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DEPARTMENT OF JUSTICE

28 CFR Part 90

[OVW Docket No. 2023–01]

RIN 1105–AB69

Special Tribal Criminal Jurisdiction Reimbursement

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: Interim final rule.

SUMMARY: The Violence Against Women Act Reauthorization Act of 2022 (VAWA 2022) authorized a new program to reimburse Tribal governments (or authorized designees of Tribal governments) for expenses incurred in exercising ''special Tribal criminal jurisdiction'' (STCJ) over non-Indians who commit certain covered crimes in Indian country. This rule will implement this new Tribal Reimbursement Program within the Department of Justice's Office on Violence Against Women (OVW) by providing details on how it will be administered, including eligibility, frequency of reimbursement, costs that can be reimbursed, the annual maximum allowable reimbursement per Tribe, and conditions for waiver of the annual maximum.

DATES:

Effective date: This rule is effective April 11, 2023.

Comment date: Written comments must be postmarked and electronic comments must be submitted on or before June 12, 2023. Comments received by mail will be considered timely if they are postmarked on or before that date. The electronic Federal Docket Management System (FDMS) will accept comments until 11:59 p.m. Eastern Time at the end of that day.

ADDRESSES: To ensure proper handling of comments, please reference ''RIN 1105–AB69'' or ''Docket No. OVW 2023–01'' on all electronic and written correspondence. The Department encourages the electronic submission of all comments through *http://www.regulations.gov* using the electronic comment form provided on that site. For easy reference, an electronic copy of this document is also available at the *http://www.regulations.gov* website. It is not necessary to submit paper comments that duplicate the electronic submission, as all comments submitted to *http://www.regulations.gov* will be posted for public review and are part of the official docket record. However, should you wish to submit written comments through regular or express mail, they should be sent to Marnie Shiels, Office on Violence Against Women, United States Department of Justice, 145 N Street NE, 10W.100, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Marnie Shiels, Office on Violence Against Women, telephone (202) 307–6026 or email at *marnie.shiels@usdoj.gov.*

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If you want to inspect the agency's public docket file in person by appointment, please see the information under the **FOR FURTHER INFORMATION CONTACT** heading.

II. General Purpose of This Rule

The Violence Against Women Reauthorization Act of 2013 (VAWA 2013) recognized the authority of participating Tribes to exercise ''special domestic violence criminal jurisdiction'' (SDVCJ) over certain defendants, regardless of their Indian or non-Indian status, who commit crimes of domestic violence or dating violence or who violate certain protection orders in Indian country.[1] The Violence Against Women Act Reauthorization Act of 2022 (VAWA 2022) expanded this recognition, effective October 1, 2022, to cover additional crimes, among other changes to the jurisdiction, and renamed it ''special Tribal criminal jurisdiction.''[2]

VAWA 2022 also authorized a new program to reimburse Tribal governments (or authorized designees of Tribal governments) for expenses incurred in exercising special Tribal criminal jurisdiction (hereinafter referred to as the ''Tribal

[1] Sec. 904, Public Law 113–4, 127 Stat. 54, 120–123 (codified at 25 U.S.C. 1304).

[2] Public Law 117–103, div. W, title VIII, section 804, 136 Stat, 49, 898–904 (amending 25 U.S.C. 1304). The VAWA 2013 definition of ''participating tribe,'' codified at 25 U.S.C. 1304(a)(4) (2021), was revised by VAWA 2022 to take into account the changes to the jurisdiction and moved to section 1304(a)(10). VAWA 2022 also established a different definition of ''participating Tribe'' for most Alaska Tribes. *See* Public Law 117–103, div. W, title VIII, section 812(3), 136 Stat. 49, 905. More information on these definitions is provided in the Background section of this document.

Reimbursement Program'').[3] This rule will implement the Tribal Reimbursement Program by setting forth eligibility requirements, frequency of reimbursement, costs that may be reimbursed, an annual maximum allowable reimbursement per Tribe, and conditions for waiver of the annual maximum allowable reimbursement.

III. Background

A. VAWA 2013

Following the Supreme Court's 1978 decision in *Oliphant* v. *Suquamish Tribe,*[4] Tribes lacked criminal jurisdiction to prosecute non-Indians for crimes committed in Indian country. If the victim was Indian and the perpetrator was non-Indian, the crime could be prosecuted only by the United States or, in some circumstances, by the state in which the Tribe's Indian country is located.[5]

Native American women have suffered some of the highest rates of violence at the hands of intimate partners in the United States. A National Institute of Justice (NIJ) analysis of 2010 survey data funded by the Centers for Disease Control and Prevention and NIJ found that more than half (55.5 percent) of American Indian and Alaska Native women have experienced physical violence by an intimate partner in their lifetimes. Over their lifetimes, American Indian and Alaska Native women are about five times as likely as non-Hispanic White-only females to have experienced physical violence at the hands of an intimate partner who is of a different race at least once in their life.[6]

Realizing the challenges created by Tribes' lack of jurisdiction to prosecute non-Indian domestic violence offenders, Congress included in VAWA 2013 a historic provision recognizing the inherent authority of participating Tribes to exercise ''special domestic violence criminal jurisdiction'' (SDVCJ) over certain defendants, regardless of their Indian or non-Indian status, who commit crimes of domestic violence or dating violence against Indian victims or violate certain protection orders in Indian country.[7] Since VAWA 2013's passage, 31 Tribes have reported that they have implemented SDVCJ.

In VAWA 2013, Congress ensured that the protections for a defendant's federal rights and civil liberties would be the same in Tribal court as they would be if the defendant were prosecuted in a state court. Specifically, if the case includes the possibility that a term of imprisonment of any length may be imposed, the defendant must be afforded all applicable rights under the Indian Civil Rights Act of 1968 (ICRA),[8] all rights applicable to defendants charged with felony offenses under the Tribal Law and Order Act of 2010 (TLOA),[9] and also the right to trial by an impartial jury chosen from a jury pool that is drawn from sources that reflect a fair cross-section of the community and do not systemically exclude any distinctive group in the community, including non-Indians.[10] The TLOA rights include providing each indigent defendant, at no cost to the defendant, the right to the assistance of a licensed defense attorney.[11]

To assist Tribes in implementing the provisions of VAWA 2013, in June 2013, DOJ established the Intertribal Technical-Assistance Working Group on Special Domestic Violence Criminal Jurisdiction (ITWG) so that Tribes could exchange views, information, and advice about how they could best implement and exercise SDVCJ, combat domestic violence, recognize victim's rights and safety needs, and fully protect defendants' rights. Since then, over 50 Tribes have participated in the ITWG where Tribes regularly share their experiences preparing to implement or implementing SDVCJ, attend in-person or online meetings, and participate in numerous webinars on subjects such as jury pools and juror selection, defendants' rights, victims' rights, and prosecution skills. Through the ITWG, Tribes have not only discussed challenges and successes with other Tribes but also shared best practices, including their revised Tribal codes, court rules, court forms, jury instructions, and other tools they have developed to implement SDVCJ. DOJ continues to support the ITWG including by providing training and technical assistance.

VAWA 2013 also authorized a grant program to assist Tribes in preparing to exercise and exercising SDVCJ.[12] This program, known as the Tribal Jurisdiction Program, first received an appropriation of $2.5 million in fiscal year (FY) 2016. Funds may be used to support a broad range of activities including efforts to strengthen Tribal criminal justice systems, provide indigent criminal defense, conduct jury trials, and provide services and rights to crime victims. Under the grant program, Tribes submit an estimated budget with their application and, if selected for funding, draw down funds as they incur the expenses based on actual costs. The grant program has flexibility to allow Tribes to use grant funds both for planning to exercise jurisdiction and the expenses of exercising the jurisdiction. Tribes that receive grants may continue to apply for additional grant funding at the end of each grant cycle. The annual appropriation for the program increased to $4 million in FY 2017 and again to $5.5 million in FY 2022.[13]

Over the course of several annual consultations with Tribes under VAWA, Tribal leaders recommended that OVW simplify the grant application process and that Congress authorize reimbursement of exercising Tribes for their expenses in holding non-Indians accountable; some also identified insufficient funding as an obstacle to

[3] This program is codified as section 204(h)(1) of the Indian Civil Rights Act (ICRA). *See* 25 U.S.C. 1304(h)(1). A Tribal government is the government of an ''Indian tribe,'' which is defined in ICRA as ''any tribe, band, or other group of Indians subject to the jurisdiction of the United States and recognized as possessing powers of self-government.'' *Id.* at 1301(1). The most recent list of 574 federally recognized Tribes published by the Department of the Interior's Bureau of Indian Affairs is available at *https://www.govinfo.gov/content/pkg/FR-2022-01-28/pdf/2022-01789.pdf.*

[4] 435 U.S. 191 (1978).

[5] Prior to the Supreme Court's decision in *Oklahoma* v. *Castro-Huerta,* 142 S.Ct. 2486 (2022), the presumption was that states possessed no criminal jurisdiction over crimes committed by or against Indians in Indian country unless Congress conferred such authority upon a state. In *Castro-Huerta,* the Supreme Court changed that analysis with respect to crimes committed by non-Indians against Indians.

[6] Andre B. Rosay, U.S. Dept. of Justice, Nat'l Inst. of Justice, Violence Against American Indian and Alaska Native Women and Men: 2010 Findings from the National Intimate Partner and Sexual Violence Survey (May 2016) 21, 26, *https://www.ncjrs.gov/pdffiles1/nij/249736.pdf.* The same analysis likewise found high rates of sexual violence against Native American women, concluding that more than one in two American Indian and Alaska Native women (56.1 percent) have experienced sexual violence in their lifetime. American Indian and Alaska Native women are three times as likely as white women to have experienced sexual violence by a perpetrator who is of a different race. *Id.* at 13, 18.

[7] *See* 25 U.S.C. 1304 (2021). VAWA 2013 defined ''participating Tribe'' as ''an Indian tribe that elects to exercise special domestic violence criminal jurisdiction over the Indian country of that Indian tribe.'' *Id.* at 1304(a)(4) (2021).

[8] The Indian Civil Rights Act of 1968 (ICRA) (codified as amended at 25 U.S.C. 1301–1304) limited the amount of jail time a Tribe can impose and the maximum fine to one-year imprisonment and $5,000.

[9] The Tribal Law and Order Act (TLOA, title II of Pub. L. 111–211) allowed Tribes to impose increased sentences (up to 3 years or $15,000), predicated on the provision of additional rights for defendants. 25 U.S.C. 1302(a)(7), (b), and (c).

[10] 25 U.S.C. 1304(d).

[11] The additional rights that a tribe must provide under TLOA when it imposes a total term of imprisonment of more than one year are listed at 25 U.S.C. 1302(c).

[12] 25 U.S.C. 1304.

[13] The total FY 2023 appropriation for the grant program and the reimbursement program that is the subject of this rule is $11 million (pursuant to 25 U.S.C. 1304(j)(2), up to 40 percent of this amount may be used for reimbursements).

implementing the VAWA 2013 jurisdiction.

OVW implemented several changes to the grant program in response to Tribal leader recommendations, including simplifying the application process, informing Tribes about the broad purposes and flexible uses of the grants, and making non-competitive awards available to exercising Tribes to defray costs resulting from a Tribe's exercise of the jurisdiction. In particular, on October 19, 2021, OVW issued a non-competitive Support for Tribes Exercising Special Domestic Violence Criminal Jurisdiction Initiative Invitation to Apply. Unlike the annual competitive solicitations under the Tribal Jurisdiction Program, this solicitation invited tribes that already had implemented SDVCJ to apply for 12-month funding to cover discrete costs associated with prosecuting SDVCJ cases rather than 36-month awards to cover a broad range of project expenses, including code development, victim services, and development of a coordinated community response. OVW made eleven awards totaling $2,142,651 under this Invitation to Apply. Although these measures increased Tribal interest in the grant funding, Tribal leaders continued to recommend that Tribes be reimbursed for the expenses incurred in exercising the jurisdiction, and Congress responded to this recommendation in VAWA 2022 by authorizing the new Tribal Reimbursement Program.

B. VAWA 2022

A March 2018 report published by the National Congress of American Indians (NCAI), *VAWA 2013's Special Domestic Violence Criminal Jurisdiction (SDVCJ) Five-Year Report,* documented the successes and gaps in SDVCJ implementation.[14] Successes included convictions of defendants with documented histories of violent behavior, along with acquittals and only one *habeas* petition—testaments to Tribes' ability to safeguard the rights of defendants. Gaps—discussed in the NCAI report and in Tribal leader testimony at annual Tribal consultations pursuant to VAWA—included the omission of other common forms of violence against women and children (*e.g.,* stalking, sexual assault, sex trafficking, and child abuse) and assaults on responding officers, courtroom personnel, and prison staff, as well as the exclusion of Tribes in Maine and Alaska.[15]

To address these gaps, VAWA 2022 expanded VAWA 2013's recognition of participating Tribes' inherent authority by including prosecution of any ''covered crime'' that occurs in the Indian country of the participating Tribe, specifically referring to participating Tribes as including those in the state of Maine, renaming the jurisdiction ''special Tribal criminal jurisdiction'' (STCJ), and establishing a pilot program under which the Attorney General is to designate up to five Alaska Tribes per calendar year as participating Tribes to exercise STCJ over all persons present in the Tribe's Village.[16] As of October 1, 2022, participating Tribes may exercise jurisdiction over the following ''covered crimes'':[17]

- Assault of Tribal justice personnel
- Child violence
- Dating violence
- Domestic violence
- Obstruction of justice
- Sexual violence
- Sex trafficking
- Stalking
- Violation of a protection order.

C. Tribal Reimbursement Program

VAWA 2022 also created the Tribal Reimbursement Program, which will reimburse Tribes for expenses incurred in exercising STCJ.[18] Under the Tribal Reimbursement Program, eligible expenses for reimbursement include expenses and costs incurred in, relating to, or associated with the following:

(i) investigating, making arrests relating to, making apprehensions for, or prosecuting covered crimes (including costs involving the purchasing, collecting, and processing of sexual assault forensic materials);

(ii) detaining, providing supervision of, or providing services for persons charged with covered crimes (including costs associated with providing health care);

(iii) providing indigent defense services for one or more persons charged with one or more covered crimes; and

(iv) incarcerating, supervising, or providing treatment, rehabilitation, or reentry services for one or more persons charged with one or more covered crimes.

Along with the new Tribal Reimbursement Program, OVW will continue to administer grants under the Tribal Jurisdiction Program. As of October 1, 2022, Tribes are able to use funds under the Tribal Jurisdiction Program to address the full range of STCJ. OVW will also continue to provide technical assistance (TA) for planning and implementing changes in Tribal criminal justice systems necessary to exercise STCJ. VAWA 2022 increased the authorizations of appropriations for FY 2023 through FY 2027; the statute, however, provided a combined authorization for both grants and reimbursement and specified that no more than 40 percent may be used for reimbursements under the Tribal Reimbursement Program.[19] The FY 2023 combined appropriation for both programs is $11 million, making the maximum amount available for reimbursements $4.4. million. Tribes will be eligible for both grants and reimbursement but will not be allowed to use grant and reimbursement funds to cover the same costs.

VAWA 2022 requires that the Attorney General issue regulations governing the Tribal Reimbursement Program by March 15, 2023, thus establishing rules for reimbursements of Tribal governments (or authorized designees) for expenses incurred in exercising STCJ. The statute also directs that these rules set a maximum annual reimbursement amount per Tribe and establish a process and conditions for waivers of the maximum amount; in addition, to the maximum extent practicable, reimbursement or notification of the reason for not reimbursing is to be made within 90 days after the Attorney General receives

[14] The report is available at *https://www.ncai.org/resources/ncai-publications/SDVCJ_5_Year_Report.pdf.*

[15] For more information on these successes and gaps, see Statement of Allison L. Randall, Principal Deputy Director, Office on Violence Against Women, U.S. Department of Justice, before the Senate Committee on Indian Affairs (Dec. 8, 2021), available at *https://www.indian.senate.gov/sites/default/files/DOJ%20Statement%20for%20SCIA%20VAWA%20Hearing%2012.8.21.pdf.*

[16] Public Law 117–103, div. W, title VIII, sections 804, 812 & 813, 136 Stat, 49, 898–910. VAWA 2022 revised VAWA 2013's definition of ''participating Tribe'' to read ''an Indian tribe that elects to exercise special Tribal criminal jurisdiction over the Indian country of that Indian tribe.'' 25 U.S.C. 1304(a)(10) (2022). VAWA 2022 also created a separate definition of ''participating Tribe'' for Alaska Tribes that do not have any ''Indian country,'' as that term is defined in 18 U.S.C. 2511, in their jurisdiction and are interested in participating in the Alaska STCJ pilot program established by section 813(d)(1) of VAWA 2022 (codified at 25 U.S.C. 1305). This definition defines the term as an Indian tribe that is designated by the Attorney General to exercise STCJ under the Alaska pilot statute, *i.e.,* the exercise of STCJ with respect to covered crimes (as defined in the main STCJ statute) over all persons present in the village of the Tribe. *See* VAWA 2022, Public Law 117–103, div. W, title VIII, § 812(1) and (3),136 Stat. 840, 905; 25 U.S.C. 1305(d)(1) & (6).

[17] 25 U.S.C. 1304(a)(5).

[18] Note that while costs associated with planning to exercise STCJ can be covered by the existing grant program, the reimbursement program can only cover costs incurred in, relating to, or associated with exercise of STCJ.

[19] *See* 25 U.S.C. 1304(j).

a qualifying request. Not later than 30 days after a Tribe (or designee) reaches the annual maximum amount, the Attorney General is directed to provide notice of this fact to the Tribe (or designee).

IV. Input From Tribes

On July 27 and 28, 2022, OVW held online consultations with Tribal leaders regarding implementation of the new Tribal Reimbursement Program. There were 72 non-Federal attendees, and eleven Tribal leaders and designated representatives of Tribal leaders provided testimony. In addition, OVW held a roundtable with a selected group of implementing Tribes to discuss their experiences with implementation, including information on costs, on August 24, 2022, and a listening session on August 31, 2022, at an ITWG meeting that was open to all attendees at the ITWG. Participants in each of the sessions noted similar concerns. OVW also received comments with the same themes during its Annual Violence Against Women Tribal Consultation, which was held September 21–23, 2022 in Anchorage, AK. Some common themes from across these sessions were:

- Tribes want a simple process to apply for funds. This includes making sure that any technology used is accessible and that there are alternative approaches for Tribes without internet access. This also includes keeping any required documentation as simple as possible.
- Tribes are concerned about the limited amount of available funds and want a way to allocate the funds that is fair and does not require Tribes to compete against each other for money.
- Tribes across the country emphasized that Alaska tribes have particular needs, including a lack of resources to develop the criminal justice system and court infrastructure to be able to exercise STCJ.
- Tribes express significant concern about how and where to detain and incarcerate STCJ offenders, noting that this is one of the significant costs that reimbursement should cover, especially unanticipated associated costs such as unforeseen medical or dental expenses.
- Tribes would like the maximum possible flexibility to determine which costs they can seek reimbursement for through the program.
- Tribes highlighted that many Tribes are under-resourced and lack the ability to pay the costs of exercising STCJ up front while awaiting federal reimbursement.

VAWA 2022 also established a pilot program for the Attorney General to designate Alaska Tribes to exercise STCJ. On July 19 and 20, and August 3, 2022, the Office of Tribal Justice held consultations about this pilot. Commenters expressed concerns about the lack of Tribal criminal justice system infrastructure in Alaska and the need for consistent, noncompetitive funding to address these needs, as well as the need for Alaska-specific technical assistance regarding STCJ implementation.

V. Potential Tribal Reimbursement Program Issues

In developing this rule, OVW identified several issues that would need to be addressed. First, OVW's financial ability to reimburse Tribes for expenses associated with exercising STCJ will necessarily be limited each year by the overall appropriation by which both the Tribal Reimbursement Program and the Tribal Grants Program are funded. This makes the maximum allowable reimbursement per Tribe and waiver process by which Tribes may seek to exceed that maximum critically important, to ensure fairness in the amount of reimbursement for each Tribe that applies. For example, in FY 2023, OVW has available, at most, $4.4 million to meet all reimbursement requests. If the rule set the maximum allowable reimbursement at $400,000, then the first eleven Tribes to apply for reimbursement might receive all money before any remaining exercising Tribe has the opportunity to request reimbursement.

Second, Tribes will need to maintain adequate records to verify for both monitoring and auditing purposes that the expenses for which they request reimbursement are eligible for reimbursement under the statute. At a minimum, such records must demonstrate that the case for which expenses are sought is an exercise of STCJ (*i.e.,* that the offense is one of the listed crimes and the defendant is a non-Indian) and must substantiate the costs for which a Tribe is seeking reimbursement.

Third, Tribes will need to ensure that the costs for which they are seeking reimbursement are not charged to other funding either within DOJ or any other federal, state, or local agency.[20] This includes programs such as OVW's Tribal Jurisdiction Program, other DOJ programs included in the Coordinated Tribal Assistance Solicitation (CTAS), or Department of Interior funding.

Fourth, because this is a reimbursement program, the amounts provided to Tribes must be based on actual expenses incurred in the exercise of STCJ.

VI. Explanation of Rationale for Provisions of This Regulation

In selecting a structure for this program, OVW considered how to address Tribal leaders' testimony regarding the Tribes' need for a reimbursement process that ensures (1) a predictable, stable source of funding, (2) each Tribe receives a fair share of available funds, particularly when available funding is likely to be insufficient to cover all reimbursement requests, and (3) Tribes that lack adequate resources to front the expenses of exercising STCJ can access some reimbursement funds in a timely fashion. OVW also considered Tribal testimony that Tribes should not be required to compete against each other for funding.

In response to these concerns, as well as the requirements outlined at 25 U.S.C. 1304(h)(1), the interim final rule provides that each Tribe that requests reimbursement will receive the same dollar amount for the maximum allowable reimbursement (except that the amount may not exceed the amount the Tribe expended the previous year in exercising STCJ). The maximum allowable reimbursement will thus function as a form of ''base funding,'' where each Tribe will have access to this maximum allowable reimbursement early in the calendar year and can draw it down as needed. At the end of the calendar year, Tribes may submit a waiver request seeking the actual amounts spent on exercise of STCJ, if their actual eligible STCJ expenses exceeded the maximum allowable reimbursement. Each Tribe will receive the same percentage of their total actual expenses in excess of the maximum allowable reimbursement. The chart and explanation below provide an example of how this might work for five sample Tribes. Please note that, for ease of understanding, this example uses a smaller amount of funding than is likely to be available and fewer total tribes than are likely to seek reimbursement.

Example:

Assume $1,000,000 is available for the Tribal Reimbursement Program in a given calendar year. OVW, as provided in the interim final rule, sets aside $250,000 (25 percent) for maximum allowable reimbursements. Five Tribes request to participate in the program. Each Tribe, except Tribe C, submits a list of prior year STCJ expenses exceeding $50,000; Tribe C submits a list showing $25,000 in prior year expenses. As a result, each Tribe receives access to a maximum allowable

[20] 25 U.S.C. 1304(i).

reimbursement of $50,000 (1/5th of $250,000) except Tribe C, whose maximum allowable reimbursement is capped at $25,000 (the amount or prior year expenses for STCJ). This leaves $775,000 available for waivers of the maximum allowable reimbursement. At the end of the calendar year, four of the five Tribes submit requests for waiver funds in excess of the maximum allowable reimbursement totaling $1,145,000, which reflects their total actual expenditures for exercising STCJ less the maximum allowable reimbursements already received. The percentage each of the four Tribes receives for waiver amounts is calculated by dividing the $775,000 by $1,145,000 (the amount requested for waivers), which is .6768559, or 67.68559%. Each tribe would therefore receive 67.68559% of the amount they requested for a waiver.

	Prior year expenses actual or estimate	Maximum allowable reimbursement	Current year actual expenses	Request for waiver funds in excess of maximum allowable reimbursement	Waiver amount	Total reimbursement
Tribe A	$100,000	$50,000	$120,000	$70,000	$47,380	$97,380
Tribe B	700,000	50,000	750,000	700,000	473,799	523,799
Tribe C	25,000	25,000	100,000	75,000	50,764	75,764
Tribe D	60,000	50,000	50,000	0	0	50,000
Tribe E	300,000	50,000	350,000	300,000	203,057	253,057
Total	1,185,000	225,000	1,370,000	1,145,000	775,000	1,000,000

Although Tribes will need to wait until the end of the calendar year to request and then receive their full reimbursement, the process set forth in the interim final rule ensures that Tribes with expenses later in the year are still able to receive the same percentage of their expenses met overall (as opposed to a ''first come, first served'' model where Tribes seeking reimbursement early in the year receive full reimbursement whereas Tribes that incur expenses later in the year may receive little or no reimbursement). The process also permits Tribes that have unexpected costs, over and above their maximum allowable reimbursement, such as a large medical bill, to be able to request reimbursement at the end of the year.

In developing the rule for this program, OVW made every effort to honor the concerns expressed by Tribes, while also addressing statutory requirements and ensuring the appropriate use of Federal funds. For example, the interim final rule includes documentation requirements that are as simple as possible while mandating that Tribes maintain auditable records. The rule lists reimbursable expenses, as outlined by the statute, but adds a broad category for ''other costs incurred in, relating to, or associated with exercising STCJ'' to permit Tribes to seek reimbursement for costs not anticipated by the rule. However, because the statute directs the Attorney General to reimburse Tribal governments ''for expenses incurred in *exercising*'' of STCJ (*see* 25 U.S.C. 1304(h)(1)(A)) (emphasis added), OVW lacks the discretion to include *planning* costs such as Tribal code development. To ensure reimbursement funds are used to supplement, not supplant, local, state, and federal funding, the rule directs Tribes to expend funds from other sources before seeking funds from this program.

OVW notes that many Tribal leaders and experts (both from Alaska and other states) expressed concern about the particularly significant needs of Alaska Tribes, such as the need for development of criminal justice systems and severe lack of resources. The Tribal Reimbursement Program, however, is not well suited to address these needs of Alaska Tribes that have not yet been designated by the Attorney General to exercise STCJ through the pilot program because, as discussed above, it is designed to reimburse the costs incurred by Tribes that already are exercising STCJ. OVW recognizes the need to provide additional support and funding to Alaska Tribes that wish to pursue Attorney General designation through the pilot program. To this end, on December 20, 2022, OVW issued the Emerging Issues and Training and Technical Assistance Call for Concept Papers, which requests proposals to provide technical assistance to Alaska Tribes on STCJ implementation, including through the creation of an Alaska-specific ITWG. In addition, on February 9, 2023, OVW released the FY 2023 Special Tribal Criminal Jurisdiction: Targeted Support for Alaska Natives Special Initiative Solicitation. This solicitation requests proposals only from Alaska Tribal governments and consortia of such governments whose Native Villages are within an Alaska Native Village Statistical Area (and therefore are potentially eligible to seek Attorney General designation to exercise STCJ).

VII. Section-by-Section Summary of the Proposed Regulatory Text

§ 90.30 Definitions

Section 90.30 provides that the definitions in 25 U.S.C. 1304(a) apply to the Tribal Reimbursement Program.

§ 90.31 Eligibility

Section 90.31 describes the eligibility for the Tribal Reimbursement Program. Tribes are eligible if they are Federally recognized and are exercising STCJ over any covered crime.

§ 90.32 Reimbursement Request

Section 90.32 describes the reimbursement request process for the Tribal Reimbursement Program. The request process for each participating Tribe will include a certification that the participating Tribe meets the eligibility requirements of section 90.31 and a list of the participating Tribe's expenses from the prior year incurred in exercising STCJ. OVW will issue an annual Notice of Reimbursement Opportunity, which will include sample forms for use in the certification and list of expenses. OVW will also provide training for Tribes on the reimbursement request process.

§ 90.33 Division of Funds: Maximum Allowable Reimbursement and Waivers

Section 90.33 provides that the funds available for the Tribal Reimbursement Program each year will be divided into two parts: one part that will guarantee the availability of funds for each participating Tribe that requests reimbursement up to the maximum allowable reimbursement, and one part that will fund waivers of the maximum.

§ 90.34 Annual Maximum Allowable Reimbursement per Participating Tribe

Section 90.34 provides that each participating Tribe that requests the annual maximum allowable reimbursement may receive access to an equal amount of the funds set aside for maximum allowable reimbursements under section 90.33. Tribes will receive the funds through the Automated Standard Application for Payments (ASAP) system, an electronic system that federal agencies use to quickly and securely transfer money to recipient organizations. Tribes will be able to see in ASAP the amount of funds remaining of the annual maximum allowable reimbursement and when the Tribe has spent all the funds.

