservation standards development process and the analyses that are typically used and has prepared a report describing that peer review.[98] Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. Because available data, models, and technological understanding have changed since 2007, DOE has engaged with the National Academy of Sciences to review DOE's analytical methodologies to ascertain whether modifications are needed to improve the Department's analyses. DOE is in the process of evaluating the resulting report.[99]

VII. Public Participation

A. Attendance at the Public Meeting

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 at *www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=37.* 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 plans to present a prepared general statement may request that copies of his or her statement be made available at the public meeting. Such persons may submit requests, along with an advance electronic copy of their statement in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format, to the appropriate address shown in the **ADDRESSES** section at the beginning of this document. The request and advance copy of statements must be received at least one week before the public meeting and are to be emailed. Please include a telephone number to enable DOE staff to make follow-up contact, if needed.

C. Conduct of the Public Meeting

DOE will designate a DOE official to preside at the 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 public meeting. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. antitrust laws. After the public meeting, interested parties may submit further comments on the proceedings, as well as on any aspect of the rulemaking, until the end of the comment period.

The public meeting 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 allow, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly. 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 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 previous procedures that may be needed for the proper conduct of the public meeting.

A transcript of the public meeting will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this document and will be accessible on the DOE website. 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. 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

[98] The 2007 ''Energy Conservation Standards Rulemaking Peer Review Report'' is available at the following website: *energy.gov/eere/buildings/downloads/energy-conservation-standards-rulemaking-peer-review-report-0* (last accessed August 24, 2022).

[99] The report is available at *www.nationalacademies.org/our-work/review-of-methods-for-setting-building-and-equipment-performance-standards.*

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 format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: one copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

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 comments on its proposal to consolidate the presentation of maximum allowable energy use for products of classes that may or may not have an automatic icemaker.

(2) DOE requests comment on its proposal for establishing energy use allowances for multiple doors and/or specialty doors. Should such an energy use allowance structure be established, and, if so, are the proposed energy use allowance levels appropriate? If they are not appropriate, DOE requests input on what the energy use allowance values should be, with supporting data to demonstrate that the alternative levels suggested are justified.

(3) DOE requests comments on the proposed definitions to clarify transparent door and door-in-door features. If the proposed definitions are not appropriate, DOE requests comment on what specific changes should be made to the definitions, or what other definitions are necessary, so that they would appropriately describe the intended specialized doors.

(4) DOE seeks comment on the method for estimating manufacturing production costs and on the resulting cost-efficiency curves.

(5) DOE requests comment on its markups analysis and the underlying assumptions, including price elasticities specific to the market for new refrigeration products and any potential effects from a market for second refrigerators or second-hand products.

(6) DOE requests comment on its methodology to develop UAFs and also requests data on actual energy use for standard-size consumer refrigerators, refrigerator-freezers, and freezers in the field to further inform the UAF development for subsequent rounds of this rulemaking.

(7) DOE requests comment on the overall methodology and results of the LCC and PBP analyses.

(8) DOE requests comment on its methodology to develop market share distributions by adjusted volume in the compliance year for each PC with two representative volumes, as well as data to further inform these distributions in subsequent rounds of this rulemaking.

(9) DOE requests comment and data on its assumption that installation costs do not change as a function of EL for refrigeration products.

(10) DOE requests comment on its assumption that maintenance costs do not change as a function of EL for refrigeration products. DOE also requests comment and data on its methodology for determining repair costs by PC and EL.

(11) DOE requests comment and data on the assumptions and methodology used to calculate refrigerator, refrigerator-freezer, and freezer survival probabilities. DOE requests comment and data on source of second refrigerators, whether from new purchase, conversion of surviving first refrigerators, or second-hand markets. DOE also welcomes any information indicating whether or not the service

lifetime of refrigeration products differs by efficiency level.

(12) DOE requests comment on its methodology to develop market share distributions by EL for each PC and representative unit for the no-new-standards case in the compliance year, as well as data to further inform these distributions in subsequent rounds of this rulemaking. DOE also requests comment on the assumption that the current efficiency distribution would remain fixed over the analysis period, and data to inform an efficiency trend by PC.