§ 90.35 Waivers of Annual Maximum Allowable Reimbursement

Section 90.35 provides the process for participating Tribes to request a waiver of the annual maximum allowable reimbursement if they incur costs in excess of that amount. If there are not sufficient funds available to reimburse the total eligible expenses requested by all participating Tribes, each Tribe will get the same percentage of their remaining costs met. Requests for waiver must include a summary of eligible expenses that shows how the Tribe's maximum allowable reimbursement was spent and identifies the specific expenses that are requested for reimbursement in excess of the maximum allowable reimbursement, including how such expenses were calculated. Participating Tribes are not required to provide documentation at the end of the year when they submit their waiver request but must keep documentation on file to support each claimed expense. OVW will provide a sample form for the summary of eligible expenses.

§ 90.36 Categories of Expenses Eligible for Reimbursement

Section 90.36 provides examples of expenses associated with the exercise of STCJ for which participating Tribes may request reimbursement and information on how to calculate the costs for such expenses.

§ 90.37 Ineligible Expenses

Section 90.37 lists expenses that cannot be reimbursed through the Tribal Reimbursement Program.

§ 90.38 Collection of Expenses From Offenders

Section 90.38 addresses the situation where a participating Tribe recoups expenses related to exercise of STCJ from convicted offenders.

§ 90.39 Expenses Documentation

Section 90.39 describes documentation of expenses that must be retained on file by participating Tribes. Such records must be retained for a period of three years from the end of the calendar year and are subject to review by DOJ.

§ 90.40 Other Sources of Funding

Section 90.40 provides that, if there are other sources of Federal funding available to pay for a particular cost associated with the exercise of STCJ, participating Tribes must expend funds from those sources before seeking reimbursement from this program.

§ 90.41 Denial of Specific Expenses for Reimbursement

Section 90.41 provides the process for participating Tribes to request a review of the denial of any specific expenses for which the participating Tribe has requested reimbursement.

§ 90.42 Monitoring and Audit

Section 90.42 provides that Tribes receiving reimbursement of expenses from the Tribal Reimbursement Program will be subject to regular monitoring and audits to ensure that expenses are properly documented and are allocable to the exercise of STCJ.

§ 90.43 Corrective Action

Section 90.43 provides for a corrective action plan and/or recovery/recoupment for expenses that are later found to be ineligible for reimbursement. In addition, participating Tribes that fail to submit the required summary of eligible expenses, respond to requests for information during monitoring or auditing, or follow a corrective action plan or return funds expended on ineligible expenses will be deemed ineligible for additional Tribal Reimbursement Program funds, in the same or another calendar year, until such deficiencies are remedied.

VIII. Effective Date

This interim final rule takes effect April 11, 2023.

IX. Statutory and Regulatory Certifications

Administrative Procedure Act

The Administrative Procedure Act (APA), codified at 5 U.S.C. 553, generally requires that agencies publish substantive rules in the **Federal Register** for notice and comment. However, pursuant to section 553(b)(B) of the APA, general notice and the opportunity for public comment are not required with respect to a rulemaking when an ''agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' Furthermore, the APA requires publication or service of a substantive rule not less than 30 days before its effective date except ''as otherwise provided by the agency for good cause found and published in the rule.'' 5 U.S.C. 553(d)(3).

In accordance with 5 U.S.C. 553(b)(B) and (d)(3), the Acting Director of the Office on Violence Against Women finds that there is good cause to publish this rule without prior notice and an opportunity for public comment and good cause to publish this rule with an immediate effective date. Publishing this rule with prior notice and comment is impracticable, unnecessary, and contrary to the public interest, as explained in more detail below. These same reasons constitute good cause for an immediate effective date. Moreover, there is no need to afford affected parties a 30-day period to adjust their behavior prior to the rule's effective date; therefore, an immediate effective date does not contravene any principles of fairness.

First, providing prior notice and an opportunity to comment is impracticable due to the timeline established by the authorizing statute and the need to have in place a viable process for reimbursing Tribes that exercise STCJ. The Indian Civil Rights Act (ICRA) of 1968, as amended by VAWA 2022, recognizes that, effective October 1, 2022, participating tribes may exercise tribal criminal jurisdiction over non-Indian offenders who commit an expanded set of covered crimes in Indian country. *See* 25 U.S.C. 1304(b) (recognizing STCJ) and VAWA 2022, Sec. 3, Public Law 117–103 (effective date). In turn, ICRA, as amended by VAWA 2022, authorizes the Department of Justice to reimburse Tribal governments for expenses incurred in exercising STCJ and requires the Attorney General to promulgate rules governing these reimbursements by March 15, 2023 (one year after enactment of VAWA 2022). 25 U.S.C. 1304(h)(1). Moreover, administration of the new reimbursement program hinges on the availability of an appropriation to support the program, authorized by 25 U.S.C. 1304(j). Assuming that such funding is available, the statute directs that, to the maximum extent practicable, not later than 90 days after the date on which the Attorney General receives a qualifying reimbursement request from a Tribal government (or authorized

designee), the Attorney General must provide reimbursement or notification why no reimbursement can be issued. *Id.* at 1304(h)(1)(C)(iii).

Given that the Consolidated Appropriations Act, 2023, Public Law 117–328, provides an appropriation of up to $4.4 million for the Tribal Reimbursement Program in FY 2023, OVW must be ready to issue reimbursements if it receives a qualifying request from a Tribal government. However, OVW also must have a rule in place governing the Tribal Reimbursement Program prior to issuing any reimbursements. This is particularly important because OVW anticipates that the amount of funds requested in reimbursements will exceed the amount of funds appropriated by Congress. Based on an analysis of grant award budgets approved under OVW's Tribal Jurisdiction Program during the past eight years, as well as input received from Tribes during consultation and listening sessions, Tribal requests for reimbursement likely will far exceed available funds. The analysis of Tribal Jurisdiction Program grant budgets showed that corrections costs alone add up to nearly $1,000,000 total across 17 Tribes. This rule provides direction on prioritizing among requests and establishing an annual maximum allowable reimbursement per Tribe. In the absence of a rule to address how to prioritize requests and to set the maximum allowable reimbursement amount, OVW might expend all available funds on reimbursements well before all reimbursement requests are received. As a result, Tribes submitting requests early in this calendar year might receive all the funding, while Tribes submitting later might receive none.

Second, providing prior notice and an opportunity to comment is unnecessary because a robust course of consultation and discussion with Tribal leaders, criminal justice personnel, and advocates has preceded issuance of this rule. As described above, pursuant to EO 13175 and the Department's policy governing Tribal consultation, as part of developing this rule OVW held two consultation sessions with Tribal leaders inviting oral and written testimony, a listening session with members of the Intertribal Technical-Assistance Working Group on STCJ (an intertribal working group that counts more than 80% of SDVCJ implementing tribes among its membership), and a roundtable discussion with a group of implementing tribes regarding SDVCJ expenses and their recommendations regarding administration of the Tribal Reimbursement Program. As a result of these sessions, OVW has considered comments from the Tribes most interested in and affected by the rule and has incorporated those views, to the degree practicable, into this interim final rule.

Third, it would be contrary to the public interest to delay issuance of this rule. As noted in the Background section above, Congress has recognized expanded tribal criminal jurisdiction over non-Indians who commit certain covered crimes in Indian country to address epidemic rates of violence against American Indian and Alaska Native women and the jurisdictional gaps in Indian country that may impede holding offenders accountable. Moreover, in the consultations and discussions that OVW held with Tribal leaders and advocates, participants reiterated the challenges that Tribes face in shouldering the immediate costs of exercising STCJ. If OVW does not have in place an interim final rule to facilitate reimbursement payments to Tribal governments, these governments may delay implementing STCJ and certain non-Indian offenders may continue to commit crimes with impunity.

Finally, there is no need to delay the rule's effective date for 30 days because no affected entity will need to adjust its behavior prior to the rule's effective date. Tribal governments do not need to take any steps to come into compliance with the new rule. Rather, each Tribe will decide whether it wishes to request reimbursement funds, regardless of the effective date. In addition, if a Tribe needs more time to put in place systems that will enable it to seek reimbursement, an immediate effective date will not prevent it from doing so. Therefore, an immediate effective date does not contravene any principles of fairness as the affected parties may choose to take no actions or defer those actions regardless of when the rule takes effect.

As part of this interim final rule, OVW will accept comments and consider revising the rule. Issuance of the rule on an interim final basis, however, will enable OVW to implement the Tribal Reimbursement Program during its first year of funding in an equitable and orderly fashion. The interim final rule is necessary for OVW to begin implementing the program, including making reimbursement payments to Tribes, during FY 2023.

Executive Orders 12866 and 13563—Regulatory Review

This regulation has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review,'' section 1(b), Principles of Regulation, and in accordance with Executive Order 13563, ''Improving Regulation and Regulatory Review,'' section 1(b). General Principles of Regulation.

The Department of Justice has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f) because it is not likely to: (1) have an annual effect on the economy of $100 million or more; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues.

(1) The rule's impact is limited to funds appropriated for the OVW Tribal Reimbursement Program, which are unlikely to ever exceed $10 million per year. As explained above, the FY 2023 appropriation for this program is a maximum of $4.4 million. The authorization of appropriations for the program, at 25 U.S.C. 1304(j), is a maximum of $10 million. Therefore, this rule cannot have an annual effect of $100 million or more.

(2) The rule does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency because OVW is the only agency that administers funds appropriated by Congress expressly to support Tribes in administering STCJ. OVW administers a grant program for Tribes implementing and exercising STCJ and can ensure that the grant program and the reimbursement program operate in tandem. Furthermore, by mandating that recipients cannot seek reimbursement for expenses that are already paid for by another federal agency, the rule obviates the likelihood of creating inconsistency or otherwise interfering with another agency's actions.

(3) The rule does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients. The rule does not change the economic impact of funds appropriated for the Tribal Reimbursement Program; instead, the rule provides, as directed by statute, that appropriated funds are used to reimburse costs incurred by Tribes in exercising STCJ. Further, as discussed above, the annual appropriation is not at a level that would have a significant budgetary impact on the Federal government or federally recognized tribes. Finally, the rule will impose very few economic costs on participating Tribes, as discussed below.

(4) This rule does not raise any novel legal or policy issues. Although STCJ may present novel legal questions in individual prosecutions, the issuance of reimbursements to assist Tribes with specified types of expenses is not novel as other Federal government agencies operate programs that provide reimbursement to Tribes.

Further, both Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and to select regulatory approaches that maximize net benefits. The Department has assessed the costs and benefits of this regulation and believes that the regulatory approach selected maximizes net benefits.

OVW provides the following analysis of the most noteworthy costs, benefits, and alternative choices. Overall, the Tribal Reimbursement Program, as implemented by this interim final rule, has very few costs, outside of the appropriated funds for the program. The only additional costs are those that Tribes may face in documenting that the expenses for which they request reimbursement were incurred in relation to covered crimes and in documenting and justifying the dollar amounts for such requests. In drafting this rule, OVW balanced the need to make this process as simple and flexible as possible for Tribes, with the need to have auditable records and ensure that funds are expended appropriately. We considered requiring Tribes to submit more detailed documentation at the time of requesting reimbursement, in order to ensure that all requested expenses are eligible for reimbursement. We rejected this as imposing too great a burden on participating Tribes and instead identified an approach that reduces the reimbursement request requirements but will ensure that participating Tribes maintain adequate records for monitoring and audit purposes and puts them on notice that they may need to return reimbursement funds that are later found to be ineligible.

Executive Order 13132—Federalism

This regulation will not have substantial direct effects on the states, on the relationship between the national government and the states, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

OVW, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reason: The direct economic impact is limited to OVW's appropriated funds. For more information on economic impact, please see above.

Executive Order 12988—Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

This rule will not result in substantial direct increased costs to Indian Tribal governments; rather, the Tribal Reimbursement Program (as carried out through the rule) will confer a benefit on participating Tribes. The rule creates a process for Tribes to access certain funds appropriated for their benefit. As discussed above, any financial costs imposed by the rule are minimal. OVW held Tribal consultations on July 27 and 28, 2022, a roundtable on August 24, 2022, and an additional listening session on August 30, 2022, all focused solely on this program. In addition, during OVW's statutorily required annual consultation held most recently on September 21–23, 2022, the Tribes also commented on this program.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and Tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year (as adjusted for inflation), and it will not uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete in domestic and export markets.

List of Subjects in 28 CFR Part 90

Grant programs; judicial administration.

For the reasons set forth in the preamble, the Office on Violence Against Women amends 28 CFR part 90 as follows:

PART 90—VIOLENCE AGAINST WOMEN

■ 1. The authority for part 90 is revised to read as follows:

Authority: 42 U.S.C. 3711 *et seq.;* 42 U.S.C. 13925; 25 U.S.C. 1304(h).

■ 2. Add subpart C to read as follows:

Subpart C—Reimbursement to Tribal Governments for Expenses Incurred Exercising Special Tribal Criminal Jurisdiction

Sec.
90.30 Definitions.
90.31 Eligibility.
90.32 Reimbursement request.
90.33 Division of funds: maximum allowable reimbursement and waivers.
90.34 Annual maximum allowable reimbursement per participating Tribe.
90.35 Conditions for waiver of annual maximum.
90.36 Categories of expenses eligible for reimbursement.
90.37 Ineligible expenses.
90.38 Collection of expenses from offenders.
90.39 Expenses documentation.
90.40 Other sources of funding.
90.41 Denial of specific expenses for reimbursement.
90.42 Monitoring and audit.
90.43 Corrective action.

Subpart C—Reimbursement to Tribal Governments for Expenses Incurred Exercising Special Tribal Criminal Jurisdiction

§ 90.30 Definitions.

The definitions in 25 U.S.C. 1304(a) apply to the Reimbursement to Tribal Governments for Expenses Incurred in Exercising Special Tribal Criminal Jurisdiction (hereinafter referred to as ''the Tribal Reimbursement Program'' or ''this program'').

§ 90.31 Eligibility.

(a) Tribal governments eligible to seek reimbursement under this program are the governments of Tribal entities recognized by and eligible for funding and services from the Bureau of Indian Affairs by virtue of their status as Indian Tribes, that exercise Special Tribal Criminal Jurisdiction (STCJ), as defined by 25 U.S.C. 1304(a)(14) or section 812(5) of Public Law 117–103 (''participating Tribes'').

(b) Tribes that are in the planning phases prior to implementing STCJ are not eligible for reimbursement of planning costs from this program.

(c) Participating Tribes that are currently exercising jurisdiction over non-Indian offenders who commit any covered crime, as defined by 25 U.S.C. 1304(a)(5), and are in the planning phase to exercise jurisdiction over additional covered crimes are eligible for reimbursement with regard to the cases for which they already are exercising jurisdiction but not for planning costs.

§ 90.32 Reimbursement request.

Each year for which funds are available for the Tribal Reimbursement Program, the Office on Violence Against Women (OVW) will issue a Notice of Reimbursement Opportunity with instructions on how to apply for the maximum allowable reimbursement. The reimbursement request for each participating Tribe will include a certification that the participating Tribe meets the eligibility requirements of § 90.31. It will also include a list of expenses that the participating Tribe incurred in exercising STCJ in the previous year, in categories such as law enforcement, prosecution, indigent defense, pre-trial services, corrections, and probation. If a participating Tribe has newly implemented tribal criminal jurisdiction over non-Indians and therefore cannot submit 12 months' worth of expenses for the prior year, the participating Tribe may use estimated amounts for each category of expenses.

§ 90.33 Division of funds: maximum allowable reimbursement and waivers.

OVW will set aside for this program up to 40 percent of funds appropriated pursuant to 25 U.S.C. 1304(j), unless otherwise provided by law. The funds set aside for the Tribal Reimbursement Program will be divided into two parts: one part that will guarantee the availability of funds for each participating Tribe that requests reimbursement up to the maximum allowable reimbursement, and one part that will fund waivers of the maximum. In the first year that OVW administers appropriated funds for this program, OVW will allot 25 percent of Tribal Reimbursement Program funds for maximum allowable reimbursements. In subsequent years, OVW may adjust this percentage, based on the appropriations available, the number of participating Tribes, the extent to which participating Tribes expend the maximum allowable reimbursement in the prior year, and the total dollar amount of waivers requested during the prior year. OVW also may consider whether demand for grant funds under the Tribal Jurisdiction Program warrants adjusting this percentage.

§ 90.34 Annual maximum allowable reimbursement per participating Tribe.

Each participating Tribe will receive access to an equal portion of the funds set aside for maximum allowable reimbursements under § 90.33 (*e.g.,* 25 percent of the total funds available for the Tribal Reimbursement Program), unless their prior year expenses were less than the maximum amount, in which case they will be limited to the actual amount of their prior year expenses. Over the course of a calendar year, participating Tribes may draw down funds from the maximum allowable reimbursement as needed for eligible expenses as described in § 90.36. Participating Tribes are not required to provide documentation at the time they draw down from the maximum allowable reimbursement. Participating Tribes must provide a summary of eligible expenses at the end of the calendar year, which must identify actual expenditures eligible for reimbursement, including dollar amounts for each expenditure and how they were calculated, and must keep documentation on file to support each claimed expense. Such documentation must be sufficient to meet the standards that 2 CFR part 200 provides for grants.

§ 90.35 Conditions for waiver of annual maximum.

(a) If participating Tribes incur eligible expenses in excess of their annual maximum allowable reimbursement, they may request a waiver of the annual maximum at the end of the calendar year. Requests for a waiver must include the summary of eligible expenses required by section 90.34 that shows how the maximum allowable reimbursement funds were spent and an additional summary of eligible expenses that identifies actual expenditures eligible for reimbursement in excess of the maximum, including dollar amounts for each expenditure and how they were calculated. Participating Tribes are not required to provide documentation at the end of the calendar year when they submit their waiver request but must keep documentation on file to support each claimed expense. Such documentation must be sufficient to meet the standards that 2 CFR part 200 provides for grants.

(b) Waivers will be calculated at the end of the calendar year based on available funds. If there are not sufficient funds available to reimburse the total eligible expenses requested by all participating Tribes, each Tribe will get the same percentage of their additional costs met. This percentage will be calculated by comparing the funds available and the total amount requested for waivers.

§ 90.36 Categories of expenses eligible for reimbursement.

Participating Tribes may apply for the maximum allowable reimbursement and waiver funds for the following expenses associated with the exercise of STCJ for each calendar year. For an expense to be eligible, the cost must be incurred in response to a report of a covered crime committed by a non-Indian, but there does not need to be an arrest or a prosecution for the offense. The summary of eligible expenses submitted each year must demonstrate how costs were calculated. Following are examples of types of eligible costs that participating Tribes may include and basis for calculations.

(a) Law enforcement expenses such as officer time (including response, interviews, follow-up, report writing, and court time); sexual assault kits or other evidentiary supplies; and testing, analysis, and storage of evidence. Requests for reimbursement must be based on actual costs attributed to SCTJ cases.

(b) Incarceration expenses such as prison and jail costs and prisoner transportation costs, whether through contract or Tribally owned facilities. Requests for reimbursement must be based on actual costs attributed to STCJ cases and may be based on per diem costs for housing non-Indian offenders.

(c) Offender medical and dental expenses not otherwise covered by insurance policies or federal sources such as Medicaid, including costs for insurance for offenders. Requests for reimbursement must be based on actual costs attributed to STCJ cases.

(d) Prosecution expenses such as staff time (including meetings, interviews, filings, research, preparation, court, and other time that can be demonstrated as allocable to prosecuting a covered crime); expert witness fees; exhibits; witness costs; and copying costs. Requests for reimbursement must be based on actual costs attributed to STCJ cases.

(e) Defense counsel expenses such as staff time (including meetings, interviews, filings, research, preparation, court, and other time that can be demonstrated as allocable to defending one or more non-Indian offenders charged with one or more covered crimes); competency evaluations; expert witness fees; exhibits; witness costs; and copying

costs. Requests for reimbursement must be based on actual cost. If the defense counsel is provided by contract, then the reimbursement amount can be based on the invoiced cost to the participating Tribe.

(f) Court expenses such as judge and court staff time; postage for summoning jurors; jury fees; witness costs; and competency evaluation or other mental health evaluations ordered by the court. Requests for reimbursement must be based on actual costs attributed to STCJ cases.

(g) Community supervision/re-entry expenses such as probation, parole, or other staff time; electronic or other monitoring fees; chemical dependency testing; batterer or sex offender evaluation and treatment; and pre-sentence investigation costs. Requests for reimbursement must be based on actual costs attributed to STCJ cases.

(h) Indirect costs based on a current federally approved indirect cost rate agreement.

(i) Other costs incurred in, relating to, or associated with exercising STCJ. Participating Tribes requesting reimbursement for costs in this category must demonstrate that the cost is incurred in, relating to, or associated with exercise of STCJ.

§ 90.37 Ineligible expenses.

Participating Tribes are not permitted to request reimbursement for the following:

(a) Planning: Expenses associated with planning to exercise STCJ, such as code drafting.

(b) Training, including costs for training criminal justice personnel, court personnel, or others.

(c) Any expenses not incurred in, relating to, or associated with exercising STCJ.

§ 90.38 Collection of expenses from offenders.

If a participating Tribe recoups expenses related to exercise of STCJ from the convicted offenders prior to receiving reimbursement for such expenses, then the recouped funds shall be used prior to seeking reimbursement through the Tribal Reimbursement Program. If a participating Tribe recoups expenses related to exercise of STCJ from the convicted offenders subsequent to receiving reimbursement for such expenses, such funds must be used toward exercise of STCJ.

§ 90.39 Expenses documentation.

Documentation of expenses retained on file by participating Tribes pursuant to sections 90.34 and 90.35 must be adequate for an audit. At a minimum, participating Tribes must retain the general accounting ledger and all supporting documents, including invoices, sales receipts, or other proof of expenses incurred for those expenses reimbursed by the Tribal Reimbursement Program. Such records must be retained for a period of three years from the end of the calendar year during which the participating Tribe sought reimbursement. All financial records pertinent to the Tribal Reimbursement Program, including the general accounting ledger and all supporting documents, are subject to agency review during the calendar year in which reimbursement is sought, during any audit, and for the three-year retention period.

§ 90.40 Other sources of funding.

If there are other sources of federal funding available to pay for a particular cost associated with the exercise of STCJ, participating Tribes must expend funds from those sources before seeking reimbursement from this program. Examples include existing Department of Justice grant funds, Medicare/Medicaid, and Bureau of Indian Affairs funding.

§ 90.41 Denial of specific expenses for reimbursement.

If reimbursement of specific expenses is denied, the participating Tribe may request review of the denial via a letter to the OVW Director stating the reason why the denied expense was eligible for reimbursement. OVW must receive the letter within 30 calendar days of the denial. The OVW Director will review the letter and notify the participating Tribe of a final decision within 30 days of receipt of the letter.

§ 90.42 Monitoring and audit.

Tribes receiving reimbursement of expenses under the Tribal Reimbursement Program will be subject to regular monitoring and audits to ensure that expenses are properly documented and are allocable to the exercise of STCJ.

§ 90.43 Corrective action.

Reimbursement requests later found not to meet statutory, regulatory, or other program requirements may result in a corrective action plan and/or recovery/recoupment. Participating Tribes that fail to submit the required summary of eligible expenses under §§ 90.34 and 90.35, respond to requests for information during monitoring or auditing, or follow a corrective action plan or return funds expended on ineligible expenses will be deemed ineligible for additional Tribal Reimbursement Program funds, in the same or another calendar year, until such deficiencies are remedied.

Dated: March 31, 2023.

Allison Randall,

Acting Director.

[FR Doc. 2023–07519 Filed 4–10–23; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 147

[Docket Number USCG–2021–0474]

RIN 1625–AA87

Safety Zone; Lucius Spar Outer Continental Shelf Facility, Keathley Canyon Block 875, Gulf of Mexico

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a safety zone around the Lucius Spar, located in Keathley Canyon Block 875 on the Outer Continental Shelf (OCS) in the Gulf of Mexico. The purpose of this rule is to protect the facility from all vessel traffic operating outside the normal shipping channels and fairways that are not providing service to or working with the facility. Establishing a safety zone around the facility will significantly reduce the threat of allisions, collisions, security breaches, oil spills, releases of natural gas, and thereby protect the safety of life, property, and the environment.

DATES: This rule is effective April 11, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2021–0474 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LCDR David Newcomb, District Eight OCS, U.S. Coast Guard; telephone 504–671–2106, *David.T.Newcomb@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
OCS Outer Continental Shelf

§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

Anadarko Petroleum Corporation requested that the Coast Guard establish a safety zone around its facility. There are safety concerns for both the personnel aboard the facility and the environment that arise when a safety zone is not established. In response, on October 23, 2022, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Lucius Spar Outer Continental Shelf Facility, Keathley Canyon Block 875, Gulf of Mexico. There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this safety zone. During this comment period that ended on November 23, 2022, we received 1 comment.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 14 U.S.C. 85, 43 U.S.C. 1333, Department of Homeland Security Delegation No. 0170.1, and 33 CFR 1.05–1, 147.1, and 147.10, which collectively permit the establishment of safety zones for facilities located on the OCS for the purpose of protecting life and property on the facilities, and the marine environment in the safety zones. The Coast Guard has determined that a safety zone is necessary to protect the facility from all vessels operating outside the normal shipping channels and fairways that are not providing services to or working with the facility. Navigation in the vicinity of the safety zone consists of large commercial shipping vessels, fishing vessels, cruise ships, tugs with tows and the occasional recreational vessel. The deepwater area also includes an extensive system of fairways. The purpose of the rule is to significantly reduce the threat of allisions, oil spills, and releases of natural gas, and thereby protect the safety of life, property, and the environment.

IV. Discussion of Comments, Changes and the Rule

As noted above, we received 1 comment on our NPRM published on November 23, 2022. The commenter asked to specify the horizontal datum (NAD 27, NAD 83, etc.) for the latitude and longitude position in the rule. We have done so. In this rule, as in all OCS Safety Zone rules, we use the NAD 83 horizontal datum.

This rule established a safety zone on the Outer Continental Shelf (OCS) in the deepwater area of the Gulf of Mexico at Keathley Canyon 875. The area or the safety zone is 500 meters (1640.4 feet) from each point on the facility, which is located at 26°7′55.0632″ N, 92°2′24.2982″ W (NAD 83). The deepwater area is waters of 304.8 meters (1,000 feet) or greater depth extending to the limits of the Exclusive Economic Zone (EEZ) contiguous to the territorial sea of the United States and extending to a distance up to 200 nautical miles from the baseline from which the breadth of the sea is measured. No vessel, except those attending the facility, or those less than 100 feet in length and not engaged in towing will be permitted to enter the safety zone without obtaining permission from Commander, Eighth Coast Guard District or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the location of the Lucius Spar, on the OCS, and its distance from both land and safety fairways. Vessels traversing waters near the safety zone will be able to safely travel around the zone using alternate routes. Exceptions to this rule include vessels measuring less than 100 feet in length overall and not engaged in towing. The Eighth Coast Guard District Commander, or a designated representative, will consider requests to transit through the safety zone on a case-by-case basis.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing a safety zone around an offshore deepwater facility. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2–1 of Commandant Instruction M16475.lD. A preliminary environmental analysis checklist and Categorical Exclusion Determination, prepared and signed before October 31, 2022 are available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 147

Continental shelf, Marine safety, Navigation (water).

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 147 as follows:

PART 147—SAFETY ZONES

■ 1. The authority citation for part 147 continues to read as follows:

Authority: 14 U.S.C. 554; 43 U.S.C. 1333; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 147.873 to read as follows:

§ 147.873 Safety Zone; Lucius Spar, Outer Continental Shelf Facility, Keathley Canyon 875.

(a) *Description.* The Lucius Spar in the deepwater area of the Gulf of Mexico at Keathley Canyon 875. The facility is located at: 26°7′55.0632″ N, 92°2′24.2982″ W (NAD 83) and the area within 500 meters (1640.4 feet) from each point on the facility structure's outer edge is a safety zone.

(b) *Regulation.* No vessel may enter or remain in this safety zone except for the following:

(1) An attending vessel, as defined in 147.20

(2) A vessel under 100 feet in length overall not engaged in towing; or

(3) A vessel authorized by the Commander, Eighth Coast Guard District or a designated representative.

(c) *Requests for permission.* Persons or vessels requiring authorization to enter the safety zone must request permission from the Commander, Eighth Coast Guard District or a designated representative. If permission is granted, all persons and vessels shall comply with the instructions of the Commander or designated representative.

Dated: April 4, 2023.

Richard Timme,

RADM, U.S. Coast Guard, Commander, Coast Guard District Eight.

[FR Doc. 2023–07585 Filed 4–10–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 147

[Docket Number USCG–2021–0476]

RIN 1625–AA00

Safety Zone; Heidelberg Spar Outer Continental Shelf Facility, Green Canyon Block 860, Gulf of Mexico

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a safety zone around the Heidelberg Spar, located in Green Canyon Block 860 on the Outer Continental Shelf (OCS) in the Gulf of Mexico. The purpose of this rule is to protect the facility from all vessel traffic operating outside the normal shipping channels and fairways that are not providing service to or working with the facility. Establishing a safety zone around the facility will significantly reduce the threat of allisions, collisions, security breaches, oil spills, releases of natural gas, and thereby protect the safety of life, property, and the environment.

DATES: This rule is effective May 11, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2021–0476 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LCDR David Newcomb, District Eight OCS, U.S. Coast Guard; telephone 504–671–2106, *David.T.Newcomb@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
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II. Background Information and Regulatory History

Anadarko Petroleum Company requested that the Coast Guard establish a safety zone around its facility. There are safety concerns for both the personnel aboard the facility and the

environment that arise when a safety zone is not established. In response, on October 23, 2022, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Heidelberg Spar, Outer Continental Shelf Facility, Green Canyon Block 860, Gulf of Mexico. There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this safety zone. During this comment period that ended on November 23, 2022, we received 1 comment.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 14 U.S.C. 85, 43 U.S.C. 1333, Department of Homeland Security Delegation No. 0170.1, and 33 CFR 1.05–1, 147.1, and 147.10, which collectively permit the establishment of safety zones for facilities located on the OCS for the purpose of protecting life and property on the facilities, and the marine environment in the safety zones. The Coast Guard has determined that a safety zone is necessary to protect the facility from all vessels operating outside the normal shipping channels and fairways that are not providing services to or working with the facility. Navigation in the vicinity of the safety zone consists of large commercial shipping vessels, fishing vessels, cruise ships, tugs with tows and the occasional recreational vessel. The deepwater area also includes an extensive system of fairways. The purpose of the rule is to significantly reduce the threat of allisions, oil spills, and releases of natural gas, and thereby protect the safety of life, property, and the environment.

IV. Discussion of Comments, Changes and the Rule

As noted above, we received 1 comment on our NPRM published on November 23, 2022. The commenter asked to specify the horizontal datum (NAD 27, NAD 83, etc.) for the latitude and longitude position in the rule. We have done so. In this rule, as in all OCS Safety Zone rules, we use the NAD 83 horizontal datum.

This rule established a safety zone on the Outer Continental Shelf (OCS) in the deepwater area of the Gulf of Mexico at Green Canyon 860. The area or the safety zone is 500 meters (1640.4 feet) from each point on the facility, which is located 27°6′41.0394″ N, 90°45′50.3994″ W (NAD 83). The deepwater area is waters of 304.8 meters (1,000 feet) or greater depth extending to the limits of the Exclusive Economic Zone (EEZ) contiguous to the territorial sea of the United States and extending to a distance up to 200 nautical miles from the baseline from which the breadth of the sea is measured. No vessel, except those attending the facility, or those less than 100 feet in length and not engaged in towing will be permitted to enter the safety zone without obtaining permission from Commander, Eighth Coast Guard District or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the location of the Heidelberg Spar, on the OCS, and its distance from both land and safety fairways. Vessels traversing waters near the safety zone will be able to safely travel around the zone using alternate routes. Exceptions to this rule include vessels measuring less than 100 feet in length overall and not engaged in towing. The Eighth Coast Guard District Commander, or a designated representative, will consider requests to transit through the safety zone on a case-by-case basis.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial

direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing a safety zone around an offshore deepwater facility. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2–1 of Commandant Instruction M16475.lD. A preliminary environmental analysis checklist and Categorical Exclusion Determination, prepared and signed before October 31, 2022, are available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

PART 147—SAFETY ZONES

■ 1. The authority citation for part 147 continues to read as follows:

Authority: 14 U.S.C. 554; 43 U.S.C. 1333; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 147.877 to read as follows:

§ 147.877 Safety Zone, Heidelberg Spar, Outer Continental Shelf Facility, Green Canyon 860.

(a) *Description.* The Heidelberg Spar in the deepwater area of the Gulf of Mexico at Green Canyon. The facility is located at: 27°6′41.0394″ N, 90°45′50.3994″ W (NAD 83) and the area within 500 meters (1640.4 feet) from each point on the facility structure's outer edge is a safety zone.

(b) *Regulation.* No vessel may enter or remain in this safety zone except for the following:

(1) An attending vessel, as defined in § 147.20;

(2) A vessel under 100 feet in length overall not engaged in towing; or

(3) A vessel authorized by the Commander, Eighth Coast Guard District or a designated representative.

(c) *Requests for permission.* Persons or vessels requiring authorization to enter the safety zone must request permission from the Commander, Eighth Coast Guard District or a designated representative. If permission is granted, all persons and vessels shall comply with the instructions of the Commander or designated representative.

Dated: April 4, 2023.

Richard Timme,

RADM, U.S. Coast Guard, Commander, Coast Guard District Eight.

[FR Doc. 2023–07593 Filed 4–10–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 147

[Docket Number USCG–2022–0313]

RIN 1625–AA00

Safety Zone; Vito Floating Production System, Outer Continental Shelf Facility, Mississippi Canyon Block 939, Gulf of Mexico

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a safety zone around the Vito Floating Production System (FPS), located in Mississippi Canyon Block 939 on the Outer Continental Shelf (OCS) in the Gulf of Mexico. The purpose of this rule is to protect the facility from all vessel traffic operating outside the normal shipping channels and fairways that are not providing service to or working with the facility. Establishing a safety zone around the facility will significantly reduce the threat of allisions, collisions, security breaches, oil spills, releases of natural gas, and thereby protect the safety of life, property, and the environment.

DATES: This rule is effective May 11, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0313 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FPS Floating Production System
FR Federal Register
NPRM Notice of proposed rulemaking
OCS Outer Continental Shelf
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

Shell Oil requested that the Coast Guard establish a safety zone around its facility. There are safety concerns for both the personnel aboard the facility and the environment that arise when a safety zone is not established. In response, on October 23, 2022, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Vito Floating Production System, Outer Continental Shelf Facility, Mississippi Canyon Block 939, Gulf of Mexico. There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this safety zone. During this comment period that ended on November 23, 2022, we received 2 comments.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 14 U.S.C. 85, 43 U.S.C. 1333, Department of Homeland Security Delegation No. 0170.1, and 33 CFR 1.05–1, 147.1, and 147.10, which collectively permit the establishment of safety zones for facilities located on the OCS for the purpose of protecting life and property on the facilities, and the marine environment in the safety zones. The Coast Guard has determined that a safety zone is necessary to protect the facility from all vessels operating outside the normal shipping channels and fairways that are not providing

services to or working with the facility. Navigation in the vicinity of the safety zone consists of large commercial shipping vessels, fishing vessels, cruise ships, tugs with tows and the occasional recreational vessel. The deepwater area also includes an extensive system of fairways. The purpose of the rule is to significantly reduce the threat of allisions, oil spills, and releases of natural gas, and thereby protect the safety of life, property, and the environment.

IV. Discussion of Comments, Changes and the Rule

As noted above, we received 2 comments on our NPRM published on November 23, 2022. The first commenter was wholly in support of the establishment of a safety zone. The second commenter asked to specify the horizontal datum (NAD 27, NAD 83, etc.) for the latitude and longitude position in the rule. We have done so. In this rule, as in all OCS Safety Zone rules, we use the NAD 83 horizontal datum.

This rule established a safety zone on the Outer Continental Shelf (OCS) in the deepwater area of the Gulf of Mexico at Mississippi Canyon 939. The area or the safety zone is 500 meters (1640.4 feet) from each point on the facility, which is located 28°01′32.325″ N, 89°12′33.254″ W (NAD 83).The deepwater area is waters of 304.8 meters (1,000 feet) or greater depth extending to the limits of the Exclusive Economic Zone (EEZ) contiguous to the territorial sea of the United States and extending to a distance up to 200 nautical miles from the baseline from which the breadth of the sea is measured. No vessel, except those attending the facility, or those less than 100 feet in length and not engaged in towing will be permitted to enter the safety zone without obtaining permission from Commander, Eighth Coast Guard District or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the location of the Vito FPS, on the OCS, and its distance from both land and safety fairways. Vessels traversing waters near the safety zone will be able to safely travel around the zone using alternate routes. Exceptions to this rule include vessels measuring less than 100 feet in length overall and not engaged in towing. The Eighth Coast Guard District Commander, or a designated representative, will consider requests to transit through the safety zone on a case-by-case basis.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security

Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing a safety zone around an offshore deepwater facility. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2–1 of Commandant Instruction M16475.lD. A preliminary environmental analysis checklist and Categorical Exclusion Determination, prepared and signed before October 31, 2022 are available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 147

Continental shelf, Marine safety, Navigation (water).

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 147 as follows:

PART 147—SAFETY ZONES

■ 1. The authority citation for part 147 continues to read as follows:

Authority: 14 U.S.C. 544; 43 U.S.C. 1333; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 00170.1.

■ 2. Add § 147.879 to read as follows:

§ 147.879 Safety Zone; Vito Floating Production System, Outer Continental Shelf Facility, Mississippi Canyon Block 939, Gulf of Mexico

(a) *Description.* The Vito FPS is in the deepwater area of the Gulf of Mexico at Mississippi Canyon Block 939. The facility is located at 28°01′32.325″ N, 89°12′33.254″ W, (NAD 83) and the area within 500 meters (1640.4 feet) from each point on the facility structure's outer edge is a safety zone.

(b) *Regulation.* No vessel may enter or remain in this safety zone except for the following:

(1) An attending vessel, as defined in 147.20;

(2) A vessel under 100 feet in length overall not engaged in towing; or

(3) A vessel authorized by the Commander, Eighth Coast Guard District or a designated representative.

(c) *Requests for permission.* Persons or vessels requiring authorization to enter the safety zone must request permission from the Commander, Eighth Coast Guard District or a designated representative. If permission is granted, all persons and vessels shall comply with the instructions of the Commander or designated representative.

Richard Timme,

RADM, U.S. Coast Guard, Commander, Coast Guard District Eight.

[FR Doc. 2023–07589 Filed 4–10–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 147

[Docket Number USCG–2021–0475]

RIN 1625–AA00

Safety Zone; Horn Mountain Spar Outer Continental Shelf Facility, Mississippi Canyon Block 127, Gulf of Mexico

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the navigable waters around the Horn Mountain Spar, located in Mississippi Canyon Block 127 on the Outer Continental Shelf (OCS) in the Gulf of Mexico. The purpose of this rule is to protect the facility from all vessel traffic operating outside the normal shipping channels and fairways that are not providing service to or working with the facility. Establishing a safety zone around the facility will significantly reduce the threat of allisions, collisions, security breaches, oil spills, releases of natural gas, and thereby protect the safety of life, property, and the environment.

DATES: This rule is effective May 11, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2021–0475 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LCDR David Newcomb, District Eight OCS, U.S. Coast Guard; telephone 504–671–2106, *David.T.Newcomb@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

Anadarko Petroleum Corporation requested that the Coast Guard establish a safety zone around its facility. There are safety concerns for both the personnel aboard the facility and the environment that arise when a safety zone is not established. In response, on October 23, 2022, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Horn Mountain Spar Outer Continental Shelf Facility, Mississippi Canyon Block 127, Gulf of Mexico. There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this safety zone. During this comment period that ended on November 23, 2022, we received 1 comment

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 14 U.S.C. 85, 43 U.S.C. 1333, Department of Homeland Security Delegation No. 0170.1, and 33 CFR 1.05–1, 147.1, and 147.10, which collectively permit the establishment of safety zones for facilities located on the OCS for the purpose of protecting life and property on the facilities, and the marine environment in the safety zones. The Coast Guard has determined that a safety zone is necessary to protect the facility from all vessels operating outside the normal shipping channels and fairways that are not providing services to or working with the facility. Navigation in the vicinity of the safety zone consists of large commercial shipping vessels, fishing vessels, cruise ships, tugs with tows and the occasional recreational vessel. The deepwater area also includes an extensive system of fairways. The purpose of the rule is to significantly reduce the threat of allisions, oil spills, and releases of natural gas, and thereby protect the safety of life, property, and the environment.

IV. Discussion of Comments, Changes and the Rule

As noted above, we received 1 comment on our NPRM published on November 23, 2022. The commenter asked to specify the horizontal datum (NAD 27, NAD 83, etc.) for the latitude and longitude position in the rule. We have done so. In this rule, as in all OCS Safety Zone rules, we use the NAD 83 horizontal datum.

This rule established a safety zone on the Outer Continental Shelf (OCS) in the deepwater area of the Gulf of Mexico at Mississippi Canyon 127. The area or the safety zone is 500 meters (1640.4 feet) from each point on the facility, which is located at 28°51′57.5994″ N, 88°3′22.32″ W (NAD 83). The deepwater area is waters of 304.8 meters (1,000 feet) or greater depth extending to the limits of the Exclusive Economic Zone (EEZ) contiguous to the territorial sea of the United States and extending to a distance up to 200 nautical miles from the baseline from which the breadth of the sea is measured. No vessel, except those attending the facility, or those less than 100 feet in length and not engaged in towing will be permitted to enter the safety zone without obtaining permission from Commander, Eighth Coast Guard District or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the location of the Horn Mountain Spar, on the OCS, and its distance from both land and safety fairways. Vessels traversing waters near the safety zone will be able to safely travel around the zone using alternate routes. Exceptions to this rule include vessels measuring less than 100 feet in length overall and not engaged in towing. The Eighth Coast Guard District Commander, or a designated representative, will consider requests to transit through the safety zone on a case-by-case basis.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing a safety zone around an offshore deepwater facility. Normally such actions are categorically excluded

from further review under paragraph 34(g) of Figure 2–1 of Commandant Instruction M16475.lD. A preliminary environmental analysis checklist and Categorical Exclusion Determination, prepared and signed before October 31, 2022 are available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

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

List of Subjects in 33 CFR Part 147

Continental shelf, Marine safety, Navigation (water).

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 147 as follows:

PART 147—SAFETY ZONES

■ 1. The authority citation for part 147 continues to read as follows:

Authority: 14 U.S.C. 554; 43 U.S.C. 1333; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 147.875 to read as follows:

§ 147.875 Safety Zone, Horn Mountain Spar, Outer Continental Shelf Facility, Mississippi Canyon 127.

(a) *Description.* The Horn Mountain Spar is in the deepwater area of the Gulf of Mexico at Mississippi Canyon 127. The facility is located at: 28°51′57.5994″ N, 88°3′22.32″ W, (NAD 83) and the area within 500 meters (1640.4 feet) from each point on the facililty structure's outer edge is a safety zone.

(b) *Regulation.* No vessel may enter or remain in this safety zone except for the following:

(1) An attending vessel, as defined in 147.20;

(2) A vessel under 100 feet in length overall not engaged in towing; or

(2) A vessel authorized by the Commander, Eighth Coast Guard District or a designated representative.

(c) *Requests for permission.* Persons or vessels requiring authorization to enter the safety zone must request permission from the Commander, Eighth Coast Guard District or a designated representative. If permission is granted, all persons and vessels shall comply with the instructions of the Commander or designated representative.

Dated: April 4, 2023.

Richard Timme,

RADM, U.S. Coast Guard, Commander, Coast Guard District Eight.

[FR Doc. 2023–07594 Filed 4–10–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0125]

RIN 1625–AA00

Safety Zone; Naval Air Station Key West, Boca Chica, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters of the Boca Chica Channel in Boca Chica, Florida. This action is necessary to provide for the safety of life on these navigable waters near Boca Chica Key, FL, during the 2023 Naval Air Station Key West Air Show. This rule prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Key West or a designated representative.

DATES: This rule is effective daily from 10 a.m. through 4 p.m. on April 14, 2023 through April 16, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2023–0125 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LTJG Hailye Wilson, Sector Key West Waterways Management Division, U.S. Coast Guard; telephone 305–292–8768, email *Hailye.M.Wilson@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. The Coast Guard lacks sufficient time to provide for a comment period and then consider those comments before issuing the rule since this rule is needed by April 14, 2023. It would be contrary to the public interest since immediate action is necessary to protect the safety of the public, and vessels transiting the waters of the Boca Chica Key.

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

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Key West (COTP) has determined that potential hazards associated with the Air Show starting April 14, 2023, will be a safety concern. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone until the Air Show is complete.

IV. Discussion of the Rule

This rule establishes a safety zone from 10 a.m. until 4 p.m. on April 14, 2023 through April 16, 2023. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the bridge is being repaired. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic will be able to safely transit around this safety zone which would impact a small designated area of the Boca Chica Channel during the afternoon when vessel traffic is normally low. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting only 6 hours for three days that will prohibit entry within the Boca Chica Channel. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051, 70124; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.T07–0125 to read as follows:

§ 165.T07–0125 Safety Zone; Naval Air Station Key West, Boca Chica, FL.

(a) *Location.* The following area is a safety zone: All waters of Boca Chica Channel, from surface to bottom, encompassed by a line connecting the following points beginning at 24°33′48″ N, 081°43′02″ W, thence to 24°34′18″ N, 081°43′08″ W, thence to 24°34′28″ N, 081°42′22″ W, and along the shoreline back to the beginning point. These coordinates are based on North American Datum.

(b) *Definitions.* As used in this section, ''designated representative'' means a Coast Guard Patrol

Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Key West (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by telephone at 305–292–8727. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement periods.* This section will be enforced daily from 10 a.m. to 4 p.m. April 14, 2023, through April 16, 2023.

Dated: March 31, 2023.

Jason D. Ingram,

Captain, U.S. Coast Guard, Captain of the Port Key West.

[FR Doc. 2023–07500 Filed 4–10–23; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AR48

Copayment Exemption for Indian Veterans

AGENCY: Department of Veterans Affairs.

ACTION: Final rule correction and correcting amendments.

SUMMARY: On April 4, 2023, the Department of Veterans Affairs (VA) published in the **Federal Register** a final rule to amend its medical regulations to implement a statute exempting Indian and urban Indian veterans from copayment requirements for the receipt of hospital care or medical services. This correction addresses a technical error in the published final rule and correcting amendments to four sections involved.

DATES: Effective April 11, 2023.

FOR FURTHER INFORMATION CONTACT: Mark Upton, Deputy to the Deputy Under Secretary for Health, Office of the Deputy Under Secretary for Health (10A), 810 Vermont Avenue NW, Washington, DC 20420, 202–461–7459. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: VA is correcting technical errors that appeared in a final rule on copayment exemptions for Indian and urban Indian veterans published on April 4, 2023, in the **Federal Register** (FR) at 88 FR 19862. In the preamble of the final rule, VA is replacing ''Medicare'' with ''Medicaid.''

VA is making correcting amendments to the part 17 authority and provisions constituting collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). See §§ 17.108, 17.110, 17.111, and 17.4600 of title 38, Code of Federal Regulations (CFR). On April 4, 2023, OMB approved these information collections and assigned OMB control number 2900–0920. This document corrects the references to the OMB control numbers to add such control numbers at the end of §§ 17.108, 17.110, 17.111, and 17.4600.

Correction to the Preamble

In FR Rule Doc. No. 2023–06954, beginning on 19868 in the April 4, 2023 issue of the **Federal Register**, make the following corrections:

1. On page 19868, column 2, line 18, remove ''Medicare'' and add ''Medicaid'' in its place.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Claims, Day care, Government programs—veterans, Health care, Health facilities, Health records, Medical devices, Mental health programs, Veterans.

Correcting Amendments

Accordingly, VA corrects 38 CFR part 17 by making the following correcting amendments:

PART 17—MEDICAL

■ 1. The authority citation for part 17 is amended by revising the entries for §§ 17.111 and 17.4600 to read in part as follows:

Authority: 38 U.S.C. 501, and as noted in specific sections.

* * * * *

Section 17.111 is also issued under 38 U.S.C. 101(28), 501, 1701(7), 1703, 1710, 1710B, 1720B, 1720D, 1722A, and 1730A.

* * * * *

Section 17.4600 is also issued under 38 U.S.C. 1725A and 1730A.

* * * * *

§ 17.108 [Amended]

■ 2. Amend § 17.108 in the parenthetical at the end of the section by removing ''TBD'' and adding ''0920'' in its place.

§ 17.110 [Amended]

■ 3. Amend § 17.110 in the parenthetical at the end of the section by removing ''TBD'' and adding ''0920'' in its place.

§ 17.111 [Amended]

■ 4. Amend § 17.111 in the parenthetical at the end of the section by removing ''TBD'' and adding ''0920'' in its place.

§ 17.4600 [Amended]

■ 5. Amend § 17.4600 in the parenthetical at the end of the section by removing ''TBD'' and adding ''0920'' in its place.

Consuela Benjamin,

Regulations Development Coordinator, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2023–07528 Filed 4–10–23; 8:45 am]

BILLING CODE 8320–01–P

POSTAL SERVICE

39 CFR Part 111

Counterfeit Postage

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service is amending *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) in various sections to clarify the handling of items found in the mail bearing counterfeit postage.

DATES: *Effective:* May 7, 2023.

FOR FURTHER INFORMATION CONTACT: Jane Quenk at (202) 268–7098 or Garry Rodriguez at (202) 268–7281.

SUPPLEMENTARY INFORMATION: On February 16, 2023, the Postal Service published a notice of proposed rulemaking (88 FR 10068) to revise the DMM in various sections to clarify the handling of items found in the mail bearing counterfeit postage. The Postal Service received numerous comments on that notice, and it appreciates the valuable public input. Multiple commenters expressed support for the Postal Service efforts to address counterfeit postage, an issue that many commenters viewed as wide-spread, problematic, and a risk to Postal Service revenue. The Postal Service now responds to the comments received as follows:

Comments Relating to Information About Counterfeit Postage

Comment: The Postal Service received several comments requesting to know how to avoid purchasing counterfeit postage.

Response: Customers are urged to purchase their postage from legitimate vendors. Information about where to buy legitimate postage is available on usps.com. *See https://faq.usps.com/s/article/What-is-an-Approved-Postal-Provider.*

Comment: Various commenters requested training that would provide them information to allow them to tell the difference between counterfeit and legitimate postage.

Response: Training about security enhancements and security measures found in postage will not be provided to the public because revealing this information could lead to misuse of the information and enable the creation of counterfeit postage.

Comment: Comments reflect that customers and shippers want to know when an item they expect to be delivered has been identified as having counterfeit postage.

Response: USPS is looking at enhancements to tracking and scanning technologies to provide appropriate messaging.

Comments Related to How the Postal Service Will Identify Counterfeit Postage and Whether There Will Be an Administrative Review Process

Comment: Commenters expressed concerns related to the process of identifying counterfeit postage and were concerned about the possible misidentification of valid postage as counterfeit postage. Others worried that a misidentification would lead to improper abandonment, disposal, or to items being stolen. Further, one commenter asked about whether there would be an administrative review process for such findings.

Response: The Postal Service is mindful of these concerns. To limit misidentification of counterfeit postage, the Postal Service will only allow related determinations to be made by individuals who are trained and authorized or by approved machine systems programmed to identify the counterfeit postage. This will help to build expertise and reduce opportunities for the improper, or inconsistent, handling of such matters and will better ensure the security of the mails. Further, the Postal Service is not planning to implement an administrative review process. The Postal Service is making its best efforts to reduce the occurrence of misidentified counterfeit postage. Given the volume of mail using counterfeit postage, and the prevalence of invalid return addresses used on items bearing counterfeit postage, implementation of such an administrative process is impractical. As the issuer of postage, the Postal Service is the final arbiter of what is valid postage versus what is counterfeit postage.

Comments Regarding the Plan To Abandon and Dispose of Items Bearing Counterfeit Postage

The rule will allow items found in the mails with counterfeit postage to be ''considered abandoned'' and allows for such items to be ''disposed of at the discretion of the Postal Service.''

Comment: Several comments were received suggesting that items that bear counterfeit postage not be abandoned; instead, they sought to have such items delivered postage due, postage due with a fine, or alternatively to be delivered COD (collect on delivery—requires payment of postage and fees at time of mailing). The comments characterize the refusal to deliver the items as postage due as ''punishing the victim.''

Response: These suggestions carry a significant cost for the Postal Service, and under existing regulations, the Postal Service may not deliver—even as postage due or as COD—items with no postage, including those that bear counterfeit postage. This regulation is not intended to punish the addressee. Instead, the regulation seeks to abide with current regulations by refusing to expend resources to deliver an item for which no postage was paid.

Comment: Some comments suggested that it was improper to abandon and dispose of these items unless the Postal Service could prove that the sender knew the postage was counterfeit.

Response: The introduction to the regulation referred to fact that that the intentional use of counterfeit postage to defraud the government is a crime. Although the Postal Service noted this fact, and the regulation may discourage this activity, the regulation is not issued to penalize criminal activity and therefore, the Postal Service is not required to prove that the mailer knew the postage was counterfeit when it used it for mailing purposes. Instead, the regulation is promulgated under the Postal Service's broad authority to deliver the mails in a cost-efficient manner and to comply with existing regulations.

Comments Questioning the Efficacy of the Rule and Suggesting Alternate Manners of Combatting Counterfeit Postage

Comment: Some comments pointed out that the regulation would be helpful but noted that it would not adequately address or solve counterfeit postage issues. Other comments pointed to problems with various types of postage and complex pricing models that lead to losses, while others identified alternate manners of combatting counterfeit postage.

Response: The alternate methods discussed included: improvements to various postage payment methods, the enforcement of criminal laws, deputizing retired stamp collectors to monitor ads that sell counterfeit postage, and creating a counterfeit postage vendor list. The abandonment process in the regulation does not replace the investigation and prosecution of criminal conduct. The Postal Inspection Service continues to work on these investigations. The Postal Service does not view the new regulation as an exclusive solution, rather, it views it as part of a multi-pronged approach to address counterfeit postage issues.

Miscellaneous Comments Outside of the Scope of the Regulation

Comment: Many comments were submitted providing tips on where counterfeit postage is being sold.

Response: These comments are beyond the scope of the regulation, but they will be forwarded to the Postal Inspection Service.

Comment: Some comments received suggested the Postal Service donate items that are abandoned or expressed concerns with how the items will be handled after abandonment.

Response: These comments are outside of the scope of regulation because once the property is abandoned, the disposition of that property is within the Postal Service's discretion. Even so, the Postal Service is aware of the many methods that may be used to dispose of items and will handle these items in a responsible and sustainable manner.

Comment: ''What does resembling a postage stamp [sic] in form and design mean? Can I affix foreign stamps for philatelic purposes.''

Response: Although these questions are beyond the scope of the regulation, we refer the commenter to DMM 604.1.3. This provision explains that the use of foreign stamps is invalid for use as postage in the United States and may not be used for domestic originated international mail.

Comment: One commenter pointed out that there was no cost benefit analysis provided with the proposed regulation.

Response: The Administrative Procedures Act does not apply to the Postal Service, nonetheless, the Postal Service has chosen to publish the proposed regulation to provide public notice and an opportunity to comment.

The Postal Service is not required to provide a cost benefit analysis to substantiate this rule. However, as the Postal Service has explained, the rule has been issued to address the critical problem resulting from the increases in the volume of packages with counterfeit postage.

The Postal Service seeks to distinguish the handling of articles entered without postage under subsection 604.8.2 from those that contain counterfeit postage.

Therefore, the Postal Service is revising subsection 604.8.4 to provide that when all articles with counterfeit postage are found they will be considered abandoned and disposed of at the discretion of the Postal Service, rather than be returned to the sender as the affixing of counterfeit postage reflects a refusal to pay postage or an intentional effort to avoid paying postage. The Postal Service is also revising various other subsections for clarity with the revision to subsection 604.8.4.

We believe this revision will provide customers with clarity on the handling of items bearing counterfeit postage.

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

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

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 111 is amended as follows:

PART 111—GENERAL INFORMATION ON POSTAL SERVICE

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

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401–404, 414, 416, 3001–3018, 3201–3220, 3401–3406, 3621, 3622, 3626, 3629, 3631–3633, 3641, 3681–3685, and 5001.

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

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

* * * * *

500 Additional Mailing Services

* * * * *

507 Mailer Services

1.0 Treatment of Mail

1.1 Nondelivery of Mail

Mail can be undeliverable for these reasons:

* * * * *

[Renumber items b through g as c through h and add new item b to read as follows:]

b. Counterfeit Postage (see 604.8.4).