(13) DOE requests comment on the overall methodology and results of the shipments analysis.

(14) DOE requests comment on its assumption of no efficiency trend and seeks historical product efficiency data.

(15) DOE requests comment on assumptions made in the energy use scaling for non-representative product classes in the National Impacts Analysis.

(16) DOE requests comment on the overall methodology and results of the consumer subgroup analysis.

(17) DOE requests comment on how to address the climate benefits and other non-monetized effects of the proposal.

(18) DOE seeks comments, information, and data on the capital conversion costs and product conversion costs estimated for each TSL.

(19) DOE seeks comment on whether manufacturers expect manufacturing capacity constraints would limit product availability to consumers in the timeframe of the amended standard compliance date (2027). In particular, DOE requests information on the product classes and associated efficiency levels that would delay manufacturer's ability to comply with a standard due to the extent of factory investments associated with VIP.

(20) DOE requests data on the availability of VSCs in the timeframe of the standard (2027). Additionally, DOE requests comment on the impact of international regulations on availability of VSCs for the domestic refrigerator, refrigerator-freezer, and freezer market.

(21) DOE requests comment on the potential impacts on domestic, low-volume manufacturers at the TSLs presented in this NOPR.

(22) DOE requests information regarding the impact of cumulative regulatory burden on manufacturers of refrigerators, refrigerator-freezers, and freezers associated with multiple DOE standards or product-specific regulatory actions of other Federal agencies.

(23) DOE seeks comment on its analysis of wall thickness increases for product classes 10, 11A, and 18 along with its preliminary conclusions that consumer utility will not be impacted.

(24) DOE requests data on manufacturers' ability to complete investments necessary to adapt product designs and production facilities within the 3-year compliance timeline at TSL 5. Further, DOE requests comment on the specific limitations, including specific financial impacts on manufacturers, that would limit industry's ability to adapt to amended standards at TSL 5.

(25) DOE requests comment on whether regulatory certainty and a 3-year compliance period would allow for manufacturers and suppliers to establish sufficient supply availability of VSCs for the refrigerators, refrigerator-freezers, and freezers industry at TSL 5.

(26) DOE seeks comments, information, and data on the number of small businesses in the industry, the names of those small businesses, and their market shares by product class. DOE also requests comment on the potential impacts of the proposed standards on small manufacturers.

Additionally, DOE welcomes comments on other issues relevant to the conduct of this rulemaking that may not specifically be identified in this document.

VIII. 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 February 9, 2023, 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 February 14, 2023.

Treena V. Garrett,

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

For the reasons set forth in the preamble, DOE proposes to amend part 430 of chapter II, subchapter D, of title 10 of the 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 appendix A to subpart B of part 430 by:

■ a. In section 3. Definitions, by adding, in alphabetical order, definitions for ''Door-in-door'' and ''Transparent door'';

■ b. In section 5.3:

■ (i) Removing paragraphs (a) and (f), and;

■ (ii) Redesignating paragraphs (b) through (e) as paragraphs (a) through (d); and

■ c. Adding new sections 5.4 and 5.5.

The additions read as follows.

Appendix A to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Refrigerators, Refrigerator-Freezers, and Miscellaneous Refrigeration Products

* * * * *

3. * * *

Door-in-door means a set of doors or an outer door and inner drawer for which—

(a) Both doors (or both the door and the drawer) must be opened to provide access to the interior through a single opening;

(b) Gaskets for both doors (or both the door and the drawer) are exposed to external ambient conditions on the outside around the full perimeter of the respective openings; and

(c) The space between the two doors (or between the door and the drawer) achieves temperature levels consistent with the temperature requirements of the interior compartment to which the door-in-door provides access.

* * * * *

Transparent door means a door for which 75 percent or more of the surface area is glass or another transparent material.

* * * * *

5.4 Icemaker Energy Use

(a) For refrigerators and refrigerator-freezers: To demonstrate compliance with the energy conservation standards at 10 CFR 430.32(a) applicable to products manufactured on or after September 15, 2014, but before the compliance date of any

amended standards published after January 1, 2022, IET, expressed in kilowatt-hours per cycle, equals 0.23 for a product with one or more automatic icemakers and otherwise equals 0 (zero). To demonstrate compliance with any amended standards published after January 1, 2022, IET, expressed in kilowatt-hours per cycle, is as defined section 5.9.2.1 of HRF–1–2019 (incorporated by reference, see § 430.3).

(b) For miscellaneous refrigeration products: To demonstrate compliance with the energy conservation standards at 10 CFR 430.32(aa) applicable to products manufactured on or after October 28, 2019, IET, expressed in kilowatt-hours per cycle, equals 0.23 for a product with one or more automatic icemakers and otherwise equals 0 (zero).

5.5 Triangulation Method

If the three-point interpolation method of section 5.2(b) of this appendix is used for setting temperature controls, the average per-cycle energy consumption shall be defined as follows:

$E = E_X + IET$

Where:

E is defined in section 5.9.1.1 of HRF–1–2019;

IET is defined in section 5.4 of this appendix; and

E_X is defined and calculated as described in appendix M, section M4(a) of AS/NZS 4474.1:2007 (incorporated by reference, see § 430.3). The target temperatures t_{xA} and t_{xB} defined in section M4(a)(i) of AS/NZS 4474.1:2007 shall be the standardized temperatures defined in section 5.6 of HRF–1–2019.

* * * * *

■ 3. Amend appendix B to subpart B of part 430 by:

■ a. In section 5.3:

■ (i) Removing paragraph (a); and

■ (ii) Redesignating paragraphs (b) and (c) as paragraphs (a) and (b); and;

■ b. Adding new section 5.4.

The additions read as follows:

Appendix B to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Freezers

* * * * *

5.4 Icemaker Energy Use

For freezers: To demonstrate compliance with the energy conservation standards at 10 CFR 430.32(a) applicable to products manufactured on or after September 15, 2014 but before the compliance date of any amended standards published after January 1, 2022, IET, expressed in kilowatt-hours per cycle, equals 0.23 for a product with one or more automatic icemakers and otherwise equals 0 (zero). To demonstrate compliance with any amended standards published after January 1, 2022, IET, expressed in kilowatt-hours per cycle, is as defined in section 5.9.2.1 of HRF–1–2019 (incorporated by reference, see § 430.3).

* * * * *

■ 4. Amend § 430.32 by revising paragraph (a) to read as follows:

§ 430.32 Energy and water conservation standards and their compliance dates.

* * * * *

(a) *Refrigerators/refrigerator-freezers/freezers.* These standards do not apply to refrigerators and refrigerator-freezers with total refrigerated volume exceeding 39 cubic feet (1104 liters) or freezers with total refrigerated volume exceeding 30 cubic feet (850 liters). The energy standards as determined by the equations of the following table(s) shall be rounded off to the nearest kWh per year. If the equation calculation is halfway between the nearest two kWh per year values, the standard shall be rounded up to the higher of these values.

The following standards remain in effect from September 15, 2014, until [*date 3 years after the publication of the final rule*].