* * * * *

604 Postage Payment Methods and Refunds

1.0 Stamps

* * * * *

1.4 Imitations of Stamps

[Revise the text of 1.4 to read as follows:]

Matter bearing imitations of postage stamps, in adhesive or printed form, or private seals or stickers resembling a postage stamp in form and design, is not acceptable for mailing (See 8.4.2 for handling items with counterfeit postage.).

* * * * *

4.0 Postage Meters and PC Postage Products (''Postage Evidencing Systems'')

* * * * *

4.4 Postage Discrepancies

4.4.1 Definitions

[Revise the text of 4.4.1 by deleting the last sentence.]

* * * * *

8.0 Insufficient or Omitted Postage

* * * * *

8.2 Omitted Postage

8.2.1 Handling Mail With Omitted Postage

[Revise the first sentence of 8.2.1 to read as follows:]

Except under 8.4 matter of any class, including that for which extra services are indicated, received at either the office of mailing or office of address without postage, is endorsed ''Returned for Postage'' and is returned to the sender without an attempt at delivery.

* * *

* * * * *

[Revise the heading and text of 8.4 to read as follows:]

8.4 Counterfeit Postage

8.4.1 Definition

Counterfeit postage is any marking or indicia that has been made, printed, or otherwise created without authorization from the Postal Service that is printed or applied, or otherwise affixed, on an article placed in the mails that indicates or represents that valid postage has been paid to mail the article.

8.4.2 Handling Items With Counterfeit Postage

Items found in the mail bearing counterfeit postage will be considered abandoned and disposed of at the discretion of the Postal Service.

* * * * *

Tram T. Pham,

Attorney, Ethics and Legal Compliance.

[FR Doc. 2023–07566 Filed 4–10–23; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 721

[EPA–HQ–OPPT–2021–0227; FRL–8985–02–OCSPP]

RIN 2070–AB27

Significant New Use Rules on Certain Chemical Substances (21–2.F)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for chemical substances which were the subject of premanufacture notices (PMNs). This action requires persons to notify EPA at least 90 days before commencing manufacture (defined by statute to include import) or processing of any of these chemical substances for an activity that is designated as a significant new use by this rule. This action further requires that persons not commence manufacture or processing for the significant new use until they have submitted a Significant New Use Notice (SNUN), and EPA has conducted a review of the notice, made an appropriate determination on the notice, and has taken any risk management actions as are required as a result of that determination.

DATES: This rule is effective on June 12, 2023. For purposes of judicial review, this rule shall be promulgated at 1 p.m. (e.s.t.) on April 25, 2023.

FOR FURTHER INFORMATION CONTACT:

For technical information contact: William Wysong, New Chemicals Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001;

telephone number: (202) 564–4163; email address: *wysong.william@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

1. General Applicability

This action may apply to you if you manufacture (import), process, or use the chemical substances contained in this rule. 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:

- Manufacturers or processors of one or more subject chemical substances (NAICS codes 325 and 324110), *e.g.,* chemical manufacturing and petroleum refineries.

2. Applicability to Importers and Exporters

This action may also apply to certain entities through pre-existing import certification and export notification rules under TSCA. Chemical importers are subject to the import provisions of TSCA section 13 (15 U.S.C. 2612), the requirements promulgated at 19 CFR 12.118 through 12.127 (see also 19 CFR 127.28), and the EPA policy in support of import certification at 40 CFR part 707, subpart B. Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA, including regulations issued under TSCA sections 5, 6, 7 and Title IV.

In addition, pursuant to 40 CFR 721.20, this action may also apply to any persons who export or intend to export a chemical substance that is the subject of this rule are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

B. How can I access the docket?

The docket includes information considered by the Agency in developing the proposed and final rules. The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2021–0227, is available online at *https://www.regulations.gov* and in person at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. 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 is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *https://www.epa.gov/dockets.*

II. Background

A. What action is the Agency taking?

EPA is finalizing SNURs under TSCA section 5(a)(2) for certain chemical substances which were the subject of PMNs. These SNURs require persons who intend to manufacture or process any of these chemical substances for an activity that is designated as a significant new use to notify EPA at least 90 days before commencing that activity.

Previously, in the **Federal Register** of November 17, 2021 (86 FR 64115 (FRL–8985–01–OCSPP)), EPA proposed SNURs for these chemical substances. More information on the specific chemical substances subject to this final rule can be found in the **Federal Register** document proposing the SNURs. The docket includes information considered by the Agency in developing the proposed and final rules, including the public comments received on the proposed rules that are described in Unit IV.

B. What is the Agency's authority for taking this action?

TSCA section 5(a)(2) (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including the four TSCA section 5(a)(2) factors listed in Unit III.

C. Do the SNUR general provisions apply?

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the rule. Provisions relating to user fees appear at 40 CFR part 700. Pursuant to 40 CFR 721.1(c), persons subject to these SNURs must comply with the same SNUN requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA sections 5(b) and 5(d)(1), the exemptions authorized by TSCA sections 5(h)(1), 5(h)(2), 5(h)(3), and 5(h)(5) and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA must either determine that the significant new use is not likely to present an unreasonable risk of injury or take such regulatory action as is associated with an alternative determination before manufacture or processing for the significant new use can commence. If EPA determines that the significant new use is not likely to present an unreasonable risk, EPA is required under TSCA section 5(g) to make public, and submit for publication in the **Federal Register**, a statement of EPA's findings.

III. Significant New Use Determination

A. Determination Factors

TSCA section 5(a)(2) states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors, including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In determining what would constitute a significant new use for the chemical substances that are the subject of these SNURs, EPA considered relevant information about the toxicity of the chemical substances and potential human exposures and environmental releases that may be associated with the substances, in the context of the four bulleted TSCA section 5(a)(2) factors listed in this unit.

During its review of the chemical substances that are the subjects of these SNURs and as further discussed in Unit VI., EPA identified potential risk concerns associated with other circumstances of use that, while not intended or reasonably foreseen, may occur in the future. EPA is designating

those other circumstances of use as significant new uses.

B. Procedures for Significant New Uses Claimed as Confidential Business Information (CBI)

By this rule, EPA is establishing certain significant new uses which have been claimed as CBI subject to Agency confidentiality regulations at 40 CFR part 2 and 40 CFR part 720, subpart E. Absent a final determination or other disposition of the confidentiality claim under 40 CFR part 2 procedures, EPA is required to keep this information confidential. When this rule was proposed in 2021, EPA cross referenced 40 CFR 721.1725(b)(1), the procedures to deal with the situation where a specific significant new use is CBI, in order to apply it other SNURs where certain significant new uses have been claimed as CBI. Since the proposed rule, however, EPA has finalized amendments to 40 CFR 721.11 (87 FR 39756, July 5, 2022 (FRL–5605–02–OCSPP)), which now provides a means by which bona fide submitters can determine whether their substance is subject to the SNUR and for EPA to disclose the confidential significant new use designations to a manufacturer or processor who has established a bona fide intent to manufacture or process a particular chemical substance. As such, EPA has removed the proposed references to 40 CFR 721.1725(b)(1) for SNURs that certain significant new uses have been claimed as CBI because the procedure in 40 CFR 721.11 now applies to all SNURs containing any CBI, including the significant new use.

Under these procedures a manufacturer or processor may request EPA to determine whether a specific use would be a significant new use under the rule. The manufacturer or processor must show that it has a *bona fide* intent to manufacture or process the chemical substance and must identify the specific use for which it intends to manufacture or process the chemical substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture or process the chemical substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the chemical substances subject to these SNURs are also CBI, manufacturers and processors can combine the *bona fide* submission under the procedure in 40 CFR 721.11 into a single step to identify if a chemical substance is subject to part 721 and if a specific use would be a significant new use under the rule.

IV. Public Comments

EPA received public comments from two identifying entities on the proposed rules. The Agency's responses are presented in the Response to Public Comments document that is available in the docket for this rulemaking. EPA did not make any changes to the requirements presented in the proposed rules, as described in the response to comments.

V. Substances Subject to This Rule

EPA is establishing significant new use and recordkeeping requirements for chemical substances in 40 CFR part 721, subpart E. In Unit IV. of the proposed SNURs, EPA provided the following information for each chemical substance:

- PMN number.
- Chemical name (generic name, if the specific name is claimed as CBI).
- Chemical Abstracts Service (CAS) Registry number (if assigned for non-confidential chemical identities).
- Basis for the SNUR.
- Potentially useful information.
- CFR citation assigned in the regulatory text section of this final rule.

The regulatory text section of these rules specifies the activities designated as significant new uses. Certain new uses, including production volume limits and other uses designated in the rules, may be claimed as CBI.

VI. Rationale and Objectives of the Rule

A. Rationale

The chemical substances that are the subjects of these SNURs received ''not likely to present an unreasonable risk'' determinations under TSCA section 5(a)(3)(C) based on EPA's review of the intended, known, and reasonably foreseen conditions of use. However, EPA has identified other circumstances that, should they occur in the future, even if not reasonably foreseen, may present risk concerns. Specifically, EPA has determined that deviations from the protective measures identified in the PMN submissions could result in changes in the type or form of exposure to the chemical substances, increased exposures to the chemical substances, and/or changes in the reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of the chemical substances. These SNURs identify as a significant new use manufacturing, processing, use, distribution in commerce, or disposal that does not conform to the protective measures identified in the submissions. As a result, those significant new uses cannot occur without first going through a separate, subsequent EPA review and determination process associated with a SNUN.

B. Objectives

EPA is issuing these SNURs because the Agency wants:

- To have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing or processing a listed chemical substance for the described significant new use.
- To be obligated to make a determination under TSCA section 5(a)(3) regarding the use described in the SNUN, under the conditions of use. The Agency will either determine under section 5(a)(3)(C) that the significant new use is not likely to present an unreasonable risk, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by the Administrator under the conditions of use, or make a determination under TSCA section 5(a)(3)(A) or (B) and take the required regulatory action associated with the determination, before manufacture or processing for the significant new use of the chemical substance can occur.
- To be able to complete its review and determination on each of the PMN substances, while deferring analysis on the significant new uses proposed in these rules unless and until the Agency receives a SNUN.

Issuance of a SNUR for a chemical substance does not signify that the chemical substance is listed on the TSCA Inventory. Guidance on how to determine if a chemical substance is on the TSCA Inventory is available on the internet at *https://www.epa.gov/tsca-inventory.*

VII. Applicability of the Rules to Uses Occurring Before the Effective Date of the Final Rule

To establish a significant new use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have undergone premanufacture review. In cases where EPA has not received a notice of commencement (NOC) and the chemical substance has not been added to the TSCA Inventory, no person may commence such activities without first submitting a PMN. Therefore, for chemical substances for which an NOC has not been submitted, EPA concludes that the designated significant new uses are not ongoing.

When the chemical substances identified in this rule are added to the TSCA Inventory, EPA recognizes that, before the rule is effective, other persons

might engage in a use that has been identified as a significant new use. However, the identities of many of the chemical substances subject to this rule have been claimed as confidential (per 40 CFR 720.85). Based on this, the Agency believes that it is highly unlikely that any of the significant new uses described in the regulatory text of this rule are ongoing.

EPA designated October 12, 2021 (the date of FR publication of the proposed rule) as the cutoff date for determining whether the new use is ongoing. The objective of EPA's approach is to ensure that a person cannot defeat a SNUR by initiating a significant new use before the effective date of the final rule.

Persons who began commercial manufacture or processing of the chemical substances for a significant new use identified on or after that date will have to cease any such activity upon the effective date of the final rule. To resume their activities, these persons would have to first comply with all applicable SNUR notification requirements and EPA would have to take action under section 5 allowing manufacture or processing to proceed.

VIII. Development and Submission of Information

EPA recognizes that TSCA section 5 does not require development of any particular new information (*e.g.,* generating test data) before submission of a SNUN. There is an exception: If a person is required to submit information for a chemical substance pursuant to a rule, Order or consent agreement under TSCA section 4, then TSCA section 5(b)(1)(A) requires such information to be submitted to EPA at the time of submission of the SNUN.

In the absence of a rule, Order, or consent agreement under TSCA section 4 covering the chemical substance, persons are required only to submit information in their possession or control and to describe any other information known to or reasonably ascertainable by them (see 40 CFR 720.50). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing. Unit IV. of the proposed rule lists potentially useful information for all SNURs listed here. Descriptions are provided for informational purposes. The potentially useful information identified in Unit IV. of the proposed rule will be useful to EPA's evaluation in the event that someone submits a SNUN for the significant new use. Companies who are considering submitting a SNUN are encouraged, but not required, to develop the information on the substance, which may assist with EPA's analysis of the SNUN.

EPA strongly encourages persons, before performing any testing, to consult with the Agency pertaining to protocol election. Furthermore, pursuant to TSCA section 4(h), which pertains to reduction of testing in vertebrate animals, EPA encourages consultation with the Agency on the use of alternative test methods and strategies (also called New Approach Methodologies, or NAMs), if available, to generate the recommended test data. EPA encourages dialog with Agency representatives to help determine how best the submitter can meet both the data needs and the objective of TSCA section 4(h). For more information on alternative test methods and strategies to reduce vertebrate animal testing, visit *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/alternative-test-methods-and-strategies-reduce.*

The potentially useful information described in Unit IV. of the proposed rule may not be the only means of providing information to evaluate the chemical substance associated with the significant new uses. However, submitting a SNUN without any test data may increase the likelihood that EPA will take action under TSCA sections 5(e) or 5(f). EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on the following:

- Human exposure and environmental release that may result from the significant new use of the chemical substances.

IX. SNUN Submissions

According to 40 CFR 721.1(c), persons submitting a SNUN must comply with the same notification requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in 40 CFR 720.50. SNUNs must be submitted on EPA Form No. 7710–25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in 40 CFR 720.40 and 721.25. E–PMN software is available electronically at *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca.*

X. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers and processors of the chemical substances subject to this rule. EPA's complete economic analysis is available in the docket for this rulemaking.

XI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulations and Regulatory Review

This action establishes SNURs for new chemical substances that were the subject of PMNs. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA, 44 U.S.C. 3501 *et seq.* OMB has previously approved the information collection activities contained in the existing SNUR regulations under OMB Control No. 2070–0038 (EPA ICR No. 1188.13). If an entity were to submit a SNUN to the Agency, the annual burden is estimated to be less than 100 hours per response, and the estimated burden for export notifications is less than 1.5 hours per notification. In both cases, if the firm submitting either a SNUN or export notification is already registered in CDX, the burden would be lower than the presented estimates.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

EPA is amending the table in 40 CFR part 9 to list the OMB approval number for the information collection requirements contained in this action. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the display requirements of PRA and OMB's implementing regulations at 5 CFR part 1320. The Information Collection Request (ICR) covering the SNUR activities was previously subject to public notice and comment prior to OMB approval, and

given the technical nature of the table, EPA finds that further notice and comment to amend it is unnecessary. As a result, EPA finds that there is ''good cause'' under section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) to amend this table without further notice and comment.

C. Regulatory Flexibility Act (RFA)

Pursuant to RFA section 605(b), 5 U.S.C. 601 *et seq.,* I hereby certify that promulgation of this SNUR would not have a significant adverse economic impact on a substantial number of small entities. The requirement to submit a SNUN applies to any person (including small or large entities) who intends to engage in any activity described in the final rule as a ''significant new use''. Because these uses are ''new,'' based on all information currently available to EPA, it appears that no small or large entities presently engage in such activities. A SNUR requires that any person who intends to engage in such activity in the future must first notify EPA by submitting a SNUN. Although some small entities may decide to pursue a significant new use in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of SNURs covering over 1,000 chemicals, the Agency receives only a small number of notices per year. For example, the number of SNUNs received was seven in Federal fiscal year (FY) 2013, 13 in FY2014, six in FY2015, 12 in FY2016, 13 in FY2017, and 11 in FY2018. Only a fraction of these were from small businesses. In addition, the Agency currently offers relief to qualifying small businesses by reducing the SNUN submission fee from $16,000 to $2,800. This lower fee reduces the total reporting and recordkeeping of cost of submitting a SNUN to about $10,116 for qualifying small firms. Therefore, the potential economic impacts of complying with this SNUR are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published in the **Federal Register** of June 2, 1997 (62 FR 29684) (FRL–5597–1), the Agency presented its general determination that final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

D. Unfunded Mandates Reform Act (UMRA)

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government will be impacted by this action. As such, EPA has determined that this action does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of UMRA sections 202, 203, 204, or 205 (2 U.S.C. 1501 *et seq.*).

E. Executive Order 13132: Federalism

This action will not have federalism implications because it is not expected to have 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action will not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes, significantly or uniquely affect the communities of Indian Tribal governments, and does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175 (65 FR 67249, November 9, 2000), do not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because this action is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Since this action does not involve any technical standards, NTTAA section 12(d), 15 U.S.C. 272 note, does not apply to this action.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898 (59 FR 7629, February 16, 1994).

K. Congressional Review Act (CRA)

This action is subject to the CRA (5 U.S.C. 801 *et seq.*), and EPA will submit a rule report containing this rule and other required information to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: April 3, 2023.

Denise Keehner,

Director, Office of Pollution Prevention and Toxics.

Therefore, for the reasons stated in the preamble, 40 CFR chapter I is amended as follows:

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.,* 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.,* 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.,* 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. In § 9.1, amend the table by adding entries for §§ 721.11604 through 721.11634 in numerical order under the undesignated center heading ''Significant New Uses of Chemical Substances'' to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Significant New Uses of Chemical Substances	
* * * * *	
721.11659	2070–0038
721.11660	2070–0038
721.11661	2070–0038
721.11662	2070–0038
721.11663	2070–0038
721.11664	2070–0038
721.11665	2070–0038
721.11666	2070–0038
721.11667	2070–0038
721.11668	2070–0038
721.11669	2070–0038
721.11670	2070–0038
721.11671	2070–0038
721.11672	2070–0038
721.11673	2070–0038
721.11674	2070–0038
721.11675	2070–0038
721.11676	2070–0038
721.11677	2070–0038
721.11678	2070–0038
721.11679	2070–0038
721.11680	2070–0038
721.11681	2070–0038
721.11682	2070–0038
721.11683	2070–0038
721.11684	2070–0038
721.11685	2070–0038
721.11686	2070–0038
* * * * *	

* * * * *

PART 721—SIGNIFICANT NEW USES OF CHEMICAL SUBSTANCES

■ 3. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 4. Add §§ 721.11659 through 721.11686 to subpart E to read as follows:

* * * * *

Sec.

721.11659 Mixed amine salt (generic).
721.11660 Oxyalkylene modified polyalkyl amine alkyl diacid polymer with 2-(chloromethyl)oxirane (generic).
721.11661 Formaldehyde, homopolymer, reaction products with N-propyl-1-propanamine.
721.11662 2-Propenoic acid, polymer with 2-methyl-2-[(1-oxo-2-propen-1-yl)amino]-1-propanesulfonic acid.
721.11663 Benzoic acid, alkyl derivs. (generic).
721.11664 Aminoalkylated imidazole (generic).
721.11665 Fatty acids and fatty acid unsatd., reaction products with ethyleneamines and maleic anhydride (generic).
721.11666 Aromatic anhydride polymer with bisalkylbiphenylbisamine compound with alkylamino acrylate ester (generic).
721.11667 Propanoic acid, hydroxyl-(hydroxyalkyl)-alkyl-, polymer with 1,6-diisocyanatoalkane and poly[oxy(alkyl-alkanediyl)] ether with alkyl (hydroxyalkyl)- alkanediol, 2-propenoate (ester), lithium salt, glycerol monoacrylate 1-neodecanoate- and alkylene glycol monoacrylate-blocked (generic).
721.11668 Polyol adduct of bisaldehyde (generic).
721.11669 2,5-Furandione, polymer with ethenylbenzene, 4-hydroxy-substituted butyl amide, sodium salts (generic).
721.11670 2,5-Furandione, polymer with ethenylbenzene, 4-hydroxy- substituted butyl[3-[2-[1-[[(2-methoxyphenyl)amino]carbonyl]-2-oxopropyl]diazenyl]phenyl]substituted, sodium salts (generic).
721.11671 Butanamide, 2-[2-[(substituted phenyl)diazenyl]-N-(2-methoxyphenyl)-3-oxo- (generic).
721.11672 Polycyclic substituted alkane, polymer with cyclicalkylamine, epoxide, and polycyclic epoxide ether, reaction products with dialkylamine substituted alkyl amine (generic).
721.11673 Polycyclic alkane, polymer with monocyclic amine, polycyclic epoxide ether, reaction products with dialkylamine alkyl amine (generic).
721.11674 Polycyclic substituted alkane, polymer with epoxide, reaction products with cyclicalkylamine and dialkylamine substituted alkyl amine (generic).
721.11675 Substituted carbopolycyclic dicarboxylic acid dialkyl ester, polymer with alkanediol and carbopolycyclic bis(substituted carbopolycycle) bisalkanol (generic).
721.11676 D-Glucopyranose, oligomeric, Bu glycosides, polymers with epichlorohydrin, 2-hydroxy-3-sulfopropyl ethers, sodium salts.
721.11677 Alkyl polyoxyethylene ethers, carboxymethylated (generic).
721.11678 Iron, complexes with ethylenediamine-4-hydroxycarbomonocycle hetero-acid-2-oxoacetic acid reaction products, potassium salts (generic).
721.11679 Iron, complexes with ethylenediamine-4-hydroxycarbomonocycle hetero-acid potassium salt (1:1)-potassium 2-oxoacetate (1:1) reaction products, potassium salts (generic).
721.11680 Iron, complexes with ethylenediamine-4-hydroxycarbomonocycle hetero-acid-2-oxoacetic acid reaction products, sodium salts (generic).
721.11681 Iron, complexes with ethylenediamine-4-hydroxycarbomonocycle hetero-acid sodium salt (1:1)-sodium 2-oxoacetate (1:1) reaction products, sodium salts (generic).
721.11682 Alkaneic acid, dialkyl ester polymer with alkanediol, (isocyanatocarbomonocycle) alkyl)carbomonocycle) carbamate (generic).
721.11683 Amides, from C8-18 and C18-unsatd. glycerides and diethylenetriamine, ethoxylated.
721.11684 Amides, from diethylenetriamine and palm kernel-oil, ethoxylated.
721.11685 Amides, from coconut oil and diethylenetriamine, ethoxylated.
721.11686 Phenol-formaldehyde polymer with amino-oxirane copolymer and benzoates (generic).

§ 721.11659 Mixed amine salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as mixed amine salt (PMN P–15–632) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(y)(1) and (2).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11660 Oxyalkylene modified polyalkyl amine alkyl diacid polymer with 2-(chloromethyl)oxirane (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as oxyalkylene modified polyalkyl amine alkyl diacid polymer with 2-(chloromethyl)oxirane (PMN P–17–233) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the PMN substance in any manner that results in inhalation exposure.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=20.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in

§ 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11661 Formaldehyde, homopolymer, reaction products with N-propyl-1-propanamine.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as formaldehyde, homopolymer, reaction products with N-propyl-1-propanamine (PMN P–17–298; CAS No. 1374859–50–3) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to use the PMN substance other than as a hydrogen sulfide scavenger used in controlling hydrogen sulfide in the vapor space of fuel storage, shipping vessels, and pipelines.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N=3.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11662 2-Propenoic acid, polymer with 2-methyl-2-[(1-oxo-2-propen-1-yl)amino]-1-propanesulfonic acid.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 2-propenoic acid, polymer with 2-methyl-2-[(1-oxo-2-propen-1-yl)amino]-1-propanesulfonic acid (PMN P–17–325; CAS No. 40623–75–4) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N = 50.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11663 Benzoic acid, alkyl derivs. (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as benzoic acid, alkyl derivs. (PMN P–17–355) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the PMN substance in any manner that results in inhalation exposure.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11664 Aminoalkylated imidazole (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as aminoalkylated imidazole (PMN P–17–396) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j) and (o).

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N = 33.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11665 Fatty acids and fatty acid unsatd., reaction products with ethyleneamines and maleic anhydride (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as fatty acids and fatty acid unsatd., reaction products with ethyleneamines and maleic anhydride (PMN P–18–29) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the PMN substance in any manner that results in inhalation exposure.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11666 Aromatic anhydride polymer with bisalkylbiphenylbisamine compound with alkylamino acrylate ester (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as aromatic anhydride polymer with bisalkylbiphenylbisamine compound with alkylamino acrylate ester (PMN P–18–108) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j). It is a significant new use to manufacture, process, or use the PMN substance in any manner that results in inhalation exposure.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11667 Propanoic acid, hydroxyl-(hydroxyalkyl)-alkyl-, polymer with 1,6-diisocyanatoalkane and poly[oxy(alkyl-alkanediyl)] ether with alkyl (hydroxyalkyl)-alkanediol, 2-propenoate (ester), lithium salt, glycerol monoacrylate 1-neodecanoate- and alkylene glycol monoacrylate-blocked (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as propanoic acid, hydroxyl-(hydroxyalkyl)-alkyl-, polymer with 1,6-diisocyanatoalkane and poly[oxy(alkyl-alkanediyl)] ether with alkyl (hydroxyalkyl)- alkanediol, 2-propenoate (ester), lithium salt, glycerol monoacrylate 1-neodecanoate- and alkylene glycol monoacrylate-blocked (PMN P–18–114) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to use the PMN substance in spray applications.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11668 Polyol adduct of bisaldehyde (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as polyol adduct of bisaldehyde (PMN P–18–133) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(y)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11669 2,5-Furandione, polymer with ethenylbenzene, 4-hydroxy-substituted butyl amide, sodium salts (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as 2,5-furandione, polymer with ethenylbenzene, 4-hydroxy-substituted butyl amide, sodium salts (PMN P–18–165) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o). It is a significant new use to manufacture, process, or use the PMN substance in any manner that results in inhalation exposure.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11670 2,5-Furandione, polymer with ethenylbenzene, 4-hydroxy- substituted butyl[3-[2-[1-[[(2-methoxyphenyl)amino]carbonyl]-2-oxopropyl]diazenyl]phenyl]substituted, sodium salts (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as 2,5-furandione, polymer with ethenylbenzene, 4-hydroxy-substituted butyl[3-[2-[1-[[(2-methoxyphenyl)amino]carbonyl]-2-oxopropyl]diazenyl]phenyl]substituted, sodium salts (PMN P–18–166) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o). It is a significant new use to manufacture, process, or use the PMN substance in any manner that results in inhalation exposure.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11671 Butanamide, 2-[2-[(substituted phenyl)diazenyl]-N-(2-methoxyphenyl)-3-oxo- (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as butanamide, 2-[2-[(substituted phenyl)diazenyl]-N-(2-methoxyphenyl)-3-oxo- (PMN P–18–167) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (o). It is a significant new use to manufacture, process, or use the PMN substance in any manner that results in inhalation exposure.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11672 Polycyclic substituted alkane, polymer with cyclicalkylamine, epoxide, and polycyclic epoxide ether, reaction products with dialkylamine substituted alkyl amine (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as polycyclic substituted alkane, polymer with cyclicalkylamine, epoxide, and polycyclic epoxide ether, reaction products with dialkylamine substituted alkyl amine (PMN P–18–214) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to use the PMN substance in a spray application method other than the method described in the spray analysis report submitted with the PMN.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11673 Polycyclic alkane, polymer with monocyclic amine, polycyclic epoxide ether, reaction products with dialkylamine alkyl amine (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as polycyclic alkane, polymer with monocyclic amine, polycyclic epoxide ether, reaction products with dialkylamine alkyl amine (PMN P–18–215) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to use the PMN substance in a spray application method other than the method described in the spray analysis report submitted with the PMN.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11674 Polycyclic substituted alkane, polymer with epoxide, reaction products with cyclicalkylamine and dialkylamine substituted alkyl amine (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as polycyclic substituted alkane, polymer with epoxide, reaction products with cyclicalkylamine and dialkylamine substituted alkyl amine (PMN P–18–216) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to use the PMN substance in a spray application method other than the method described in the spray analysis report submitted with the PMN.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11675 Substituted carbopolycyclic dicarboxylic acid dialkyl ester, polymer with alkanediol and carbopolycyclic bis(substituted carbopolycycle) bisalkanol (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted carbopolycyclic dicarboxylic acid dialkyl ester, polymer with alkanediol and carbopolycyclic bis(substituted carbopolycycle) bisalkanol (PMN P–18–329) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the PMN substance in any manner that results in inhalation exposure.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11676 D-Glucopyranose, oligomeric, Bu glycosides, polymers with epichlorohydrin, 2-hydroxy-3-sulfopropyl ethers, sodium salts.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as D-glucopyranose, oligomeric, Bu glycosides, polymers with epichlorohydrin, 2-hydroxy-3-sulfopropyl ethers, sodium salts (PMN P–18–385; CAS No. 2139271–53–5) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the PMN substance in any manner that results in inhalation exposure.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11677 Alkyl polyoxyethylene ethers, carboxymethylated (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkyl polyoxyethylene ethers, carboxymethylated (PMN P–19–135) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the PMN substance in any manner that results in inhalation exposure.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N = 60.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11678 Iron, complexes with ethylenediamine-4-hydroxycarbomonocycle hetero-acid-2-oxoacetic acid reaction products, potassium salts (generic).