Product class	Equations for maximum energy use (kWh/yr)	
	Based on AV (ft^3)	Based on av (L)
1. Refrigerators and refrigerator-freezers with manual defrost	7.99AV + 225.0	0.282av + 225.0.
1A. All-refrigerators—manual defrost	6.79AV + 193.6	0.240av + 193.6.
2. Refrigerator-freezers—partial automatic defrost	7.99AV + 225.0	0.282av + 225.0.
3. Refrigerator-freezers—automatic defrost with top-mounted freezer without an automatic icemaker.	8.07AV + 233.7	0.285av + 233.7.
3–BI. Built-in refrigerator-freezer—automatic defrost with top-mounted freezer without an automatic icemaker.	9.15AV + 264.9	0.323av + 264.9.
3I. Refrigerator-freezers—automatic defrost with top-mounted freezer with an automatic icemaker without through-the-door ice service.	8.07AV + 317.7	0.285av + 317.7.
3I–BI. Built-in refrigerator-freezers—automatic defrost with top-mounted freezer with an automatic icemaker without through-the-door ice service.	9.15AV + 348.9	0.323av + 348.9.
3A. All-refrigerators—automatic defrost	7.07AV + 201.6	0.250av + 201.6.
3A–BI. Built-in All-refrigerators—automatic defrost	8.02AV + 228.5	0.283av + 228.5.
4. Refrigerator-freezers—automatic defrost with side-mounted freezer without an automatic icemaker.	8.51AV + 297.8	0.301av + 297.8.
4–BI. Built-In Refrigerator-freezers—automatic defrost with side-mounted freezer without an automatic icemaker.	10.22AV + 357.4	0.361av + 357.4.
4I. Refrigerator-freezers—automatic defrost with side-mounted freezer with an automatic icemaker without through-the-door ice service.	8.51AV + 381.8	0.301av + 381.8.
4I–BI. Built-In Refrigerator-freezers—automatic defrost with side-mounted freezer with an automatic icemaker without through-the-door ice service.	10.22AV + 441.4.2	0.361av + 441.4.
5. Refrigerator-freezers—automatic defrost with bottom-mounted freezer without an automatic icemaker.	8.85AV + 317.0	0.312av + 317.0.
5–BI. Built-In Refrigerator-freezers—automatic defrost with bottom-mounted freezer without an automatic icemaker.	9.40AV + 336.9	0.332av + 336.9.
5I. Refrigerator-freezers—automatic defrost with bottom-mounted freezer with an automatic icemaker without through-the-door ice service.	8.85AV + 401.0	0.312av + 401.0.
5I–BI. Built-In Refrigerator-freezers—automatic defrost with bottom-mounted freezer with an automatic icemaker without through-the-door ice service.	9.40AV + 420.9	0.332av + 420.9.
5A. Refrigerator-freezer—automatic defrost with bottom-mounted freezer with through-the-door ice service.	9.25AV + 475.4	0.327av + 475.4.
5A–BI. Built-in refrigerator-freezer—automatic defrost with bottom-mounted freezer with through-the-door ice service.	9.83AV + 499.9	0.347av + 499.9.
6. Refrigerator-freezers—automatic defrost with top-mounted freezer with through-the-door ice service.	8.40AV + 385.4	0.297av + 385.4.

Product class	Equations for maximum energy use (kWh/yr)	
	Based on AV (ft^3)	Based on av (L)
7. Refrigerator-freezers—automatic defrost with side-mounted freezer with through-the-door ice service.	8.54AV + 432.8	0.302av + 431.1.
7–BI. Built-In Refrigerator-freezers—automatic defrost with side-mounted freezer with through-the-door ice service.	10.25AV + 502.6	0.362av + 502.6.
8. Upright freezers with manual defrost	5.57AV + 193.7	0.197av + 193.7.
9. Upright freezers with automatic defrost without an automatic icemaker	8.62AV + 228.3	0.305av + 228.3.
9I. Upright freezers with automatic defrost with an automatic icemaker	8.62AV + 312.3	0.305av + 312.3.
9–BI. Built-In Upright freezers with automatic defrost without an automatic icemaker	9.86AV + 260.9	0.348av + 260.6.
9I–BI. Built-In Upright freezers with automatic defrost with an automatic icemaker	9.86AV + 344.9	0.348av + 344.9.
10. Chest freezers and all other freezers except compact freezers	7.29AV + 107.8	0.257av + 107.8.
10A. Chest freezers with automatic defrost	10.24AV + 148.1	0.362av + 148.1.
11. Compact refrigerators and refrigerator-freezers with manual defrost	9.03AV + 252.3	0.319av + 252.3.
11A.Compact refrigerators and refrigerator-freezers with manual defrost	7.84AV + 219.1	0.277av + 219.1.
12. Compact refrigerator-freezers—partial automatic defrost	5.91AV + 335.8	0.209av + 335.8.
13. Compact refrigerator-freezers—automatic defrost with top-mounted freezer	11.80AV + 339.2	0.417av + 339.2.
13I. Compact refrigerator-freezers—automatic defrost with top-mounted freezer with an automatic icemaker.	11.80AV + 423.2	0.417av + 423.2.
13A. Compact all-refrigerator—automatic defrost	9.17AV + 259.3	0.324av + 259.3.
14. Compact refrigerator-freezers—automatic defrost with side-mounted freezer	6.82AV + 456.9	0.241av + 456.9.
14I. Compact refrigerator-freezers—automatic defrost with side-mounted freezer with an automatic icemaker.	6.82AV + 540.9	0.241av + 540.9.
15. Compact refrigerator-freezers—automatic defrost with bottom-mounted freezer	11.80AV + 339.2	0.417av + 339.2.
15I. Compact refrigerator-freezers—automatic defrost with bottom-mounted freezer with an automatic icemaker.	11.80AV + 423.2	0.417av + 423.2.
16. Compact upright freezers with manual defrost	8.65AV + 225.7	0.306av + 225.7.
17. Compact upright freezers with automatic defrost	10.17AV + 351.9	0.359av + 351.9.
18. Compact chest freezers	9.25AV + 136.8	0.327av + 136.8.

AV = Total adjusted volume, expressed in ft^3, as determined in appendices A and B of subpart B of this part.
av = Total adjusted volume, expressed in Liters.

The following standards apply to products manufacturer starting on [*date 3 years after the publication of the final rule*].

Product class	Equations for maximum energy use (kWh/yr)	
	Based on AV (ft^3)	Based on av (L)
1. Refrigerator-freezers and refrigerators other than all-refrigerators with manual defrost	6.79AV + 191.3	0.240av + 191.3.
1A. All-refrigerators—manual defrost	5.77AV + 164.6	0.204av + 164.6.
2. Refrigerator-freezers—partial automatic defrost	(6.79AV + 191.3)*K2	(0.240av + 191.3)*K2.
3. Refrigerator-freezers—automatic defrost with top-mounted freezer	6.86AV + 198.6 + 28I	0.242av + 198.6 + 28I.
3–BI. Built-in refrigerator-freezer—automatic defrost with top-mounted freezer	8.24AV + 238.4 + 28I	0.291av + 238.4 + 28I.
3A. All-refrigerators—automatic defrost	(6.01AV + 171.4)*K3A	(0.212av + 171.4)*K3A.
3A–BI. Built-in All-refrigerators—automatic defrost	(7.22AV + 205.7)*K3ABI.	(0.255av + 205.7)*K3ABI.
4. Refrigerator-freezers—automatic defrost with side-mounted freezer	6.89AV + 241.2 + 28I	0.243av + 241.2 + 28I.
4–BI. Built-In Refrigerator-freezers—automatic defrost with side-mounted freezer	8.79AV + 307.4 + 28I	0.310av + 307.4 + 28I.
5. Refrigerator-freezers—automatic defrost with bottom-mounted freezer	(7.61AV + 272.6)*K5 + 28I.	(0.269av + 272.6)*K5 + 28I.
5–BI. Built-In Refrigerator-freezers—automatic defrost with bottom-mounted freezer	(8.65AV + 309.9)*K5BI + 28I.	(0.305av + 309.9)*K5BI + 28I.
5A. Refrigerator-freezer—automatic defrost with bottom-mounted freezer with through-the-door ice service.	(7.26AV + 329.2)*K5A	(0.256av + 329.2)*K5A.
5A–BI. Built-in refrigerator-freezer—automatic defrost with bottom-mounted freezer with through-the-door ice service.	(8.21AV + 370.7)*K5ABI.	(0.290av + 370.7)*K5ABI.
6. Refrigerator-freezers—automatic defrost with top-mounted freezer with through-the-door ice service.	7.14AV + 280.0	0.252av + 280.0.
7. Refrigerator-freezers—automatic defrost with side-mounted freezer with through-the-door ice service.	(6.92AV + 305.2)*K7	(0.244av + 305.2)*K7.
7–BI. Built-In Refrigerator-freezers—automatic defrost with side-mounted freezer	(8.82AV + 384.1)*K7BI	(0.311av + 384.1)*K7BI.
8. Upright freezers with manual defrost	5.57AV + 193.7	0.197av + 193.7.
9. Upright freezers with automatic defrost	7.76AV + 205.5 + 28I	0.274av + 205.5 + 28I.
9–BI. Built-In Upright freezers with automatic defrost	9.37AV + 247.9 + 28I	0.331av + 247.9 + 28I.
10. Chest freezers and all other freezers except compact freezers	7.29AV + 107.8	0.257av + 107.8.
10A. Chest freezers with automatic defrost	10.24AV + 148.1	0.362av + 148.1.