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as iron, complexes with ethylenediamine-4-hydroxycarbomonocycle hetero-acid-2-oxoacetic acid reaction products, potassium salts (PMN P–19–148) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f) and (j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11679 Iron, complexes with ethylenediamine-4-hydroxycarbomonocycle hetero-acid potassium salt (1:1)-potassium 2-oxoacetate (1:1) reaction products, potassium salts (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as iron, complexes with ethylenediamine-4-hydroxycarbomonocycle hetero-acid potassium salt (1:1)-potassium 2-oxoacetate (1:1) reaction products, potassium salts (PMN P–19–149) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f) and (j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11680 Iron, complexes with ethylenediamine-4-hydroxycarbomonocycle hetero-acid-2-oxoacetic acid reaction products, sodium salts (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as iron, complexes with ethylenediamine-4-hydroxycarbomonocycle hetero-acid-2-oxoacetic acid reaction products, sodium salts (PMN P–19–150) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f) and (j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11681 Iron, complexes with ethylenediamine-4-hydroxycarbomonocycle hetero-acid sodium salt (1:1)-sodium 2-oxoacetate (1:1) reaction products, sodium salts (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as iron, complexes with ethylenediamine-4-hydroxycarbomonocycle hetero-acid sodium salt (1:1)-sodium 2-oxoacetate (1:1) reaction products, sodium salts (PMN P–19–151) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f) and (j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11682 Alkaneic acid, dialkyl ester polymer with alkanediol, (isocyanatocarbomonocycle) alkyl)carbomonocycle) carbamate (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkaneic acid, dialkyl ester polymer with alkanediol, (isocyanatocarbomonocycle) alkyl)carbomonocycle) carbamate (PMN P–19–152) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o). It is a significant new use to manufacture the PMN substance with greater than 25.0% residual isocyanate by weight. It is a significant new use to manufacture, process, or use the PMN substance in any manner that results in inhalation exposure.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11683 Amides, from C8-18 and C18-unsatd. glycerides and diethylenetriamine, ethoxylated.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as amides, from C8-18 and C18-unsatd. glycerides and diethylenetriamine, ethoxylated (PMN P–19–155; CAS No. 2173332–72–2) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o). It is a significant new use to manufacture or process the PMN substance in any manner that results in inhalation exposure. It is a significant new use to use the PMN substance other than as an adjuvant for industrial herbicide agrochemical formulations.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N = 2.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are

applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11684 Amides, from diethylenetriamine and palm kernel-oil, ethoxylated.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as amides, from diethylenetriamine and palm kernel-oil, ethoxylated (PMN P–19–156; CAS No. 2173332–69–7) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o). It is a significant new use to manufacture or process the PMN substance in any manner that results in inhalation exposure. It is a significant new use to use the PMN substance other than as an adjuvant for industrial herbicide agrochemical formulations.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N = 2.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11685 Amides, from coconut oil and diethylenetriamine, ethoxylated.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as amides, from coconut oil and diethylenetriamine, ethoxylated (PMN P–19–157; CAS No. 2173332–70–0) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o). It is a significant new use to manufacture or process the PMN substance in any manner that results in inhalation exposure. It is a significant new use to use the PMN substance other than as an adjuvant for industrial herbicide agrochemical formulations.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4), where N = 2.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11686 Phenol-formaldehyde polymer with amino-oxirane copolymer and benzoates (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as phenol-formaldehyde polymer with amino-oxirane copolymer and benzoates (PMN P–20–24) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j) and (o). It is a significant new use to use the PMN substance in final product formulation at a concentration greater than 8%.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2021–0294; FRL–9831–02–R5]

Air Plan Approval; Illinois; VOC RACT Requirements for Aerospace Manufacturing and Rework Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving State Implementation Plan (SIP) rule revisions submitted by the Illinois Environmental Protection Agency (IEPA or Illinois) on April 13, 2021, and supplemented by a Clean Air Act (CAA) section 110(l) demonstration submitted on October 6, 2022. Illinois requests that EPA approve rule revisions related to control of volatile organic compound (VOC) emissions from aerospace manufacturing and rework facilities into Illinois' SIP. These rule revisions are consistent with the Control Techniques Guidelines (CTG) for Aerospace Manufacturing and Rework Operations published by EPA in 1997, generally used to meet Reasonably Available Control Technology (RACT) requirements, and serve as SIP strengthening measures for aerospace facilities located in the Illinois portion of the St. Louis nonattainment area (Metro-East area). The Metro-East area consists of Madison, Monroe, and St. Clair counties in Illinois. EPA proposed to approve this action on January 10, 2023, and received no adverse comments.

DATES: This final rule is effective on May 11, 2023.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2021–0294. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19. We recommend that you telephone Kathleen Mullen, Environmental Engineer, Attainment Planning and Maintenance Section, at (312) 353–3490 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Kathleen Mullen, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois

60604, (312) 353–3490, *mullen.kathleen@epa.gov.*

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

I. Background Information

On January 10, 2023, EPA proposed to approve rule revisions to title 35 of the Illinois Administrative Code (Ill. Adm. Code) part 211 (Definitions and General Provisions) and part 219 (Organic Material Emission Standards and Limitations for the Metro-East Area). These rule revisions implement the control of VOC emissions from aerospace manufacturing and rework operations in the Metro-East Area. Specifically, we are approving Illinois rules 35 Ill. Admin. Code Part 211 sections 211.125, 211.234, 211.245, 211.271, 211.272, 211.273, 211.275, 211.277, 211.278, 211.280, 211.284, 211.289, 211.300, 211.303, 211.491, 211.500, 211.520, 211.712, 211.737, 211.975, 211.985, 211.1095, 211.1326, 211.1327, 211.1329, 211.1432, 211.1555, 211.1567, 211.1620, 211.1625, 211.1735, 211.1820, 211.1895, 211.1915, 211.2035, 211.2180, 211.2340, 211.2400, 211.2412, 211.2480, 211.2485, 211.2612, 211.2613, 211.2795, 211.2980, 211.3160, 211.3180, 211.3230, 211.3360, 211.3755, 211.3850, 211.3870, 211.3920, 211.4066, 211.4215, 211.4535, 211.5072, 211.5336, 211.5338, 211.5339, 211.5585, 211.5675, 211.5680, 211.5805, 211.5855, 211.5883, 211.5887, 211.5895, 211.5900, 211.5905, 211.5907, 211.6013, 211.6055, 211.6064, 211.6133, 211.6137, 211.6426, 211.6428, 211.6575, 211.6583, 211.6670, 211.6685, 211.6720, 211.7260 and 211.7275, and 35 Ill. Admin. Code Part 219 sections 219.105, 219.106, 219.110, 219.112, 219.187, 219.204, 219.205, 219.207, 219.208, 219.211 and 219.219, effective 3/4/2021. An explanation of the CAA requirements, a detailed analysis of the revisions, and EPA's reasons for proposing approval were provided in the notice of proposed rulemaking (88 FR 1341) and will not be restated here. The public comment period for the proposed rule ended on February 9, 2023. EPA received no adverse comments on the proposal.

II. Final Action

EPA is approving into the Illinois SIP revisions to rules relating to the control of VOC emissions from aerospace manufacturing and rework operations (35 Ill. Admin. Code part 211 and 35 Ill. Admin. Code part 219) submitted on April 13, 2021, which Illinois supplemented with a 110(l) demonstration on October 6, 2022. These rule revisions apply to aerospace facilities located in the Metro-East Area and serve as SIP strengthening measures.

III. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Illinois Regulations discussed in section I. of this preamble and set forth in the amendments to 40 CFR part 52 below. 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). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[1]

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 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); and
- 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.

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).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

IEPA did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area.

[1] 62 FR 27968 (May 22, 1997).

Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 12, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Volatile organic compounds.

Dated: April 3, 2023.

Debra Shore,

Regional Administrator, Region 5.

For the reasons stated in the preamble, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. In § 52.720, the table in paragraph (c) is amended by:

■ a. Adding entries for ''211.125'', ''211.234'', ''211.245'', ''211.271'', ''211.272'', ''211.273'', ''211.275'', ''211.277'', ''211.278'', ''211.280'', ''211.284'', ''211.289'', ''211.300'', ''211.303'', ''211.491'', ''211.500'', ''211.520'', ''211.712'', ''211.737'', ''211.975'', ''211.985'', ''211.1095'', ''211.1326'', ''211.1327'', ''211.1329'', ''211.1432'', ''211.1555'', ''211.1567'', ''211.1620'', ''211.1625'', ''211.1735'', ''211.1820'', ''211.1895'', ''211.1915'', ''211.2035'', ''211.2180'', ''211.2340'', ''211.2400'', ''211.2412'', ''211.2480'', ''211.2485'', ''211.2612'', ''211.2613'', and ''211.2795'' in numerical order;

■ b. Revising the entry for ''211.2980'';

■ c. Adding entries for ''211.3160'' and ''211.3180'' in numerical order;

■ d. Revising the entry for ''211.3230'';

■ e. Adding entries for ''211.3360'' and ''211.3755'' in numerical order;

■ f. Revising the entries for ''211.3850'' and ''211.3870'';

■ g. Adding entries for ''211.3920'', ''211.4066'', ''211.4215'', ''211.4535'', ''211.5072'', ''211.5336'', ''211.5338'', and ''211.5339'' in numerical order;

■ h. Revising the entry for ''211.5585'';

■ i. Adding entries for ''211.5675'', ''211.5680'', ''211.5805'', ''211.5855'', ''211.5883'', ''211.5887'', ''211.5895'', ''211.5900'', ''211.5905'', ''211.5907'', ''211.6013'', ''211.6055'', ''211.6064'', ''211.6133'', ''211.6137'', ''211.6426'', ''211.6428'', ''211.6575'', and ''211.6583'' in numerical order;

■ j. Revising the entry for ''211.6670'';

■ k. Adding an entry for ''211.6685'' in numerical order;

■ l. Revising the entry for ''211.6720'';

■ m. Adding entries for ''211.7260'' and ''211.7275'' in numerical order; and

■ n. Revising the entries for ''219.105'', ''219.106'', ''219.110'', ''219.112'', ''219.187'', ''219.204'', ''219.205'', ''219.207'', ''219.208'', ''219.211'', and ''219.219''.

The revisions and additions read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED ILLINOIS REGULATIONS AND STATUTES

Illinois citation	Title/subject	State effective date	EPA approval date	Comments
*	*	*	*	*
211.125	Ablative Coating	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
211.234	Adhesive Bonding Primer	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
211.245	Adhesion Promoter for Aerospace Applications	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
211.271	Aerosol Coating	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
211.272	Aerospace Coating	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
211.273	Aerospace Coating Operation	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
211.275	Aerospace Flexible Primer	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
211.277	Aerospace Facility	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
211.278	Aerospace Pretreatment Coating	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
211.280	Aerospace Primer	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
211.284	Aerospace Specialty Coating	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	

EPA-APPROVED ILLINOIS REGULATIONS AND STATUTES—Continued

Illinois citation	Title/subject	State effective date	EPA approval date	Comments
211.289	Aerospace Vehicle or Component	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
211.300	Aircraft Fluid Systems	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
211.303	Aircraft Transparancies	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
211.491	Antichafe Coating	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
211.500	Antique Aerospace Vehicle or Component	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
211.520	Aqueous Cleaning Solvent	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
211.712	Bearing Coating	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
211.737	Bonding Maskant	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
211.975	Chemical Agent-Resistant Coating	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
211.985	Chemical Milling Maskant	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
211.1095	Clear Coating for Aerospace Applications	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
211.1326	Commercial Exterior Aerodynamic Structure Primer.	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
211.1327	Commercial Interior Adhesive	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
211.1329	Compatible Substrate Primer	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
211.1432	Confined Space	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
211.1555	Corrosion Prevention System	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
211.1567	Critical Use and Line Sealer Maskant	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
211.1620	Cryogenic Flexible Primer	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
211.1625	Cryoprotective Coating	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
211.1735	Department of Defense Classified Coating	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	

EPA-APPROVED ILLINOIS REGULATIONS AND STATUTES—Continued

Illinois citation	Title/subject	State effective date	EPA approval date	Comments
*	*	*	*	*
211.1820	Dry Lubricative Material for Aerospace Applications.	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
211.1895	Electrostatic Discharge and Electromagnetic Interference Coating.	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
211.1915	Elevated-Temperature Skydrol-Resistant Commercial Primer.	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
211.2035	Epoxy Polyamide Topcoat	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
211.2180	Exterior Primer for Large Commercial Aircraft ..	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
211.2340	Fire-Resistant Interior Coating	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
211.2400	Flight Test Coating	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
211.2412	Flush Cleaning at Aerospace Facilities	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
211.2480	Fuel Tank Adhesive for Aerospace Applications.	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
211.2485	Fuel Tank Coating for Aerospace Applications	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
211.2612	General Aviation	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
211.2613	General Aviation Rework Facility	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
211.2795	Hand-Wipe Cleaning Operation at Aerospace Facilities.	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
211.2980	High Temperature Coating	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
211.3160	Insulation Covering	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
211.3180	Intermediate Release Coating	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
211.3230	Lacquers	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
211.3360	Limited Access Space	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
211.3755	Metalized Epoxy Coating	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	

EPA-APPROVED ILLINOIS REGULATIONS AND STATUTES—Continued

Illinois citation	Title/subject	State effective date	EPA approval date	Comments
*	*	*	*	*
211.3850	Miscellaneous Metal Parts and Products Coating.	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
211.3870	Miscellaneous Metal Parts or Products Coating Line.	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
211.3920	Mold Release Coating for Aerospace Applications.	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
211.4066	Nonstructural Adhesive	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
211.4215	Optical Antireflection Coating	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
211.4535	Part Marking Aerospace Coating	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
211.5072	Primer for General Aviation Rework Facility	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
211.5336	Radiation-Effect or Electric Coating	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
211.5338	Radome	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
211.5339	Rain Erosion-Resistant Coating	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
211.5585	Research and Development Operation	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
211.5675	Rocket Motor Bonding Adhesive	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
211.5680	Rocket Motor Nozzle Coating	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
211.5805	Rubber-Based Adhesive	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
211.5855	Scale Inhibitor	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
211.5883	Screen Print Ink for Aerospace Applications	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
211.5887	Sealant for Aerospace Applications	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
211.5895	Seal Coat Maskant	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
211.5900	Self-Priming Topcoat for Aerospace Applications.	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
211.5905	Self-Priming Topcoat for General Aviation Rework Facility.	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
211.5907	Semi-Aqueous Cleaning Solvent	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	

EPA-APPROVED ILLINOIS REGULATIONS AND STATUTES—Continued

Illinois citation	Title/subject	State effective date	EPA approval date	Comments
*	*	*	*	*
211.6013	Silicone Insulation Material	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
211.6055	Smoothing and Caulking Compounds	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
211.6064	Solid Film Lubricant	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
211.6133	Space Vehicle	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
211.6137	Specialized Function Coating	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
211.6426	Structural Autoclavable Adhesive for Aerospace Applications.	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
211.6428	Structural Nonautoclavable Adhesive for Aerospace Applications.	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
211.6575	Temporary Protective Coating for Aerospace Applications.	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
211.6583	Thermal Control Coating for Aerospace Applications.	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
211.6670	Topcoat	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
211.6685	Topcoat for General Aviation Rework Facility	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
211.6720	Touch-Up Coating	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
211.7260	Wet Fastener Installation Coating	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
211.7275	Wing Coating	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
219.105	Test Methods and Procedures	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
219.106	Compliance Dates	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
219.110	Vapor Pressure of Organic Material or Solvent	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
219.112	Incorporation by Reference	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
219.187	Other Industrial Cleaning Operations	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	

EPA-APPROVED ILLINOIS REGULATIONS AND STATUTES—Continued

Illinois citation	Title/subject	State effective date	EPA approval date	Comments
*	*	*	*	*
219.204	Emission Limitations	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
219.205	Daily-Weighted Average Limitations	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
219.207	Alternative Emission Limitations	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
219.208	Exemptions from Emission Limitations	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
219.211	Recordkeeping and Reporting	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*
219.219	Work Practice Standards for Aerospace Facilities.	3/4/2021	4/11/2023, [INSERT **Federal Register** CITATION]	
*	*	*	*	*

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[FR Doc. 2023–07334 Filed 4–10–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 21–402; FCC 23–21; FR ID 134450]

Targeting and Eliminating Unlawful Text Messages

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) requires mobile wireless providers to block texts, at the network level, on a reasonable Do-Not-Originate (DNO) list, which include numbers that purport to be from invalid, unallocated, or unused North American Numbering Plan (NANP) numbers, and NANP numbers for which the subscriber to the number has requested that texts purporting to originate from that number be blocked. In addition, the Commission requires mobile wireless providers and other entities to maintain a point of contact for texters to report erroneously blocked texts.

DATES: Effective May 11, 2023.

FOR FURTHER INFORMATION CONTACT: Mika Savir of the Consumer Policy Division, Consumer and Governmental Affairs Bureau, at *mika.savir@fcc.gov* or (202) 418–0384.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, FCC 23–21, CG Docket No. 21–402, adopted on March 16, 2023, and released on March 17, 2023. The full text of this document is available online at *https://docs.fcc.gov/public/attachments/FCC-23-21A1.pdf.* To request this document in accessible formats for people with disabilities (*e.g.,* Braille, large print, electronic files, audio format) or to request reasonable accommodations (*e.g.,* accessible format documents, sign language interpreters, CART), send an email to *fcc504@fcc.gov* or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530.

The compliance date of these rules is six months after Office of Management and Budget (OMB) approval of the rules and subsequent notice of publication in the **Federal Register**.

Congressional Review Act

The Commission sent a copy of document FCC 23–21 to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

Final Paperwork Reduction Act of 1995 Analysis

This document may contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. This document will be submitted to OMB for review under section 3507(d) of the PRA. OMB, the general public, and other federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding.

Synopsis

1. In the Report and Order, the Commission adopts a proposal in the Notice of Proposed Rulemaking (NPRM), published at 87 FR 61271, on October 11, 2022; specifically to require mobile wireless providers to block texts, at the network level, on a reasonable Do-Not-Originate (DNO) list, which include numbers that purport to be from invalid, unallocated, or unused North American Numbering Plan (NANP) numbers, and NANP numbers for which the subscriber to the number has requested that texts purporting to originate from that number be blocked. These are texts that no reasonable consumer would wish to receive because they are highly likely to be illegal. In addition, the Commission is requiring mobile wireless providers and other entities to maintain a point of contact for texters to report erroneously blocked texts.

2. These rules apply to text messaging originating from NANP numbers that use the wireless networks, *e.g.,* Short Message Service (SMS) and Multimedia Messaging Service (MMS).

3. The Commission recognizes that providers and others have adopted measures to protect consumers from illegal text messages, such as upfront vetting for bulk message senders, the CTIA Messaging Principles and Best Practices, and providers' own requirements and guidance. The Commission's actions complement those efforts while ensuring customers of all providers get a baseline of protection. Industry efforts to date are

important to protect consumers, the increases in consumer complaints and consumer harm from robotext messages convinces the Commission to take additional measures to protect consumers.

4. The Commission adopts the proposal to require mobile wireless providers to block text messages at the network level (*i.e.,* without requiring consumer opt in or opt out). The rule adopted requires that they block texts purporting to be from numbers on a reasonable DNO list. No reasonable consumer would wish to receive text messages that spoof a number that is not in operation or purports to be from a well-known, trusted organization that does not send text messages and thus is highly likely to be a scam. The requirement to block texts that purport to be from numbers on a reasonable DNO list does not include text messages from valid short codes.

5. The Commission finds it appropriate to adopt a mandatory rule here for blocking texts that purport to be from numbers on a reasonable DNO list for several reasons: (i) the texts from such numbers are likely to be illegal; (ii) illegal text messages can have links to malware, a problem that voice calls do not have; (iii) the volume of unwanted and illegal text messages is increasing, particularly since the Commission adopted measures to block such voice calls; (iv) consumers expect to receive texts from unfamiliar numbers, *e.g.,* as appointment reminders and for double factor authentication, and therefore are more likely to open such messages even when they do not recognize the sending party; and (v) this approach provides benefits to consumers while imposing minimal burden on mobile wireless providers.

6. The Commission finds that the rule adopted today will impose a minimal burden on mobile wireless providers while providing a necessary baseline level of protection to consumers. Many mobile wireless providers already employ measures to block illegal text messages, including DNO-based blocking. For providers that already employ such measures, the rule imposes no additional burden. For the limited number of providers that do not currently employ such measures, the rule will provide consumers with a baseline level of protection against illegal and fraudulent text messages. The rule adopted today strikes the best balance between protecting consumers from illegal text messages while imposing minimal burden on mobile wireless providers. These actions are reasonable responses to the harm and specifically focused to mitigate the ongoing damages consumers face from illegal, fraudulent text messages that mobile wireless providers transmit today.

7. The requirement for mandatory blocking of texts that purport to be from numbers on a reasonable DNO list is straightforward and does not define ''highly likely to be illegal'' or ask mobile wireless providers to determine whether particular messages are ''highly likely to be illegal.'' The Commission disagrees that regulation of criteria used by mobile wireless providers to determine which text messages are ''highly likely to be illegal'' would be inconsistent with the classification of wireless messaging as Title I information service. The rule adopted does not affect providers' ability to continue to employ other methods to protect consumers. Mobile wireless providers are now required to block texts that purport to be from numbers on a reasonable DNO list; mobile wireless providers remain free to continue the measures they are currently using to protect consumers from illegal text messages.

8. Further, the Commission is requiring mobile wireless providers and others to maintain a point of contact for senders to report erroneously blocked texts. A point of contact will enable texters to contact mobile wireless providers to swiftly resolve complaints of unwarranted blocking of text messages.

9. The Commission declines to adopt rules for several of the other topics raised in the Notice of Proposed Rulemaking. The Commission declines to require text blocking notifications because the record indicates that service providers are already providing adequate notice when they block texts. The Commission declines to enact rules regarding safeguarding against blocking of texts to 911 and other emergency numbers based on the record. The Commission also declines to adopt caller ID authentication requirements for text messages due to uncertainty about the current feasibility of such a requirement.

10. With respect to legal authority to adopt the rules, the Commission finds that it has authority to require mobile wireless providers to block certain text messages originating from NANP numbers. First, under the Telephone Consumers Protection Act (TCPA), the Commission has authority over the unsolicited text messages that fall within the scope of the Report and Order. The Commission has found that, for the purposes of the TCPA, texts are included in the term ''call.'' Because the Commission has authority to regulate certain text messages under the TCPA, particularly regarding messages sent using an autodialer and without the consent of the called party, the Commission has the legal authority for the adopted rule.

11. The Commission finds that it has authority under the Truth in Caller ID Act to adopt a blocking requirement. That Truth in Caller ID Act makes unlawful the spoofing of caller ID information ''in connection with any voice service or text messaging service . . . with the intent to defraud, cause harm, or wrongfully obtain anything of value.'' The Commission finds that adopting this requirement is necessary to block calls that unlawfully spoof numbers on reasonable DNO lists, and thus is authorized by the Truth in Caller ID Act.

12. Finally, the Commission has authority under Title III of the Communications Act to adopt these measures. As courts have recognized, Title III ''endow[s] the Commission with 'expansive powers' and a 'comprehensive mandate to ''encourage the larger and more effective use of radio in the public interest.'' ' Section 303 of the Communications Act grants the Commission authority to establish operational obligations for licensees that further the goals and requirements of the Communications Act if such obligations are necessary for the ''public convenience, interest, or necessity'' and are not inconsistent with other provisions of law. In particular, § 303(b) of the Communications Act authorizes the Commission to ''[p]rescribe the nature of the service to be rendered by each class of licensed stations and each station within each class,'' and that is what our mandatory blocking rule addresses here. In addition, §§ 307 and 316 of the Communications Act allow the Commission to authorize the issuance of licenses or adopt new conditions on existing licenses if such actions will promote public interest, convenience, and necessity. The Commission finds the requirements adopted for mobile wireless providers are necessary to protect the public from unwanted and illegal text messages and that such a requirement is in the public interest.

Final Regulatory Flexibility Analysis

13. As required by the Regulatory Flexibility Act of 1980, as amended, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (*NPRM*). The Commission sought written public comment on the proposals in the *NPRM,* including comment on the IRFA. The Commission received no comments in

response to the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

14. *Need for, and Objectives of, the Report and Order.* The Order requires mobile wireless providers to block texts, at the network level, that purport to be from numbers on a reasonable Do-Not-Originate (DNO) list. Such texts are highly likely to be illegal and for that reason the Commission is adopting a requirement to block at the network level. The Order also requires providers and other entities to maintain a point of contact for texters to report erroneously blocked texts.

15. *Summary of Significant Issues Raised by Public Comments in Response to the IRFA.* There were no comments filed that specifically addressed the proposed rules and policies presented in the IRFA.

16. *Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration.* Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

17. *Description and Estimate of the Number of Small Entities to Which the Rules Will Apply.* The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules and policies, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

18. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration's (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 32.5 million businesses.

19. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

20. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2017 Census of Governments indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number, there were 36,931 general purpose governments (county, municipal, and town or township) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of ''small governmental jurisdictions.''

21. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year. Of that number, 2,837 firms employed fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 797 providers that reported they were engaged in the provision of wireless services. Of these providers, the Commission estimates that 715 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

22. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Providers of internet services (*e.g.* dial-up ISPs) or voice over internet protocol (VoIP) services, via client-supplied telecommunications connections are also included in this industry. The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small. U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year. Of those firms, 1,039 had revenue of less than $25 million. Based on this data, the Commission estimates that the majority of ''All Other Telecommunications'' firms can be considered small.

23. *Description of Projected Reporting, Recordkeeping and Other Compliance Requirements for Small Entities.* This *Order* may include new or modified information collection requirements. The Order adopts a requirement that mobile wireless providers block texts purporting to be from NANP numbers on a reasonable DNO list, which include numbers that purport to be from invalid, unallocated, or unused numbers, and NANP numbers for which the subscriber to the number has requested that texts purporting to originate from that number be blocked. In addition, the *Order* requires providers to establish a point of contact for senders to resolve issues of erroneously blocked texts. To the extent the new requirements constitute an information collection, such collection will not present a substantial burden for small business concerns with fewer than 25 employees; any such burdens would be far outweighed by the benefits to

consumers from blocking text messages that are highly likely to be illegal.

24. *Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives, among others: ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.''

25. The *Order* requires mobile wireless providers to block texts, at the network level, that purport to be from numbers on a reasonable Do-Not-Originate list. Such texts are highly likely to be illegal and for that reason the Commission is adopting a requirement to block at the network level. The Commission recognizes that mobile wireless providers, including small entities, already take measures to block illegal text messages from reaching their customers' phones and this requirement should not be burdensome. The *Order* also requires providers and other entities to establish a point of contact for texters to report erroneously blocked texts. Because many of these providers and entities maintain a point of contact for call blocking purposes, and because the *Order* states that providers and entities may use the same point of contact for the text blocking requirement, the requirement should not be burdensome.

26. *Report to Congress.* The Commission will send a copy of the Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. The Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

List of Subjects in 47 CFR Part 64

Communications common carriers, Telecommunications, Telephone.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 154,201, 202, 217, 218, 220, 222, 225, 226, 227, 227b, 228, 251(a), 251(e), 254(k), 255, 262, 276, 403(b)(2)(B), (c), 616, 620, 716, 1401–1473, unless otherwise noted; Pub. L. 115–141, Div. P, sec. 503, 132 Stat. 348, 1091.

Subpart L—Restrictions on Telemarketing, Telephone Solicitation, and Facsimile Advertising

■ 2. Amend § 64.1200 by adding paragraphs (p), (q), and (r) to read as follows:

§ 64.1200 Delivery restrictions.

* * * * *

(p) A mobile wireless provider must block a text message purporting to originate from a North American Numbering Plan number on a reasonable do-not-originate list. A list so limited in scope that it leaves out obvious North American Numbering Plan numbers that could be included with little effort may be deemed unreasonable. The do-not-originate list may include only:

(1) North American Numbering Plan Numbers for which the subscriber to the number has requested that texts purporting to originate from that number be blocked;

(2) North American Numbering Plan numbers that are not valid;

(3) Valid North American Numbering Plan numbers that are not allocated to a provider by the North American Numbering Plan Administrator; and

(4) Valid North American Numbering Plan numbers that are allocated to a provider by the North American Numbering Plan Administrator, but are unused, so long as the provider blocking the message is the allocatee of the number and confirms that the number is unused or has obtained verification from the allocatee that the number is unused at the time of blocking.

(q) Paragraph (p) of this section may contain an information-collection and/or recordkeeping requirement. Compliance with paragraph (p) will not be required until this paragraph (q) is removed or contains a compliance date, which will not occur until after the Office of Management and Budget completes review of such requirements pursuant to the Paperwork Reduction Act or until after the Consumer and Governmental Affairs Bureau determines that such review is not required.

(r) A mobile wireless provider must provide a point of contact or ensure its aggregator partners or blocking contractors that block text messages on its network provide a point of contact to resolve complaints about erroneous blocking from message senders that can document that their messages have been blocked. Such point of contact may be the same point of contact for voice call blocking error complaints.

[FR Doc. 2023–07405 Filed 4–10–23; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 21–450; FCC 23–15; FRS 134199]

Affordable Connectivity Program

AGENCY: Federal Communications Commission.

ACTION: Final order.

SUMMARY: In the Fifth Report and Order, the Federal Communications Commission (Commission or FCC) offers an additional funding opportunity of up to $10 million for the National Competitive Outreach Grant Program (NCOP) and the Tribal Competitive Outreach Grant Program (TCOP), which are components of the Affordable Connectivity Outreach Grant Program (Outreach Grant Program).

DATES: Effective April 11, 2023.

FOR FURTHER INFORMATION CONTACT: Joel Graham, Attorney Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau, at (202) 418–7400 or *Joel.Graham@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Fifth Report and Order (Order) in WC Docket No. 21–450, FCC 23–15, adopted on March 13, 2023 and released on March 15, 2023. The full text of this document is available *at https://docs.fcc.gov/public/attachments/FCC-23-15A1.pdf*.

I. Introduction

1. In the Order, the Federal Communications Commission (Commission) directs the Consumer and Governmental Affairs Bureau (Bureau)

to offer an additional funding opportunity of up to $10 million for the National Competitive Outreach Grant Program (NCOP) and the Tribal Competitive Outreach Grant Program (TCOP), which are components of the Affordable Connectivity Outreach Grant Program (Outreach Grant Program). This maximum of $10 million will come from a combination of: (a) unspent funding—funding previously allocated to the Outreach Grant Program but not awarded; and (b) unobligated funding—funding from the $100 million Affordable Connectivity Program (ACP) outreach budget that the Commission has not yet allocated to specific outreach efforts. The Commission directs the Bureau to issue a Notice of Funding Opportunity (NOFO) to initiate the application process for this additional funding.

2. The ACP plays an integral role in helping to bridge the digital divide, which remains a top priority for the Commission. As part of its efforts to encourage participation in the ACP, the Commission established the Outreach Grant Program in order to engage with partners around the country to help inform ACP-eligible households about the program in their local communities, with funding and resources to support such outreach and community engagement. The extensive demand for ACP outreach funding so far underscores the need for these funds and the importance of reaching the eligible households that have not yet enrolled in the ACP. This new funding opportunity for ACP outreach is intended to provide additional funding awards beyond the outreach grant awards announced by the Commission on March 10, 2023. Directing the Bureau to offer an additional outreach grant funding opportunity will allow additional eligible entities to receive grant awards to conduct this necessary outreach to increase participation among those Americans most in need of affordable connectivity.

3. Pursuant to the authority provided to the Commission in the Infrastructure Investment and Jobs Act (Infrastructure Act), Public Law 117–58, sec. 60502(a)(3), 135 Stat. 429, 1240 (2021),the Commission previously designated up to $100 million for all ACP outreach. Out of this $100 million, the Commission directed the Bureau in August 2022 to designate up to $60 million to be competitively allocated to eligible entities and to also designate a minimum of $10 million for grants specifically for ACP outreach to persons who live on qualifying Tribal lands. In November 2022, consistent with the Commission's funding designations, the Bureau issued a NOFO for up to $60 million for NCOP and a minimum of $10 million for TCOP. Hundreds of applicants applied for these programs, and the demand for national competitive grant funding exceeded the $60 million budget for this program.

4. To expand the number of entities raising awareness of the ACP with the goal of increasing enrollments among eligible households, the Commission directs the Bureau to offer an additional funding opportunity for NCOP and TCOP totaling up to $10 million, to be distributed among each program equally insofar as possible. The additional funding for this funding opportunity will come from unspent Outreach Grant Program funding and ACP outreach funding not previously designated for specific ACP outreach activities, such that total funding including this additional NOFO does not exceed the $100 million previously designated for all ACP outreach in the Affordable Connectivity Program Order (*ACP Order,* 87 FR 8346, February 14, 2022. This approach carefully balances the demand for additional grant funding with the importance of maintaining fiscal responsibility of the ACP by staying within the $100 million budget the Commission established for all ACP outreach. The Bureau will continue to have the delegated authority outlined in the *Second ACP Order,* 87 FR 54311, September 6, 2022, in coordination with the Wireline Competition Bureau (WCB), the Office of the General Counsel (OGC), and the Office of the Managing Director (OMD) as appropriate, to develop, administer, and manage the Outreach Grant Program.

II. Discussion

5. The overwhelming response to the Outreach Grant Program convinces the Commission that it is appropriate to issue a new funding opportunity for NCOP and TCOP, to be distributed equally between the programs to the extent feasible. This necessarily means raising the $60 million upper limit on funding for NCOP. Therefore, the Commission directs the Bureau to release another funding opportunity for up to $10 million, with the funding to come from unspent Outreach Grant Program funding and funding from the $100 million ACP outreach budget not already obligated for specific outreach activities. The Commission also directs the Bureau to issue a NOFO to solicit applications for this additional funding opportunity.

6. *Allocation of Funds.* Due to the demand for outreach grant funding above the $60 million cap for NCOP set forth in the *Second ACP Order* and NOFO for that program, and due to the continued pressing need for outreach to persons on qualifying Tribal lands, the Commission directs the Bureau to offer a funding opportunity of up to a combined total of $10 million for NCOP and TCOP. For this funding opportunity, the Commission directs the Bureau to use funding from: (a) the $100 million ACP outreach budget that has not been obligated to other ACP outreach activities, such as funds available for the FCC's own ACP outreach, and (b) any unspent Outreach Grant Program funding, *i.e.,* funding not awarded through the initial notices of funding opportunity for the Outreach Grant Program. Although the Commission intends for the Bureau to divide the maximum of $10 million equally between NCOP and TCOP (*e.g.,* $5 million per program), if the amount that will be awarded to applicants to either program is less than $5 million, the Commission authorizes the Bureau to transfer the balance from one program to the other, notwithstanding any funding minimums established in the *Second ACP Order* or this Order.

7. The funding requested by grant applicants in response to the NOFO for the National Competitive Outreach Grant Program supports the Commission's decision to make available more funding for competitive grants to allow additional trusted outreach partners to increase awareness of and encourage enrollment in the ACP. The Commission established the Outreach Grant Program to provide a range of outreach partners with funding and resources in an effort to help inform households about the ACP and thus increase participation among those Americans most in need of affordable broadband connectivity. The Commission designated funds to the Outreach Grant Program, including the $60 million maximum for competitive allocation, with the ''expect[ation] that the allocated budget . . . will support extensive, meaningful outreach by numerous eligible outreach partners.'' As made apparent by the overwhelming response to the Commission's initial Outreach Grant Program funding opportunity, the need for extensive, meaningful ACP outreach has not diminished. Consequently, the Commission raises the $60 million funding cap for NCOP and directs the Bureau to offer a new funding opportunity for this program.

8. The Commission also directs the Bureau to make that funding opportunity available for TCOP. ACP outreach to persons on qualifying Tribal lands is a Commission priority, and an additional funding opportunity for

TCOP will facilitate this vital outreach. The Commission's intent is to maximize the number of entities conducting ACP outreach to residents on qualifying Tribal lands, and the Commission thus directs the Bureau to make eligible Tribal governments and Tribal organizations aware of this funding opportunity and how to apply for it, including but not limited to by providing information sessions tailored to prospective Tribal applicants during the TCOP application window and highlighting changes in the NOFO from the initial NOFO for the Tribal program.

9. The Commission declines at this time, however, to increase the $100 million budget for all ACP outreach established in the ACP Order and reaffirmed in the *Second ACP Order*. That budget balances the anticipated need for extensive ACP outreach with the responsibility to ensure that ample funds remain to provide the ACP benefit to qualifying households for as long as possible. Therefore, the funding opportunity established in the Order will not result in any changes to this $100 million figure.

10. *Additional Notice of Funding Opportunity.* The Commission directs the Bureau to issue a NOFO for the NCOP and TCOP funding designated in the Order. The notice will provide detailed information including the entities eligible for the funding, fundable expenses and activities, application and evaluation processes, reporting requirements, and other rules and requirements for the funding. The Commission further directs the Bureau to limit the additional funding opportunity designated in the Order to entities that do not receive funding from the first round of disbursements in the Outreach Grant Program, including as a pass-through entity or subrecipient. Expanding the number of entities performing ACP outreach will increase the likelihood of contacting consumers not reached by existing efforts.

11. Except as expressly set forth in the Order, the new NOFO and awards remain subject to the statutes, regulations, directives, and guidance discussed, promulgated, or otherwise set forth in the *Second ACP Order.* In that order, the Commission established the goal and objectives of the Outreach Grant Program; provided examples of types of eligible entities and types of outreach activities and expenses that could be considered for funding; allocated funding set-asides for specific types of grantees; established important safeguards to promote program integrity and guard against potential waste, fraud, and abuse; adopted and implemented grant regulations; directed the Bureau to develop, manage, and administer the Outreach Grant Program; provided guidance and regulatory requirements for the framework of the Outreach Grant Program; and addressed other requirements and administrative aspects of the program. The Commission believes that these parameters, except to the extent expressly deviated from in the Order, provide the necessary structure and guidelines for this additional round of Outreach Grant Program available funding, consistent with the Commission's authority under applicable federal statutes and regulations.

12. The Commission emphasizes that the Bureau retains the authority granted in the *Second ACP Order* to administer the Outreach Grant Program in a cost-effective manner. This includes the authority to limit the types of entities that may be eligible for a particular notice of funding opportunity; to prioritize certain types of applications; to revise allowable costs and cap certain expenses; to tailor the grant application process templates or submission windows to accommodate different types of grants or funding opportunities; and to educate prospective applicants about the grant program and the application process.

13. For instance, to ensure the most efficient use and distribution of additional NCOP funding, the Bureau could, informed by previous experience with the Outreach Grant Program, limit the categories of eligible entities for this additional funding opportunity to the types of entities that would best maximize the reach, impact, and effectiveness of the additional NCOP funding. The Bureau could likewise limit the entities eligible for TCOP under the funding opportunity established by the Order. The Bureau could also limit the number of subrecipients permissible for an applicant applying as a pass-through entity or shorten or lengthen any application window to ensure efficient administration of the NOFO or otherwise meet the needs of a particular funding opportunity. Additionally, the Commission emphasizes that the Bureau may, prior to issuing a NOFO, conduct grant workshops and targeted outreach about the grant program to encourage quality grant applications.

14. Further, because there has already been one opportunity for eligible entities to apply for national competitive grants, for this funding opportunity the Bureau is not bound by the minimum allocation for States and Territories set forth in the *Second ACP Order,* and the Bureau need not consider such allocations in developing this new funding opportunity. Nor is the Bureau, for this new funding opportunity, necessarily required to ensure that future NCOP awards be made to ''diverse geographic regions and entity sizes or types.''

III. Procedural Matters

15. *Paperwork Reduction Act.* Pursuant to section 1752(h) of the Infrastructure Act, the collection of information sponsored or conducted under the regulations promulgated in the Fifth Report and Order is deemed not to constitute a collection of information for the purposes of the Paperwork Reduction Act, 44 U.S.C. 3501–3521.

16. *Congressional Review Act.* The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget concurs, that this rule is ''non-major'' under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of the Fifth Report & Order, to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

IV. Ordering Clauses

17. Accordingly, *it is ordered* that, pursuant to the authority contained in Section 904 of Division N, Title IX of the Consolidated Appropriations Act, 2021, Public Law 116–260, 134 Stat. 1182, as amended by section 60502 of Division F, Title V of the Infrastructure Investment and Jobs Act, Public Law 117–58, 135 Stat. 429 (2021), and the authority contained in sections 1, 4(i), and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 155(c), 1752, and the authority contained section 60502 of Division F, Title V of the Infrastructure Investment and Jobs Act, 47 U.S.C. 1752(b)(10)(C), the Fifth Report and Order *is adopted.*

18. *It is further ordered* that the Fifth Report and Order *shall be effective* April 11, 2023.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2023–06779 Filed 4–10–23; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 230331–0089]

RIN 0648–BL92

Pacific Halibut Fisheries of the West Coast; 2023 Catch Sharing Plan and Recreational Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This final rule approves changes to the Pacific Halibut Catch Sharing Plan for the International Pacific Halibut Commission's regulatory Area 2A off of Washington, Oregon, and California. In addition, this final rule implements management measures governing the 2023 recreational fisheries that are not implemented through the International Pacific Halibut Commission. Management measures include the recreational fishery seasons and subarea allocations for Area 2A. These actions are intended to conserve Pacific halibut and provide angler opportunity where available.

DATES: This rule is effective May 11, 2023. The season dates and bag limits in this rule are effective on April 6, 2023. The remaining provisions of this final rule are effective on May 11, 2023.

ADDRESSES: Additional information regarding this action may be obtained by contacting the Sustainable Fisheries Division, NMFS West Coast Region, 500 W Ocean Blvd., Long Beach, CA 90802. For information regarding all halibut fisheries and general regulations not contained in this rule, contact the International Pacific Halibut Commission, 2320 W Commodore Way Suite 300, Seattle, WA 98199–1287.

FOR FURTHER INFORMATION CONTACT: Katie Davis, phone: 323–372–2126 or email: *katie.davis@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Northern Pacific Halibut Act of 1982 (Halibut Act), 16 U.S.C. 773–773k, gives the Secretary of Commerce (Secretary) responsibility for implementing the provisions of the Convention between Canada and the United States for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Halibut Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979). The Halibut Act requires that the Secretary adopt regulations to carry out the purposes and objectives of the Halibut Convention and Halibut Act (16 U.S.C. 773c). Additionally, as provided in the Halibut Act, the Regional Fishery Management Councils having authority for the geographic area concerned may develop, and the Secretary of Commerce may implement, regulations governing Pacific halibut fishing in in U.S. waters that are in addition to, and not in conflict with, approved International Pacific Halibut Commission (IPHC) regulations (16 U.S.C. 773c(c)).

At its annual meeting held January 22–27, 2023, the IPHC adopted an Area 2A fishery constant exploitation yield (FCEY) of 1.52 million pounds of Pacific halibut. The FCEY was derived from the total constant exploitation yield (TCEY) of 1.65 million pounds for Area 2A, which includes commercial discards and bycatch estimates calculated using a formula developed by the IPHC. The Area 2A catch limit and commercial fishery allocations were adopted by the IPHC and were published in the **Federal Register** on March 7, 2023 (88 FR 14066; March 7, 2023) after acceptance by the Secretary of State, with concurrence from the Secretary of Commerce, in accordance with 50 CFR 300.62. Additionally, the March 7, 2023 (88 FR 14066) final rule contains annual domestic management measures and IPHC regulations that are published each year under NMFS' authority to implement the Halibut Convention (50 CFR 300.62). This final rule contains 2023 recreational fishery subarea allocations based on the Area 2A catch limit.

Since 1988, the Pacific Fishery Management Council (Council) has developed a Catch Sharing Plan that allocates the IPHC regulatory Area 2A Pacific halibut catch limit between treaty tribal and non-tribal harvesters, and among non-tribal commercial and recreational (sport) fisheries. NMFS has implemented at 50 CFR 300.63 *et seq.* certain provisions of the Catch Sharing Plan, and implemented in annual rules annual management measures consistent with the Catch Sharing Plan. In 1995, the Council recommended and NMFS approved a long-term Area 2A Catch Sharing Plan (60 FR 14651; March 20, 1995). NMFS has been approving adjustments to the Area 2A Catch Sharing Plan based on Council recommendations each year to address the changing needs of these fisheries. While the full Catch Sharing Plan is not published in the **Federal Register**, it is made available on the Council website.

This rule approves the changes the Council recommended at its November 2022 meeting to the Catch Sharing Plan for Area 2A. The recommended changes to the Catch Sharing Plan were developed through the Council's public process. The changes to the catch sharing plan were detailed in the proposed rule and are not repeated here. This rule implements recreational Pacific halibut fishery management measures for 2023, which include season opening and closing dates. These management measures are consistent with the recommendations made by the Council in the 2023 Catch Sharing Plan and are detailed below, and season dates recommended by the states during the proposed rule public comment period.

Additionally, this rule amends the regulations codified at 50 CFR 300.63 relating to the Area 2A recreational fishery to include certain longstanding provisions in the Catch Sharing Plan. NMFS has previously implemented these provisions through the annual management measures; they are not new to the fishery. NMFS is also finalizing non-substantive ''housekeeping'' changes to the codified regulations, to ensure they are up to date and clear.

2023 Recreational Fishery Management Measures

NMFS is implementing recreational fishery management measures consistent with the Council's recommendations in the 2023 Catch Sharing Plan. If there is any discrepancy between the Catch Sharing Plan and federal regulations, federal regulations take precedence. The recreational fishing subareas, allocations, fishing dates, and daily bag limits are as follows. These provisions may be modified through inseason action consistent with 50 CFR 300.63(c). All recreational fishing in Area 2A is managed on a ''port of landing'' basis, whereby any halibut landed into a port counts toward the allocation for the area in which that port is located, and the regulations governing the area of landing apply, regardless of the specific area of catch.

Washington Puget Sound and the U.S. Convention Waters in the Strait of Juan de Fuca

The allocation for the subarea in Puget Sound and the U.S. waters in the Strait of Juan de Fuca is 79,031 lb.

(a) The fishing seasons are structured as follows:

(i) For the area in Puget Sound and the U.S. waters in the Strait of Juan de Fuca, east of a line at approximately 124°23.70′ W long., fishing is open

April 6–10, 13–17, 20–24, and April 27–May 1; May 4–8, 11–15, 18–22, and 26–28; and June 1–30. If unharvested allocation remains after June 30, NMFS may take inseason action to reopen the fishery in August and September, up to 7 days per week, or until there is not sufficient allocation for another full day of fishing and the area is therefore closed. Any closure will be announced in accordance with Federal regulations at 50 CFR 300.63(c) and on the NMFS hotline at (206) 526–6667 or (800) 662–9825.

(b) The daily bag limit is one halibut of any size per day per person.

Washington North Coast Subarea

The allocation for landings into ports in the Washington North Coast subarea is 129,668 lb.

(a) Fishing is open May 4, 6, 11, 13, 18, 20, 26, and 28; and June 1, 3, 8, 10, 15, 17, 22, 24, and 29. If unharvested allocation remains after June 30, NMFS may take inseason action to reopen the fishery in August and September, up to 7 days per week, or until there is not sufficient allocation for another full day of fishing and the area is therefore closed. Any closure will be announced in accordance with Federal regulations at 50 CFR 300.63(c) and on the NMFS hotline at (206) 526–6667 or (800) 662–9825.

(b) The daily bag limit is one halibut of any size per day per person.

Washington South Coast Subarea

The allocation for landings into ports in the South Coast subarea is 64,376 lb.

(a) The Washington South Coast primary fishery is open on May 4, 7, 9, 11, 14, 18, 21, and 25; June 15, 18, 22, and 25. If unharvested allocation remains after June 30, NMFS may take inseason action to reopen the fishery in August and September, up to 7 days per week, until September 30 or until there is not sufficient allocation remaining for another full day of fishing and the area is therefore closed. Any closure will be announced in accordance with Federal regulations at 50 CFR 300.63(c) and on the NMFS hotline at (206) 526–6667 or (800) 662–9825. The fishing season in the Washington South Coast northern nearshore area commences the Saturday subsequent to the closure of the primary fishery in May or June if allocation remains in the Washington South Coast subarea allocation, and continues 7 days per week until 68,555 lb (31.10 mt) is projected to be taken by the two fisheries combined and the fishery is therefore closed or on September 30, whichever is earlier. If the fishery is closed prior to September 30, or there is insufficient allocation remaining to reopen the Washington South coast, northern nearshore area for another fishing day, then any remaining allocation may be transferred in-season to another Washington coastal subarea by NMFS, in accordance with Federal regulations at 50 CFR 300.63(c).

(b) The daily bag limit is one halibut of any size per day per person.

Columbia River Subarea

The allocation for landings into ports in the Columbia River subarea is 18,875 lb.

(a) This subarea is divided into an all-depth fishery and a nearshore fishery. The all-depth fishery is open May 4, 7, 11, 14, 18, 21, and 25; and June 1, 4, 8, 11, 15, 18, 22, 25, and 29. If unharvested allocation remains after June 30, NMFS may take inseason action to reopen the fishery in August and September, or until there is not sufficient allocation for another full day of fishing and the area is therefore closed. The nearshore fishery is open every Monday, Tuesday, and Wednesday beginning Monday May 8 until the nearshore allocation is taken, or on September 30, whichever is earlier. Any closure will be announced in accordance with Federal regulations at 50 CFR 300.63(c) and on the NMFS hotline at (206) 526–6667 or (800) 662–9825. Subsequent to this closure, if there is insufficient allocation remaining in the Columbia River subarea for another fishing day, then any remaining allocation may be transferred inseason to other Washington or Oregon subareas by NMFS, in accordance with Federal regulations at 50 CFR 300.63(c). Any remaining allocation would be transferred to each state in proportion to the allocation formula in the Catch Sharing Plan.

(b) The daily bag limit is one halibut of any size per day per person.

Oregon Central Coast Subarea

The allocation for landings into ports in the Oregon Central Coast subarea is 275,214 lb.

(a) The nearshore fishery is open May 1, 7 days per week, until the allocation for the nearshore fishery is estimated to have been taken, or until October 31, whichever is earlier. The allocation to the nearshore fishery is 33,026 lb.

(ii) The spring all-depth fishery is open May 1 up to 7 days per week until June 30. In the event that there is remaining subarea allocation after June 30, the fishery will also be open July 10–16 and 24–30 or until there is not sufficient allocation remaining for another full day of fishing and the area is therefore closed. The allocation to the spring all-depth fishery is 173,385 lb.

(iii) In July, NMFS will announce, in accordance with notice procedures in Federal regulations at 50 CFR 300.63(c)(3) and on the NMFS hotline (206) 526–6667 or (800) 662–9825, whether the fishery will re-open for the summer season in August, based on the overall Area 2A allocation. The fishery opens every other week on Thursday, Friday, and Saturday: August 3–5; August 17–19; August 31–September 2; September 14–16; September 28–30; October 12–14; and October 26–28; or until the combined spring season and summer season allocations in the Oregon Central Coast are estimated to have been taken and the area is therefore closed. Any closure will be announced in accordance with Federal regulations at 50 CFR 300.63(c) and on the NMFS hotline at (206) 526–6667 or (800) 662–9825. Additional fishing days may be opened if enough allocation is available to allow for additional fishing days after the spring season. After August 1, if 60,000 lb (27.2 mt) or greater remains from the combined nearshore, spring, and summer allocations, NMFS may take inseason action to open the all-depth fishery during months when the bottomfish fishery is not depth-restricted, up to 7 days a week, and ending when there is insufficient allocation remaining or October 31, whichever is earlier. After September 6, if 30,000 lb (13.6 mt) or greater remains from the combined nearshore, spring, and summer allocations, and the fishery is not already open every Thursday, Friday and Saturday, NMFS may take inseason action to re-open the fishery every Thursday, Friday, and Saturday, beginning September 7, through October 31, until there is not sufficient allocation for another full day of fishing and the area is closed. NMFS will announce, in accordance with notice procedures at 50 CFR 300.63(c)(3) and on the NMFS hotline (206) 526–6667 or (800) 662–9825, whether the summer all-depth fishery will be open on such additional fishing days, what days the fishery will be open, and what the bag limit is.

(b) The Central Oregon Coast subarea allocation (all-depth and nearshore combined) is 275,214 lb. The daily bag limit is one halibut per person. NMFS will announce bag limits in accordance with notice procedures at 50 CFR 300.63(c)(3) and on the NMFS hotline (206) 526–6667 or (800) 662–9825.

Southern Oregon Subarea

The allocation for landings into ports in the Southern Oregon subarea is 8,000 lb.

(a) The fishery is open May 1, 7 days per week until October 31 or the allocation is taken, whichever is earlier.

(b) The daily bag limit is one halibut per person with no size limit, unless otherwise specified through inseason action. NMFS will announce any bag limit changes in accordance with notice procedures at 50 CFR 300.63(c)(3) and on the NMFS hotline (206) 526–6667 or (800) 662–9825.

California Coast Subarea

The allocation for landings into ports in the California Coast subarea is 39,520 lb.

(a) The fishery is open May 1 through November 15, or until the subarea allocation is estimated to have been taken and the season is therefore closed, whichever is earlier. NMFS will announce any closure in accordance with notice procedures at § 300.63(c)(3) and on the NMFS hotline (206) 526–6667 or (800) 662–9825.

(b) The daily bag limit is one halibut of any size per day per person.

Changes to Codified Regulations

NMFS is implementing ''housekeeping changes'' to regulations at 50 CFR 300.63. These changes include non-substantive edits to increase clarity of the regulations, updating outdated regulations to more accurately reflect the current operations of the fishery, reordering paragraphs to improve organization, and codifying certain management measures that have been unchanged over many years in the Council's Catch Sharing Plan. Further explanation of these changes was provided in the proposed rule and is not repeated here.

Comments and Responses

NMFS published the proposed rule on March 2, 2023 (88 FR 13399) and accepted public comments on the Council's recommended modifications to the 2023 Area 2A Catch Sharing Plan and the proposed 2023 annual management measures through March 20, 2023. NMFS received two responsive comments from state agencies—the Oregon Department of Fish and Wildlife (ODFW) and the California Department of Fish and Wildlife (CDFW)—and has responded below, as well as one comment from a member of the public, which was not responsive and is therefore not addressed here.

Comment 1: ODFW submitted a comment recommending final recreational fishing season dates for the 2023 season for the Central Oregon Coast subarea. ODFW conducted an online survey and public meeting following the IPHC annual meeting. Based on the resulting stakeholder input, past fishing effort and harvest rates, other fishing opportunities, weather impacts, and the risk of exceeding the combined spring and summer allocations, ODFW recommended season dates for the spring and summer Central Oregon Coast fisheries. For spring, ODFW recommended open dates of May 1 through June 30, 7 days per week. In the event that there is remaining subarea allocation following the initial open dates, ODFW recommended the spring fishery open on July 10–16 and July 24–30. ODFW recommended summer fishery dates on August 3–5; August 17–19 and 31; September 1–2; September 14–16; September 28–30; October 12–14; and October 26–28; or until the total 2023 all-depth catch limit for the subarea is taken.

Response: NMFS concurs that the ODFW-recommended season dates are appropriate. There are a few differences between the spring and summer season dates NMFS published in the proposed rule and those recommended by ODFW. However, based on the rationale provided by ODFW, NMFS has modified the recreational fishery season dates off of Oregon to those recommended by ODFW in this final rule.

Comment 2: CDFW submitted a comment concurring with the season dates for the fisheries off of California that NMFS published in the proposed rule for the 2023 season. CDFW conducted an online public survey following the IPHC annual meeting. Based on public comments received on Pacific halibut fisheries in California and fishing performance in recent years, CDFW recommended season dates of May 1–November 15, or until its subarea allocation has been attained, whichever comes first.

Response: NMFS concurs that these season dates are appropriate and affirms the recreational fishery season dates off of California in this final rule.

Classification

Under section 773 of the Halibut Act, the Pacific Fishery Management Council may develop, and the Secretary of Commerce may implement, regulations governing Pacific halibut fishing by U.S. fishermen in Area 2A that are in addition to, and not in conflict with, approved IPHC regulations (16 U.S.C. 773c(c)). The final rule is consistent with the Council and NMFS's authority under the Halibut Act.