Product class	Equations for maximum energy use (kWh/yr)	
	Based on AV (ft^3)	Based on av (L)
11. Compact refrigerator-freezers and refrigerators other than all-refrigerators with manual defrost.	7.68AV + 214.5	0.271av + 214.5.
11A. Compact all-refrigerators—manual defrost	6.66AV + 186.2	0.235av + 186.2.
12. Compact refrigerator-freezers—partial automatic defrost	(7.68AV + 214.5)*K12	(0.271av + 214.5)*K12.
13. Compact refrigerator-freezers—automatic defrost with top-mounted freezer	10.62AV + 305.3 + 28I	0.375av + 305.3 + 28I.
13A. Compact all-refrigerators—automatic defrost	(8.25AV + 233.4)*K13A.	(0.291av + 233.4)*K13A.
14. Compact refrigerator-freezers—automatic defrost with side-mounted freezer	6.14AV + 411.2 + 28I	0.217av + 411.2 + 28I.
15. Compact refrigerator-freezers—automatic defrost with bottom-mounted freezer	10.62AV + 305.3 + 28I	0.375av + 305.3 + 28I.
16. Compact upright freezers with manual defrost	7.35AV + 191.8	0.260av + 191.8.
17. Compact upright freezers with automatic defrost	9.15AV + 316.7	0.323av + 316.7.
18. Compact chest freezers	7.86AV + 107.8	0.278av + 107.8.

AV = Total adjusted volume, expressed in ft^3, as determined in appendices A and B of subpart B of 10 CFR part 430.
av = Total adjusted volume, expressed in Liters.
I = 1 for a product with an automatic icemaker and = 0 for a product without an automatic icemaker. Door Coefficients (*e.g.,* K3A) are as defined in the table.

Door coefficient	Products with a transparent door	Products without a transparent door with a door-in-door	Products without a transparent door or door-in-door with added external doors
K2	N/A	N/A	1 + 0.02 * ($N_d - 1$)
K3A	1.10	N/A	N/A
K3ABI.			
K13A.			
K5		1.06	1 + 0.02 * ($N_d - 2$)
K5BI.			
K5A			1 + 0.02 * (Nd − 3)
K5ABI.			
K7			1 + 0.02 * (Nd − 2)
K7BI.			
K12	N/A	N/A	1 + 0.02 * ($N_d - 1$)

N_d is the number of external doors.

* * * * *

[FR Doc. 2023–03436 Filed 2–24–23; 8:45 am]

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FEDERAL REGISTER

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Part III

The President

Memorandum of February 20, 2023—Delegation of Authority Under Sections 506(a)(1) and 552(c)(2) of the Foreign Assistance Act of 1961

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Presidential Documents

Title 3—

The President

Memorandum of February 20, 2023

Delegation of Authority Under Sections 506(a)(1) and 552(c)(2) of the Foreign Assistance Act of 1961

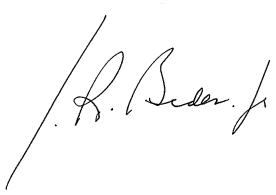
Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 621 of the Foreign Assistance Act of 1961 (FAA), I hereby delegate to the Secretary of State:

(1) the authority under section 506(a)(1) of the FAA to direct the drawdown of up to $450 million in defense articles and services of the Department of Defense, and military education and training, to provide assistance to Ukraine and to make the determinations required under such section to direct such a drawdown; and

(2) the authority under section 552(c)(2) of the FAA to direct the drawdown of up to $10 million in commodities and services from the inventory and resources of any agency of the United States Government to provide assistance to Ukraine and to make the determinations required under such section to direct such a drawdown.

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



THE WHITE HOUSE,
Washington, February 20, 2023

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