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

NMFS finds good cause to waive the 30-day delay in the date of effectiveness and make the 2023 Area 2A recreational fishery management measures (*i.e.,* season dates and bag limits) in this rule effective in time for the start of recreational Pacific halibut fisheries on April 6, 2023, pursuant to 5 U.S.C. 553(d)(3). The 2023 Catch Sharing Plan provides the framework for the annual management measures and setting subarea allocations based on annual catch limits set by the IPHC. This rule implements 2023 Area 2A subarea allocations as published in the proposed rule (88 FR 13399; March 2, 2023) for the recreational Pacific halibut fishery based on the formulas set in the Catch Sharing Plan and using the 2023 Area 2A catch limit for Pacific halibut set by the IPHC and published by NMFS on March 7, 2023 (88 FR 14066). The remaining provisions in this rule, including the changes to the codified regulations, will be in effect 30 days following publication of this rule.

Delaying the effective date of the management measures would be contrary to the public interest. The Council's 2023 Catch Sharing Plan includes changes that respond to the needs of the fisheries in each state, including fisheries that begin in early April. The Catch Sharing Plan and management measures were developed through multiple public meetings of the Council, and were described at the IPHC meeting where public comment was accepted. A delay in the effectiveness of these measures for 30 days would result in the fisheries not opening on their intended timelines and on the dates the affected public are expecting. The recreational Pacific halibut fisheries have high participation, and some subareas close months before the end of the season due to subarea allocation attainment. If the fisheries do not open on their intended timelines, fishing opportunity is lost, potentially causing economic harm to communities at recreational fishing ports.

Therefore, a delay in effectiveness of the management measures could cause economic harm to the associated fishing communities by reducing fishing opportunity at the start of the fishing year. As a result of the potential harm to fishing communities that could be caused by delaying the effectiveness of these management measures, NMFS finds good cause to waive the 30-day delay in the date of effectiveness and make the measures effective upon publication in the **Federal Register**.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during

the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act. The factual basis for the certification was published in the proposed rule and is not repeated here. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Antarctica, Canada, Exports, Fish, Fisheries, Fishing, Imports, Indians, Labeling, Marine resources, Reporting and recordkeeping requirements, Russian Federation, Transportation, Treaties, Wildlife.

Dated: April 3, 2023.

Kelly Denit,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 50 CFR part 300, subpart E, as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart E—Pacific Halibut Fisheries

■ 1. The authority citation for part 300, subpart E, continues to read as follows:

Authority: 16 U.S.C. 773–773k.

■ 2. In § 300.61, revise definition of ''charter vessel'' to read as follows:

§ 300.61 Definitions.

Charter vessel, for purposes of §§ 300.65, 300.66, and 300.67, means a vessel used while providing or receiving sport fishing guide services for halibut, and, for purposes of § 300.63, means a vessel used for hire in recreational (sport) fishing for Pacific halibut, but not including a vessel without a hired operator.

* * * * *

■ 3. Revise § 300.63 to read as follows:

§ 300.63 Catch sharing plan and domestic management measures in Area 2A.

(a) *General Provisions.* (1) Under 16 U.S.C. 773c, a fishery management council may develop regulations governing the domestic halibut fishery that do not conflict with the regulations set by the International Pacific Halibut Commission. NMFS may approve and implement such regulations. The Pacific Fishery Management Council has developed a catch sharing plan that provides a framework for allocation of Pacific halibut for Area 2A and sets management measures for fisheries in Area 2A. NMFS implements annual management measures consistent with the catch sharing plan through annual rules published in the **Federal Register**. Long term provisions included in and necessary to implement the catch sharing plan are included in the sections that follow.

(2) A portion of the Area 2A non-tribal commercial allocation is allocated as incidental catch in the salmon troll fishery in Area 2A pursuant to § 300.62. Each year the landing restrictions necessary to keep the fishery within its allocation will be recommended by the Pacific Fishery Management Council at its spring meetings and will be promulgated in the annual salmon management measures described at 660 Subpart H. This fishery will occur between dates and times listed in the annual management measures as described at § 300.62, until there is not sufficient allocation and the season is closed by NMFS.

(3) A portion of the Area 2A Washington recreational (sport) allocation is allocated pursuant to § 300.62 as incidental catch in the sablefish primary fishery north of 46°53.30′ N lat. (Pt. Chehalis, Washington), which is regulated under § 660.231. This fishing opportunity is only available in years in which the Washington recreational allocation is 214,110 lb (97.1 mt) or greater, provided that a minimum of 10,000 lb (4.5 mt) is available to the sablefish fishery. Each year that this fishing opportunity is available, the landing restrictions necessary to keep this fishery within its allocation will be recommended by the Pacific Fishery Management Council at its spring meetings, and will be published in the **Federal Register**. This fishery will occur between dates and times listed in annual management measures as described under § 300.62, until there is not sufficient allocation and the season is closed by NMFS.

(i) In years when the incidental catch of halibut in the sablefish primary fishery north of 46°53.30′ N lat. is allowed, it is allowed only for vessels using longline gear that are registered to groundfish limited entry permits with sablefish endorsements and that possess a permit issued pursuant to paragraph (d) of this section.

(ii) It is unlawful for any person to possess, land or purchase halibut south of 46°53.30′ N lat. that were taken and retained as incidental catch authorized by this section in the sablefish primary fishery.

(4) The treaty Indian fishery is governed by § 300.64 and tribal regulations. The annual allocation for the fishery will be announced with the annual management measures as described under § 300.62.

(b) *Non-Tribal Fishery Election in Area 2A.* (1) A non-tribal vessel that fishes in Area 2A may participate in only one of the following three fisheries in Area 2A:

(i) The recreational (sport) fishery as established in the annual domestic management measures issued pursuant to § 300.62 and paragraph c of this subsection;

(ii) The non-tribal commercial directed fishery for halibut established in the annual domestic management measures issued pursuant to § 300.62 and paragraph (e) of this section and/or the incidental retention of halibut during the sablefish primary fishery described at § 660.231; or

(iii) Incidental catch of halibut during the salmon troll fishery as authorized in the annual domestic management measures issued pursuant to § 300.62 and 50 CFR part 660, subpart H.

(2) No person shall fish for halibut in the recreational (sport) fishery in Area 2A from a vessel that has been used during the same calendar year for commercial halibut fishing in Area 2A, or that has been issued a permit for the same calendar year for the commercial halibut fishery in Area 2A.

(3) No person shall fish for halibut in the directed commercial halibut fishery and/or retain halibut incidentally taken in the sablefish primary fishery in Area 2A from a vessel that has been used during the same calendar year for incidental catch of halibut during the salmon troll fishery.

(4) No person shall fish for halibut in the non-tribal directed commercial halibut fishery and/or retain halibut incidentally taken in the sablefish primary fishery in Area 2A from a vessel that, during the same calendar year, has been used in the recreational (sport) halibut fishery in Area 2A or that is permitted for the recreational (sport) charter halibut fishery in Area 2A pursuant to paragraph (d) of this section.

(5) No person shall retain halibut incidentally caught in the salmon troll fishery in Area 2A taken on a vessel that, during the same calendar year, has been used in the recreational (sport) halibut fishery in Area 2A, or that is permitted for the recreational (sport) charter halibut fishery in Area 2A pursuant to paragraph (d) of this section.

(6) No person shall retain halibut incidentally caught in the salmon troll

fishery in Area 2A taken on a vessel that, during the same calendar year, has been used in the directed commercial halibut fishery and/or retained halibut incidentally taken in the sablefish primary fishery for Area 2A or that is permitted to participate in these commercial fisheries pursuant to paragraph (d) of this section.

(c) *Recreational (sport) halibut fisheries in Area 2A*—(1) *Annual Recreational Fishery Rule.* Each year, NMFS will publish a rule to govern the annual recreational (sport) fisheries for the following year and will seek public comment. The rule will include annual management measures, such as annual fishing dates and allocations for each subarea within Area 2A. The subareas are defined in paragraph (c)(5) of this section. Annual management measures may be adjusted inseason by NMFS under paragraph (c)(6) of this section.

(2) *Port of Landing.* Any halibut landed into a port counts toward the allocation for the subarea in which that port is located, and the regulations governing the subarea of landing apply, regardless of the specific area of catch.

(3) *Automatic closure of recreational fisheries.* NMFS shall determine once an area or subarea has attained or is projected to attain its area or subarea allocation, and will take automatic action to close the fishery, via announcement in the **Federal Register** and concurrent notification on the NMFS hotline at (206) 526–6667 or (800) 662–9825 and the NOAA Fisheries website. Closures will be determined without prior notice or opportunity to comment. These actions are nondiscretionary and the impacts must have been previously taken into account. Once the effective date of the closure is announced in the **Federal Register**, no person shall land, possess, or retain halibut in that area or subarea.

(4) *Groundfish fisheries.* Vessels that participate in federal recreational groundfish fisheries, including those that fish for and retain halibut, are also governed by regulations at 50 CFR 660.360.

(5) *Recreational Fishery Subareas*—(i) *Washington.* The Washington recreational fishery is divided into the following subareas:

(A) *Washington Puget Sound and the U.S. Convention waters in the Strait of Juan de Fuca.* The Washington Puget Sound and the U.S. Convention Waters in the Strait of Juan de Fuca subarea is located east of a line extending from 48°17.30′ N lat., 124°23.70′ W long., north to 48°24.10′ N lat., 124°23.70′ W long.

(B) *Washington North Coast Subarea.* The Washington North Coast subarea is located west of a line at approximately 124°23.70′ W long. and north of the Queets River (47°31.70′ N lat.).

(*1*) Recreational fishing for halibut is prohibited within the North Coast Recreational Yelloweye Rockfish Conservation Area (YRCA). It is unlawful for recreational fishing vessels to take and retain, possess, or land halibut taken with recreational gear within the North Coast Recreational YRCA. A vessel fishing with recreational gear in the North Coast Recreational YRCA may not be in possession of any halibut. Recreational vessels may transit through the North Coast Recreational YRCA with or without halibut on board. The North Coast Recreational YRCA is defined in groundfish regulations at 50 CFR 660.70(b).

(*2*) [Reserved]

(C) *Washington South Coast Subarea.* The Washington South Coast subarea is located between the Queets River, WA (47°31.70′ N lat.), and Leadbetter Point, WA (46°38.17′ N lat.).

(*1*) This subarea is divided between the all-depth fishery (the Washington South Coast primary fishery) and the incidental nearshore fishery in the area from 47°31.70′ N to 46°58.00′ N lat. and east of a boundary line approximating the 30-fm (55-m) depth contour. The Washington South coast northern nearshore area is defined by straight lines connecting the following points in the order stated:

TABLE 1 TO PARAGRAPH (c)(5)(i)(C)(*1*)

Point	N lat.	W long.
1	47°31.70′	124°37.03′
2	47°25.67′	124°34.79′
3	47°12.82′	124°29.12′
4	46°58.00′	124°24.24′

(*2*) Recreational fishing for halibut is allowed within the South Coast Recreational YRCA and Westport Offshore Recreational YRCA. The South Coast Recreational YRCA is defined at 50 CFR 660.70(e). The Westport Offshore Recreational YRCA is defined at 50 CFR 660.70(f).

(D) *Columbia River Subarea.* The Columbia River subarea is located between Leadbetter Point, WA (46°38.17′ N lat.), and Cape Falcon, OR (45°46.00′ N lat.).

(*1*) The nearshore fishery extends from Leadbetter Point (46°38.17′ N lat., 124°15.88′ W long.) to the Columbia River (46°16.00′ N lat., 124°15.88′ W long.) by connecting the following coordinates in Washington: 46°38.17′ N lat., 124°15.88′ W long., 46°16.00′ N lat., 124°15.88′ W long., and connecting to the boundary line approximating the 40-fm (73-m) depth contour in Oregon as defined at 50 CFR 660.71(o). The remaining area in the Columbia River subarea is the all-depth fishery.

(*2*) Pacific Coast groundfish may not be taken and retained, possessed or landed when halibut are on board the vessel, except sablefish, Pacific cod, flatfish species, yellowtail rockfish, widow rockfish, canary rockfish, redstripe rockfish, greenstriped rockfish, silvergray rockfish, chilipepper, bocaccio, blue/deacon rockfish, and lingcod caught north of the Washington-Oregon border (46°16.00′ N lat.) may be retained when allowed by Pacific Coast groundfish regulations at 50 CFR 660.360, during days open to the all-depth Pacific halibut fishery.

(*3*) Long-leader gear (as defined at 50 CFR 660.351) may be used to retain groundfish during the all-depth Pacific halibut fishery south of the Washington-Oregon border, when allowed by Pacific Coast groundfish regulations at 50 CFR 660.360.

(ii) *Oregon.* The Oregon recreational fishery is divided into the following subareas:

(A) *Oregon Central Coast Subarea.* The Oregon Central Coast Subarea is located between Cape Falcon (45°46.00′ N lat.) and Humbug Mountain (42°40.50′ N lat.).

(*1*) The nearshore fishery (the ''inside 40-fm'' fishery) occurs shoreward of the boundary line approximating the 40-fm (73-m) depth contour between 45°46.00′ N lat. and 42°40.50′ N lat. is defined at 50 CFR 660.71(o).

(*2*) During days open to all-depth halibut fishing when the groundfish fishery is restricted by depth, when halibut are on board the vessel, sablefish, Pacific cod, other species of flatfish (sole, flounder, sanddab), may be taken and retained, possessed or landed with long-leader gear (as defined at 50 CFR 660.351), when allowed by groundfish regulations at 50 CFR 660.360. During days open to all-depth halibut fishing when the groundfish fishery is open to all depths, any groundfish species permitted under the groundfish regulations may be retained, possessed, or landed if halibut are onboard the vessel. During days only open to nearshore halibut fishing, flatfish species may not be taken and retained seaward of the 40-fm (73-m) depth contour if halibut are on board the vessel.

(*3*) When the all-depth halibut fishery is closed and halibut fishing is permitted only shoreward of a boundary line approximating the 40-fm (73-m) depth contour, as defined at 50 CFR 660.71(o), halibut possession and

retention by vessels operating seaward of a boundary line approximating the 40-fm (73-m) depth contour is prohibited.

(*4*) Recreational fishing for halibut is prohibited within the Stonewall Bank YRCA. It is unlawful for recreational fishing vessels to take and retain, possess, or land halibut taken with recreational gear within the Stonewall Bank YRCA. A vessel fishing in the Stonewall Bank YRCA may not possess any halibut. Recreational vessels may transit through the Stonewall Bank YRCA with or without halibut onboard. The Stonewall Bank YRCA is defined at 50 CFR 660.70(g) through (i).

(B) *Southern Oregon Subarea.* The Southern Oregon Subarea is located south of Humbug Mountain, Oregon (42°40.50′ N lat.) to the Oregon/California Border (42°00.00′ N lat.).

(*1*) During the recreational halibut all-depth fishery, when the groundfish fishery is restricted by depth and halibut are onboard the vessel, sablefish, Pacific cod, and other species of flatfish (sole, flounder, sanddab) may be retained, possessed, or landed, and yellowtail rockfish, widow rockfish, canary rockfish, redstriped rockfish, greenstriped rockfish, silvergray rockfish, chilipepper, bocaccio, and blue/deacon rockfish may be taken and retained, possessed or landed, when caught with long-leader gear (as defined at 50 CFR 660.351).

(*2*) [Reserved]

(iii) *California Coast Subarea.* The California Coast Subarea is located south of the Oregon/California Border (42°00.00′ N lat.) and along the California coast.

(6) *Inseason Management for Recreational (Sport) Halibut Fisheries in Area 2A.* (i) The Regional Administrator, NMFS West Coast Region, after consultation with the Pacific Fishery Management Council, the Commission, and the affected state(s), may modify regulations during the season after making the following determinations:

(A) The action is necessary to allow allocation objectives to be met.

(B) The action will not result in exceeding the allocation for the area.

(C) If any of the recreational (sport) fishery subareas north of Cape Falcon, Oregon are not projected to utilize their respective allocations, NMFS may take inseason action to transfer any projected unused allocation to another Washington recreational subarea.

(D) If any of the recreational (sport) fishery subareas south of Leadbetter Point, Washington, are not projected to utilize their respective allocations by their season ending dates, NMFS may take inseason action to transfer any projected unused allocation to another Oregon sport subarea.

(E) If the total estimated yelloweye rockfish bycatch mortality from recreational halibut trips in all Oregon subareas is projected to exceed 22 percent of the annual Oregon recreational yelloweye rockfish harvest guideline, NMFS may take inseason action to reduce yelloweye rockfish bycatch mortality in the halibut fishery while allowing allocation objectives to be met to the extent possible.

(ii) Flexible inseason management provisions include, but are not limited to, the following:

(A) Modification of recreational (sport) fishing periods;

(B) Modification of recreational (sport) fishing bag limits;

(C) Modification of recreational (sport) fishing size limits;

(D) Modification of recreational (sport) fishing days per calendar week;

(E) Modification of subarea allocation; and

(F) Modification of the Stonewall Bank Yelloweye Rockfish Conservation Area (YRCA) restrictions off Oregon using YRCA expansions as defined in groundfish regulations at 50 CFR 660.70(g) or (h).

(iii) *Notice procedures.* Actions taken under this section will be published in the **Federal Register**. Notice of inseason management actions will be provided by a telephone hotline administered by the West Coast Region, NMFS, at 206–526–6667 or 800–662–9825.

(iv) *Effective dates.* (A) Any action issued under this section is effective on the date specified in the publication or at the time that the action is filed for public inspection with the Office of the Federal Register, whichever is later.

(B) If time allows, NMFS will invite public comment prior to the effective date of any inseason action filed with the **Federal Register**. If the Regional Administrator determines, for good cause, that an inseason action must be filed without affording a prior opportunity for public comment, public comments will be received for a period of 15 days after publication of the action in the **Federal Register**.

(C) Any inseason action issued under this section will remain in effect until the stated expiration date or until rescinded, modified, or superseded. However, no inseason action has any effect beyond the end of the calendar year in which it is issued.

(d) *Pacific Halibut Permits for IPHC Regulatory Area 2A*—(1) *General.* (i) This section applies to persons and vessels that fish for Pacific halibut, or land and retain Pacific halibut, in IPHC Regulatory Area 2A. No person shall fish for Pacific halibut from a vessel, nor land or retain Pacific halibut on board a vessel, used either for commercial fishing or as a recreational charter vessel in IPHC regulatory area 2A, unless the NMFS West Coast Region has issued a permit valid for fishing in IPHC regulatory area 2A for that vessel.

(ii) A permit issued for a vessel operating in the Pacific halibut fishery in IPHC Regulatory Area 2A shall be valid for one of the following, per paragraph (b) of this section:

(A) The incidental catch of Pacific halibut during the salmon troll fishery specified in paragraph (a)(2) of this section;

(B) The incidental catch of Pacific halibut during the sablefish fishery specified in paragraph (a)(3) of this section;

(C) The non-tribal directed commercial fishery during the fishing periods specified in paragraph (e)(1) of this section;

(D) Both the incidental catch of Pacific halibut during the sablefish fishery specified in paragraph (a)(3) of this section and the non-tribal directed commercial fishery during the fishing periods specified in paragraph (e)(1) of this section; or

(E) The recreational charter fishery.

(iii) A permit issued under this paragraph (d) is valid only for the vessel for which it is registered. A change in ownership, documentation, or name of the registered vessel, or transfer of the ownership of the registered vessel will render the permit invalid.

(iv) A vessel owner must contact NMFS if the vessel for which the permit is issued is sold, ownership of the vessel is transferred, the vessel is renamed, or any other reason for which the documentation of the vessel is changed as the change would invalidate the current permit. A new permit application is required if there is a change in any documentation of the vessel. To submit a new permit application, follow the procedures outlined under paragraph (d)(2) of this section. If the documentation of the vessel is changed after the deadline to apply for a permit has passed as described at paragraph (d)(2)(ii) of this section, the vessel owner may contact NMFS and provide information on the reason for the documentation change and all permit application information described at paragraph (d)(2) of this section. NMFS may issue a permit, or decline to issue a permit and the applicant may appeal per paragraph (d)(3) of this section.

(v) A permit issued under this paragraph (d) must be carried on board

that vessel at all times and the vessel operator shall allow its inspection by any authorized officer. The format of this permit may be electronic or paper.

(vi) No individual may alter, erase, mutilate, or forge any permit or document issued under this section. Any such permit or document that is intentionally altered, erased, mutilated, or forged is invalid.

(vii) A permit issued under this paragraph (d) is valid only during the calendar year (January 1–December 31) for which it was issued.

(viii) NMFS may suspend, revoke, or modify any permit issued under this section under policies and procedures in title 15 CFR part 904, or other applicable regulations in this chapter.

(2) *Applications*—(i) *Application form.* To obtain a permit, an individual must submit a complete permit application to the NMFS West Coast Region Sustainable Fisheries Division (NMFS) through the NOAA Fisheries Pacific halibut permits web page at *https://www.fisheries.noaa.gov/permit/pacific-halibut-permits.* A complete application consists of:

(A) An application form that contains valid responses for all data fields, including information and signatures.

(B) A current copy of the U.S. Coast Guard Documentation Form or state registration form or current marine survey.

(C) Payment of required fees as discussed in paragraph (d)(2)(iv) of this section.

(D) Additional documentation NMFS may require as it deems necessary to make a determination on the application.

(ii) *Deadlines.* (A) Applications for permits for the directed commercial fishery in Area 2A must be received by NMFS no later than 2359 PST on February 15, or by 2359 PST the next business day in February if February 15 is a Saturday, Sunday, or Federal holiday.

(B) Applications for permits that allow for incidental catch of Pacific halibut during the salmon troll fishery or the sablefish primary fishery in Area 2A must be received by NMFS no later than 2359 PST March 1, or by 2359 PST the next business day in March if March 1 is a Saturday, Sunday, or Federal holiday.

(C) Applications for permits for recreational charter vessels, which allow for catch of Pacific halibut during the recreational fishery, must be received a minimum of 15 days before intending to participate in the fishery, to allow for processing the permit application.

(iii) *Application review and approval.* NMFS shall issue a vessel permit upon receipt of a completed permit application submitted on the NOAA Fisheries website no later than the day before the start date of the fishery the applicant selected. If the application is not approved, NMFS will issue an initial administrative decision (IAD) that will explain the denial in writing. The applicant may appeal NMFS' determination following the process at paragraph (d)(3) of this section. NMFS will decline to act on a permit application that is incomplete or if the vessel or vessel owner is subject to sanction provisions of the Magnuson-Stevens Act at 16 U.S.C. 1858(a) and implementing regulations at 15 CFR part 904, subpart D.

(iv) *Permit fees.* The Regional Administrator may charge fees to cover administrative expenses related to processing and issuance of permits, processing change in ownership or change in vessel registration, divestiture, and appeals of permits. The amount of the fee is determined in accordance with the procedures of the NOAA Finance Handbook for determining administrative costs. Full payment of the fee is required at the time a permit application is submitted.

(3) *Appeals.* In cases where the applicant disagrees with NMFS' decision on a permit application, the applicant may appeal that decision to the Regional Administrator. This paragraph (d)(3) describes the procedures for appealing the IAD on permit actions made in this title under this subpart.

(i) *Who may appeal?* Only an individual who received an IAD that disapproved any part of their application may file a written appeal. For purposes of this section, such individual will be referred to as the ''permit applicant.''

(ii) *Appeal process.* (A) The appeal must be in writing, must allege credible facts or circumstances to show why the criteria in this subpart have been met, and must include any relevant information or documentation to support the appeal. The permit applicant may request an informal hearing on the appeal.

(B) Appeals must be mailed or faxed to: National Marine Fisheries Service, West Coast Region, Sustainable Fisheries Division, ATTN: Appeals, 7600 Sand Point Way NE, Seattle, WA 98115; Fax: 206–526–6426; or delivered to National Marine Fisheries Service at the same address.

(C) Upon receipt of an appeal authorized by this section, the Regional Administrator will notify the permit applicant, and may request additional information to allow action on the appeal.

(D) Upon receipt of sufficient information, the Regional Administrator will decide the appeal in accordance with the permit provisions set forth in this section at the time of the application, based upon information relative to the application on file at NMFS and any additional information submitted to or obtained by the Regional Administrator, the summary record kept of any hearing and the hearing officer's recommended decision, if any, and such other considerations as the Regional Administrator deems appropriate. The Regional Administrator will notify all interested persons of the decision, and the reasons for the decision, in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

(E) If a hearing is requested, or if the Regional Administrator determines that one is appropriate, the Regional Administrator may grant an informal hearing before a hearing officer designated for that purpose after first giving notice of the time, place, and subject matter of the hearing to the applicant. The appellant, and, at the discretion of the hearing officer, other interested persons, may appear personally or be represented by counsel at the hearing and submit information and present arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the hearing, the hearing officer shall recommend in writing a decision to the Regional Administrator.

(F) The Regional Administrator may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Regional Administrator will notify interested persons of the decision, and the reason(s) therefore, in writing, within 30 days of receipt of the hearing officer's recommended decision. The Regional Administrator's decision will constitute the final administrative action by NMFS on the matter.

(iii) *Timing of appeals.* (A) For permits issued under this paragraph (d), if an applicant appeals an IAD, the appeal must be postmarked, faxed, or hand delivered to NMFS no later than 60 calendar days after the date on the IAD. If the applicant does not appeal the IAD within 60 calendar days, the IAD becomes the final decision of the Regional Administrator acting on behalf of the Secretary of Commerce.

(B) Any time limit prescribed in this section may be extended for a period not to exceed 30 days by the Regional Administrator for good cause, either

upon his or her own motion or upon written request from the appellant stating the reason(s) therefore.

(iv) *Address of record.* For purposes of the appeals process, NMFS will establish as the address of record, the address used by the permit applicant in initial correspondence to NMFS. Notifications of all actions affecting the applicant after establishing an address of record will be mailed to that address, unless the applicant provides NMFS, in writing, with any changes to that address. NMFS bears no responsibility if a notification is sent to the address of record and is not received because the applicant's actual address has changed without notification to NMFS.

(v) *Status of permits pending appeal.* (A) For all permit actions, the permit registration remains as it was prior to the request until the final decision has been made.

(B) [Reserved]

(e) *Non-tribal directed commercial fishery management.* Each year a portion of Area 2A's overall fishery limit is allocated consistent with the Pacific Fishery Management Council's Catch Sharing Plan to the non-tribal directed commercial fishery and published pursuant to § 300.62. The non-tribal directed commercial fishery takes place in the area south of Point Chehalis, WA (46°53.30′ N lat.).

(1) *Management measures.* Annually, NMFS will determine and publish in the **Federal Register** annual management measures for the upcoming fishing year for the non-tribal directed commercial fishery. This will include dates and lengths for the fishing periods for the Area 2A non-tribal directed commercial fishery, as well as the associated fishing period limits.

(i) *Fishing periods.* NMFS will determine the fishing periods, *e.g.,* dates and/or hours that permittees may legally harvest halibut in Area 2A, on an annual basis. This determination will take into account any recommendations provided by the Pacific Fishery Management Council and comments received by the public during the public comment period on the proposed annual management measures rule. The intent of these fishing periods is to ensure the Area 2A Pacific halibut directed commercial allocation is achieved but not exceeded.

(ii) *Fishing period limits.* NMFS will establish fishing period limits, *e.g.,* the maximum amount of Pacific halibut that a vessel may retain and land during a specific fishing period, and assign those limits according to vessel class for each fishing period. Fishing period limits may be different across vessel classes (except as described in paragraph (e)(1)(iii) of this section). NMFS will determine fishing period limits following the considerations listed in paragraph (e)(1)(ii)(A) of this section. The intent of these fishing period limits is to ensure that the Area 2A commercial directed fishery does not exceed the directed commercial allocation, while attempting to provide fair and equitable access across fishery participants to an attainable amount of harvest. The limits will be published in annual management measures rules in the **Federal Register** along with a description of the considerations used to determine them.

(A) *Considerations.* When determining fishing period(s) and associated fishing period limits for the directed commercial fishery, NMFS will consider the following factors:

(*1*) The directed commercial fishery allocation;

(*2*) Vessel class;

(*3*) Number of fishery permit applicants and projected number of participants per vessel class;

(*4*) The average catch of vessels compared to past fishing period limits;

(*5*) Other relevant factors.

(B) *Vessel classes.* Vessel classes are based on overall length (defined at 46 CFR 69.9) shown in the following table:

TABLE 2 TO PARAGRAPH (e)(1)(ii)(B)

Overall length (in feet)	Vessel class
1–25	A
26–30	B
31–35	C
36–40	D
41–45	E
46–50	F
51–55	G
56+	H

(iii) *Inseason action to add fishing periods and associated fishing period limits.* Fishing periods in addition to those originally implemented at the start of the fishing year may be warranted in order to provide the fishery with opportunity to achieve the Area 2A directed commercial fishery allocation, if performance of the fishery during the initial fishing period(s) is different than expected and the directed commercial allocation is not attained through the initial period(s). If NMFS makes the determination that sufficient allocation remains to warrant additional fishing period(s) without exceeding the allocation for the Area 2A directed commercial fishery, the additional fishing period(s) and fishing period limits may be added during the fishing year. If NMFS determines fishing period(s) in addition to those included in an annual management measures rule is warranted, NMFS will set the fishing period limits equal across all vessel classes. The fishing period(s) and associated fishing period limit(s) will be announced in the **Federal Register** and concurrent publication on the hotline. If the amount of directed commercial allocation remaining is determined to be insufficient for an additional fishing period, the allocation is considered to be taken and the fishery will be closed, as described at paragraph (e)(2) of this section.

(2) *Automatic closure of the non-tribal directed commercial fishery.* The NMFS Regional Administrator or designee will initiate automatic management actions without prior public notice or opportunity to comment. These actions are nondiscretionary and the impacts must have been previously been taken into account.

(i) If NMFS determines that the non-tribal directed commercial fishery has attained its annual allocation or is projected to attain its allocation if additional fishing was to be allowed, the Regional Administrator will take automatic action to close the fishery, via announcement in the **Federal Register** and concurrent notification on the telephone hotline at 206–526–6667 or 800–662–9825.

(ii) [Reserved]

(f) *Area 2A Non-Treaty Commercial Fishery Closed Areas.* (1) Non-treaty commercial vessels operating in the directed commercial fishery for halibut in Area 2A are required to fish outside a closed area, known as the nontrawl Rockfish Conservation Area (RCA), that extends along the coast from the U.S./Canada border south to 40°10′ N lat. Between the U.S./Canada border and 46°16′ N lat., the eastern boundary of the nontrawl RCA, is the shoreline. Between 46°16′ N lat. and 40°10′ N lat., the nontrawl RCA is defined along an eastern boundary by a line approximating the 30-fm (55-m) depth contour. Coordinates for the 30-fm (55-m) boundary are listed at 50 CFR 660.71(e). Between the U.S./Canada border and 40°10′ N lat., the nontrawl RCA is defined along a western boundary approximating the 100-fm (183-m) depth contour. Coordinates for the 100-fm (183-m) boundary are listed at 50 CFR 660.73(a).

(2) Vessels that incidentally catch halibut while fishing in the sablefish primary fishery are required to follow area closures and gear restrictions defined in the groundfish regulations. It is unlawful to retain, possess or land halibut with limited entry fixed gear within the North Coast Commercial Yelloweye Rockfish Conservation Area

as defined at 50 CFR 660.230. Coordinates for the North Coast Commercial YRCA are specified in groundfish regulations at 50 CFR 660.70.

(3) Vessels that incidentally catch halibut while fishing in the salmon troll fishery are required to follow area and gear restrictions defined in the groundfish regulations at 50 CFR 660.330. It is unlawful for a commercial salmon troll vessel to retain, possess, or land halibut within the Salmon Troll YRCA with salmon troll gear. Coordinates for the Salmon Troll YRCA are specified in groundfish regulations at 50 CFR 660.70, and in salmon regulations at 50 CFR 660.405.

[FR Doc. 2023–07328 Filed 4–6–23; 8:45 am]

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Proposed Rules

Federal Register
Vol. 88, No. 69
Tuesday, April 11, 2023

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

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2021–BT–STD–0035]

RIN 1904–AF46

Energy Conservation Program: Energy Conservation Standards for Air Cleaners

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Energy Policy and Conservation Act, as amended (''EPCA''), authorizes the Secretary of Energy to classify additional types of consumer products as covered products upon determining that: classifying the product as a covered product is necessary for the purposes of EPCA; and the average annual per-household energy use by products of such type is likely to exceed 100 kilowatt-hours per year (''kWh/yr''). In a final determination published on July 15, 2022, DOE determined that classifying air cleaners as a covered product is necessary or appropriate to carry out the purposes of EPCA, and that the average U.S. household energy use for air cleaners is likely to exceed 100 kWh/yr. In this notice of proposed rulemaking (''NOPR''), DOE proposes new energy conservation standards for air cleaners identical to those set forth in a direct final rule published elsewhere in this **Federal Register**. If DOE receives adverse comment and determines that such comment may provide a reasonable basis for withdrawal, DOE will publish a notice withdrawing the direct final rule and will proceed with this proposed rule.

DATES: DOE will accept comments, data, and information regarding this NOPR no later than July 31, 2023. 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 May 11, 2023.

ADDRESSES: See section III, ''Public Participation,'' for details. If DOE withdraws the direct final rule published elsewhere in today's **Federal Register**, DOE will hold a public meeting to allow for additional comment on this proposed rule. DOE will publish notice of any meeting in the **Federal Register**.

Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov* under docket number EERE–2021–BT–STD–0035. Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2021–BT–STD–0035, by any of the following methods: *Email: AirCleaners2021STD0035@ee.doe.gov.* Include the docket number EERE–2021–BT–STD–0035 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 III 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-2021-BT-STD-0035.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section III 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 rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. Troy Watson, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (240) 449–9387. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Amelia Whiting, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–2588. Email: *Amelia.Whiting@hq.doe.gov.*

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

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I. Introduction

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 air cleaners.

A. Authority

The Energy Policy and Conservation Act, as amended (''EPCA''),[1] grants the U.S. Department of Energy (''DOE'') authority to prescribe an energy conservation standard for any type (or class) of covered products of a type specified in 42 U.S.C. 6292(a)(20) if the requirements of 42 U.S.C. 6295(o) and 42 U.S.C. 6295(p) are met and the Secretary determines that—

(A) The average per household energy use within the United States by products of such type (or class) exceeded 150 kWh (or its Btu equivalent) for any 12-month period ending before such determination;

(B) The aggregate household energy use within the United States by products of such type (or class) exceeded 4,200,000,000 kWh (or its Btu equivalent) for any such 12-month period;

(C) Substantial improvement in the energy efficiency of products of such type (or class) is technologically feasible; and

(D) The application of a labeling rule under 42 U.S.C. 6294 to such type (or class) is not likely to be sufficient to induce manufacturers to produce, and consumers and other persons to purchase, covered products of such type (or class) which achieve the maximum energy efficiency which is technologically feasible and economically justified. (42 U.S.C. 6295(*l*)(1))

DOE has determined that air cleaners meet the four criteria outlined in 42 U.S.C. 6295(l)(1) for prescribing energy conservation standards for newly covered products. First, in a final determination published on July 15, 2022 (''July 2022 Final Determination''), DOE noted that the U.S. Environmental Protection Agency's (''EPA's'') ENERGY STAR database[2] includes a range of portable configurations of air cleaners with an average annual energy consumption of 299 kWh, which exceeded the 150 kWh threshold. 87 FR 42297, 42305. DOE further noted that the average energy consumption of non-ENERGY STAR qualified models is likely higher. *Id.* EPCA specifies that the term ''energy use'' means the quantity of energy directly consumed by a consumer product at point of use determined in accordance with test procedures under 42 U.S.C. 6293 (42 U.S.C. 6291(4)) Although the values of annual energy consumption discussed in the July 2022 Final Determination were obtained prior to the establishment of the DOE air cleaners test procedure, they were measured using substantively the same methodology as in the newly established test procedure. Therefore, DOE has determined that for a 12-month period ending before its determination for this notice of proposed rulemaking (''NOPR''), the average per household energy use within the United States by air cleaners exceeded 150 kWh.

DOE has also determined that 21.8 million households in the United States use at least one air cleaner (see chapter 10 of the direct final rule technical support document (''TSD'') available in the docket for this rulemaking). Based on an average annual energy consumption per unit of at least 299 kWh, as measured by the DOE test procedure for air cleaners, the aggregate household energy use within the United States by air cleaners was at least 6,518,000,000 kWh, which exceeded 4,200,000,000 kWh (or its Btu equivalent) for the 12-month period ending before the determination in this NOPR. Further, DOE has determined that substantial energy improvement in the energy efficiency of air cleaners is technologically feasible (see chapter 5 of the direct final rule TSD available in the docket for this rulemaking.), and has determined that the application of a labeling rule under 42 U.S.C. 6294 to air cleaners is not likely to be sufficient to induce manufacturers to produce, and consumers and other persons to purchase, air cleaners that achieve the maximum energy efficiency which is technologically feasible and economically justified (see chapter 17 of the direct final rule TSD available in the docket for this rulemaking.).[3]

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 air cleaners appear at title 10 of the Code of Federal Regulations (''CFR'') part 430, subpart B, appendix FF (''appendix FF'').

DOE must follow specific statutory criteria for prescribing new or amended standards for covered products, including air cleaners. 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 determines is technologically feasible

[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] Available at: *https://data.energystar.gov/Active-Specifications/ENERGY-STAR-Certified-Room-Air-Cleaners/jmck-i55n/data.* Last accessed: December 2022.

[3] DOE estimated that such a labeling program would lead to approximately 41% of the energy savings DOE estimated for the new standards. *See* chapter 17 of the direct final rule TSD available in the docket for this rulemaking for more information.

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 air cleaners, 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))

Additionally, 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 air cleaners address standby mode and off mode energy use, through the integrated energy factor (''IEF'') metric. IEF includes annual energy consumption in standby mode as part of the annual energy consumption parameter and DOE is proposing standards for air cleaners based on IEF; therefore, the standards in this NOPR account for standby mode of an air cleaner.

Finally, EISA 2007 amended EPCA, in relevant part, to grant DOE authority to issue a final rule (hereinafter referred to as a ''direct final rule'') establishing an energy conservation standard on receipt of a statement submitted jointly by interested persons that are fairly representative of relevant points of view (including representatives of manufacturers of covered products, States, and efficiency advocates), as determined by the Secretary, that contains recommendations with respect to an energy or water conservation standard that are in accordance with the provisions of 42 U.S.C. 6295(o). (42 U.S.C. 6295(p)(4))

A NOPR that proposes an identical energy efficiency standard must be published simultaneously with the direct final rule, and DOE must provide a public comment period of at least 110 days on this proposal. (42 U.S.C. 6295(p)(4)(A)–(B)) Based on the comments received during this period, the direct final rule will either become effective, or DOE will withdraw it not later than 120 days after its issuance if (1) one or more adverse comments is received, and (2) DOE determines that those comments, when viewed in light of the rulemaking record related to the direct final rule, may provide a reasonable basis for withdrawal of the direct final rule under 42 U.S.C. 6295(o). (42 U.S.C. 6295(p)(4)(C)) Receipt of an alternative joint recommendation may also trigger a DOE withdrawal of the direct final rule in the same manner. *Id.* After withdrawing a direct final rule, DOE must proceed with the notice of proposed rulemaking published simultaneously with the direct final rule and publish in the **Federal Register** the reasons why the direct final rule was withdrawn. *Id.*

B. Background

1. Current Standards

Air cleaners are not currently subject to energy conservation standards.

2. History of Standards Rulemaking for Air Cleaners

DOE has not previously conducted an energy conservation standards rulemaking for air cleaners. On January 25, 2022, DOE published a request for information (''January 2022 RFI''), seeking comments on potential test procedure and energy conservation standards for air cleaners. 87 FR 3702. In the January 2022 RFI, DOE requested information to aid in the development of the technical and economic analyses to support energy conservation standards for air cleaners, should they be warranted. 87 FR 3702, 3705.

DOE determined in the July 2022 Final Determination that coverage of air cleaners is necessary or appropriate to carry out the purposes of EPCA; the average U.S. household energy use for air cleaners is likely to exceed 100 kWh/yr; and thus, air cleaners qualify as a ''covered product'' under EPCA. 87 FR 42297.

On August 23, 2022, groups representing manufacturers, energy and environmental advocates, and consumer groups, hereinafter referred to as ''the Joint Stakeholders,''[4] submitted a ''Joint Statement of Joint Stakeholder Proposal On Recommended Energy Conservation Standards And Test Procedure For Consumer Room Air Cleaners'' (''Joint Proposal''),[5] which urged DOE to publish final rules adopting the consumer room air cleaner test procedure and standards and compliance dates contained in the Joint Proposal, as soon as possible, but not later than December 31, 2022. (Joint Stakeholders, No. 16 at p. 1) The Joint Proposal also recommended that DOE adopt the Association of Home Appliance Manufacturers' (''AHAM's'') industry standard, AHAM AC–7–2022, ''Energy Test Method for Consumer Room Air Cleaners,'' as the DOE test procedure. (*Id.* at p. 6) In regards to energy conservation standards, the Joint Proposal specified two-tiered Tier 1 and Tier 2 standard levels, as shown in Table I.1, for conventional room air cleaners with proposed compliance dates of December 31, 2023, and December 31, 2025, respectively. (*Id.* at p. 9)

TABLE I.1—TIER 1 AND TIER 2 STANDARDS PROPOSED BY THE JOINT STAKEHOLDERS IN THE JOINT PROPOSAL

Product description	IEF ($PM_{2.5}$ CADR/W) tier 1 *	IEF ($PM_{2.5}$ CADR/W) tier 2 **
$10 \leq PM_{2.5}$ CADR < 100	1.69	1.89
$100 \leq PM_{2.5}$ CADR < 150	1.90	2.39
$PM_{2.5}$ CADR ≥ 150	2.01	2.91

* Tier 1 standards would have an effective date of December 31, 2023.
** Tier 2 standards would have an effective date of December 31, 2025.

The Tier 1 standards are equivalent to the state standards established by the States of Maryland, Nevada, and New Jersey, and the District of Columbia. (*Id.* at p. 9) Tier 2 standards are equivalent to the voluntary standards specified in EPA's ENERGY STAR Version 2.0 Room Air Cleaners Specification, Rev. May 2022, (''ENERGY STAR V. 2.0'') and those adopted by the State of Washington. (*Id.*) While the standards established by the States and those specified in ENERGY STAR V. 2.0 are based on smoke clean air delivery rate (''CADR'') and include only active mode energy consumption in the calculation of the CADR per watt (''CADR/W'') metric, the Joint Stakeholders presented data to show that there is a strong relationship between the $PM_{2.5}$ CADR calculation, which is the metric specified in appendix FF, and the measured smoke and dust CADR values. (*Id.* at p. 6) Additionally, DOE compared the IEF metric, calculated using $PM_{2.5}$ CADR and annual energy consumption in active mode and standby mode, to the smoke CADR/W metric, calculated using smoke CADR and active mode power consumption, using the ENERGY STAR database, and found a strong relationship between IEF and the CADR/W metric specified in ENERGY STAR V. 2.0 and the State standards. The Joint Stakeholders stated that the Tier 1 and Tier 2 standards are estimated to save 1.9 quads of FFC energy nationally over 30 years of sales. (*Id.* at p. 9)

After carefully considering the consensus recommendations for establishing energy conservation standards for air cleaners submitted by the Joint Stakeholders, DOE has determined that these recommendations are in accordance with the statutory requirements of 42 U.S.C. 6295(p)(4) for the issuance of a direct final rule.

More specifically, these recommendations comprise a statement submitted by interested persons who are fairly representative of relevant points of view on this matter. In appendix A to subpart C of 10 CFR part 430 (''appendix A''), DOE explained that to be ''fairly representative of relevant points of view,'' the group submitting a joint statement must, where appropriate, include larger concerns and small business in the regulated industry/manufacturer community, energy advocates, energy utilities, consumers, and States. However, it will be necessary to evaluate the meaning of ''fairly representative'' on a case-by-case basis, subject to the circumstances of a particular rulemaking, to determine whether fewer or additional parties must be part of a joint statement in order to be ''fairly representative of relevant points of view.'' Section 10 of appendix A. In reaching this determination, DOE took into consideration the fact that the Joint Stakeholders consist of representatives of manufacturers of the covered product at issue, a state corporation, and efficiency advocates—all of which are groups specifically identified by Congress as relevant parties to any consensus recommendation. (42 U.S.C. 6295(p)(4)(A)) As delineated previously, the Joint Proposal was signed and submitted by a broad cross-section of interests, including the trade association representing small and large manufacturers who produce the subject products, consumer groups, climate and health advocates, and energy-efficiency advocacy organizations, each of which signed the Joint Proposal on behalf of their respective manufacturers and efficiency advocacy organizations,

[4] The Joint Stakeholders include the Association of Home Appliance Manufacturers (''AHAM''), Appliance Standards Awareness Project (''ASAP''), American Council for an Energy-Efficient Economy (''ACEEE''), Consumer Federation of America (''CFA''), Natural Resources Defense Council (''NRDC''), the New York State Energy Research and Development Authority (''NYSERDA''), and the Pacific Gas and Electric Company (''PG&E''). AHAM is representing the companies who manufacture consumer room air cleaners and are members of the Portable Appliance Division (DOE has included names of all manufacturers listed in the footnote on page 1 of the Joint Proposal and the signatories listed on pages 13–14): 3M Co.; Access Business Group, LLC; ACCO Brands Corporation; Air King, Air King Ventilation Products; Airgle Corporation; Alticor, Inc.; Beijing Smartmi Electronic Technology Co., Ltd.; BISSELL Inc.; Blueair Inc.; BSH Home Appliances Corporation; De'Longhi America, Inc.; Dyson Limited; Essick Air Products; Fellowes Inc.; Field Controls; Foxconn Technology Group; GE Appliances, a Haier company; Gree Electric Appliances Inc.; Groupe SEB; Guardian Technologies, LLC; Haier Smart Home Co., Ltd.; Helen of Troy-Health & Home; iRobot; Lasko Products, Inc.; Molekule Inc.; Newell Brands Inc.; Oransi LLC; Phillips Domestic Appliances NA Corporation; SharkNinja Operating, LLC; Sharp Electronics Corporation; Sharp Electronics of Canada Ltd.; Sunbeam Products, Inc.; Trovac Industries Ltd; Vornado Air LLC; Whirlpool Corporation; Winix Inc.; and Zojirushi America Corporation.

[5] Available as document number 16 in the docket for this rulemaking.

which includes consumer groups, utilities, and a state corporation. Moreover, DOE does not read the statute as requiring a statement submitted by all interested parties before the Department may proceed with issuance of a direct final rule, nor does appendix A require the statement be submitted by all interested parties listed in the appendix. By explicit language of the statute, the Secretary has the discretion to determine when a joint recommendation for an energy or water conservation standard has met the requirement for representativeness (*i.e.,* ''as determined by the Secretary''). *Id.*

DOE also evaluated whether the recommendation satisfies 42 U.S.C. 6295(o), as applicable. In making this determination, DOE conducted an analysis to evaluate whether the potential energy conservation standards under consideration achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified and result in significant energy conservation. The evaluation is the same comprehensive approach that DOE typically conducts whenever it considers potential energy conservation standards for a given type of product or equipment.

Upon review, the Secretary determined that the Joint Proposal comports with the standard-setting criteria set forth under 42 U.S.C. 6295(p)(4)(A). Accordingly, the consensus-recommended efficiency levels were included as the ''recommended TSL'' for air cleaners.

In sum, as the relevant criteria under 42 U.S.C. 6295(p)(4) have been satisfied, the Secretary has determined that it is appropriate to adopt the consensus-recommended new energy conservation standards for air cleaners through the issuance of a direct final rule. As a result, DOE has published a direct final rule establishing energy conservation standards for air cleaners elsewhere in this **Federal Register**.

If DOE receives adverse comments that may provide a reasonable basis for withdrawal and withdraws the direct final rule, DOE will consider those comments and any other comments received in determining how to proceed with this proposed rule.

For further background information on these proposed standards and the supporting analyses, please see the direct final rule published elsewhere in this **Federal Register**. That document includes additional discussion on the EPCA requirements for promulgation of the energy conservation standards, the history of the standards rulemakings establishing such standards, as well as information on the test procedures used to measure the energy efficiency of air cleaners. The document also contains in-depth discussion of the analyses conducted in support of this proposed rulemaking, the methodologies DOE used in conducting those analyses, and the analytical results.

II. Proposed Standards

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))

DOE considered the impacts of standards for air cleaners at each trial standard level (''TSL''), beginning with the maximum technologically feasible (''max-tech'') 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. DOE refers to this process as the ''walk-down'' analysis.

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. There is evidence that consumers undervalue future energy savings as a result of (1) a lack of information; (2) a lack of sufficient salience of the long-term or aggregate benefits; (3) a lack of sufficient 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; (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). 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 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 direct final rule TSD available in the docket for this proposed rulemaking. 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.[6]

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

[6] 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.*

conservation standards, and potential enhancements to the methodology by which these impacts are defined and estimated in the regulatory process.[7]

DOE welcomes comments on how to more fully assess the potential impact of energy conservation standards on consumer choice and how to quantify this impact in its regulatory analysis in future rulemakings.

A. Benefits and Burdens of TSLs Considered for Air Cleaners Standards

Table II.1 and Table II.2 summarize the quantitative impacts estimated for each TSL for air cleaners. The national impacts are measured over the lifetime of air cleaners purchased in the analysis period that begins in the anticipated year of compliance with standards (2024–2057 for TSL3 and 2028–2057 for the other TSLs). The energy savings, emissions reductions, and value of emissions reductions refer to full-fuel-cycle (''FFC'') results. The efficiency levels contained in each TSL are described in section V.A of the direct final rule published elsewhere in this **Federal Register**.

TABLE II.1—SUMMARY OF ANALYTICAL RESULTS FOR AIR CLEANERS TSLS: NATIONAL IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Cumulative FFC National Energy Savings					
Quads	0.76	1.73	1.80	4.05	4.59
Cumulative FFC Emissions Reduction					
CO_2 (million metric tons)	24.1	55.0	57.7	128.5	145.7
CH_4 (thousand tons)	173.0	394.8	411.4	922.8	1,046.1
N_2O (thousand tons)	0.2	0.5	0.6	1.2	1.4
SO_2 (thousand tons)	10.0	22.8	24.2	53.2	60.4
NO_X (thousand tons)	38.2	87.2	91.2	203.7	231.0
Hg (tons)	0.1	0.1	0.2	0.3	0.4
Present Value of Benefits and Costs (3% discount rate, billion 2021$)					
Consumer Operating Cost Savings	5.6	13.2	14.1	(5.9)	(0.8)
Climate Benefits *	1.1	2.6	2.8	6.1	6.9
Health Benefits **	1.9	4.4	4.7	10.2	11.6
Total Benefits †	8.6	20.2	21.6	10.4	17.7
Consumer Incremental Product Costs	0.1	0.4	0.5	2.4	3.7
Consumer Net Benefits	5.4	12.8	13.7	(8.4)	(4.5)
Total Net Benefits	8.5	19.8	21.1	7.9	14.0
Present Value of Benefits and Costs (7% discount rate, billion 2021$)					
Consumer Operating Cost Savings	2.2	5.3	6.0	(2.3)	(0.2)
Climate Benefits *	1.1	2.6	2.8	6.1	6.9
Health Benefits **	0.7	1.6	1.8	3.7	4.2
Total Benefits †	4.1	9.5	10.6	7.5	10.9
Consumer Incremental Product Costs	0.1	0.2	0.2	1.1	1.7
Consumer Net Benefits	2.2	5.1	5.8	(3.4)	(1.9)
Total Net Benefits	4.0	9.3	10.3	6.4	9.2

Note: This table presents the costs and benefits associated with air cleaners shipped from the compliance year through 2057. These results include benefits to consumers which accrue after 2057 from the products shipped starting in the compliance year up through 2057.

* 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. To monetize the benefits of reducing greenhouse gas emissions this analysis uses the interim 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 Interagency Working Group on the Social Cost of Greenhouse Gases (IWG).

** 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 sets of SC–GHG estimates.

TABLE II.2—SUMMARY OF ANALYTICAL RESULTS FOR AIR CLEANER TSLS: MANUFACTURER AND CONSUMER IMPACTS

Category	TSL 1	TSL 2	TSL 3		TSL 4	TSL 5
			Tier 1	Tier 2		
Manufacturer Impacts						
Industry NPV (million 2021$) (No-new-standards case INPV = 1,565.9)	1,528 to 1,536	1,504 to 1,528	1,479 to 1,479	1,499 to 1,525	1,422 to 1,536	1,394 to 1,574

[7] 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 1, 2021).

TABLE II.2—SUMMARY OF ANALYTICAL RESULTS FOR AIR CLEANER TSLS: MANUFACTURER AND CONSUMER IMPACTS—Continued

Category	TSL 1	TSL 2	TSL 3		TSL 4	TSL 5
			Tier 1	Tier 2		
Industry NPV (% change)	(2) to (2)	(4) to (2)	(2) to (2)	(4) to (3)	(9) to (2)	(11) to 1
Consumer Average LCC Savings (*2021$*)						
PC1: 10 ≤ $PM_{2.5}$ CADR < 100	$18	$12	$18	$12	($87)	($87)
PC2: 100 ≤ $PM_{2.5}$ CADR < 150	$38	$50	$38	$50	($60)	$11
PC3: $PM_{2.5}$ CADR ≥ 150	$105	$94	$105	$94	$29	$20
Shipment-Weighted Average *	$67	$62	$67	$62	($23)	($10)
Consumer Simple PBP (years)						
PC1: 10 ≤ $PM_{2.5}$ CADR < 100	0.9	1.4	0.9	1.4	NA	NA
PC2: 100 ≤ $PM_{2.5}$ CADR < 150	0.4	0.5	0.4	0.5	NA	1.6
PC3: $PM_{2.5}$ CADR ≥ 150	0.1	0.1	0.1	0.1	0.3	0.3
Shipment-Weighted Average *	0.4	0.5	0.4	0.5	NA	NA
Percent of Consumers That Experience a Net Cost						
PC1: 10 ≤ $PM_{2.5}$ CADR < 100	0%	6%	0%	6%	88%	94%
PC2: 100 ≤ $PM_{2.5}$ CADR < 150	0%	0%	0%	0%	75%	54%
PC3: $PM_{2.5}$ CADR ≥ 150	0%	0%	0%	0%	50%	56%
Shipment-Weighted Average *	0%	1%	0%	1%	66%	65%

Parentheses indicate negative (−) values. The entry ''NA'' 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 2028.

DOE first considered TSL 5, which represents the max-tech efficiency levels for all the three product classes. Specifically, for all three product classes, DOE's expected design path for TSL 5 (which represents EL 4 for all product classes) incorporates cylindrical shaped filters and brushless direct current (''BLDC'') motors with an optimized motor-filter relationship. In particular, the cylindrical filter, which reduces the pressure drop across the filter because it allows for a larger surface area for the same volume of filter material, optimized with the size of the BLDC motor provides the improvement in efficiency at TSL 5 compared to TSL 4. TSL 5 would save an estimated 4.59 quads of energy, an amount DOE considers significant. Under TSL 5, the net present value (''NPV'') of consumer benefit would be −$1.9 billion using a discount rate of 7 percent, and −$4.5 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 5 are 145.7 million metric tons (''Mt'') of carbon dioxide (''CO_2''), 60.4 thousand tons of sulfur dioxide (''SO_2''), 231.0 thousand tons of nitrogen oxides(''NO_X''), 0.4 tons of mercury (''Hg''), 1,046.1 thousand tons of methane (''CH_4''), and 1.4 thousand tons of nitrous oxide(''N_2O''). The estimated monetary value of the climate benefits from reduced greenhouse gas (''GHG'') emissions (associated with the average social cost of GHG (''SC–GHG'') at a 3-percent discount rate) at TSL 5 is $6.9 billion. The estimated monetary value of the health benefits from reduced SO_2 and NO_X emissions at TSL 5 is $4.2 billion using a 7-percent discount rate and $11.6 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 $9.2 billion. Using a 3-percent discount rate for all benefits and costs, the estimated total NPV at TSL 5 is $14.0 billion. The estimated total NPV is provided for additional information, however, DOE primarily relies upon the NPV of consumer benefits when determining whether a standard level is economically justified.

At TSL 5, the average life-cycle cost (''LCC'') impact is a loss of $87 for Product Class 1 (10 ≤ $PM_{2.5}$ CADR < 100), an average LCC savings of $11 for Product Class 2 (100 ≤ $PM_{2.5}$ CADR < 150), and an average LCC savings of $20 for Product Class 3 ($PM_{2.5}$ CADR ≥ 150). The simple payback period cannot be calculated for Product Class 1 due to the max-tech EL not being cost effective compared to the baseline EL, and is 1.6 years for Product Class 2 and 0.3 years for Product Class 3. The fraction of consumers experiencing a net LCC cost is 94 percent for Product Class 1, 54 percent for Product Class 2 and 56 percent for Product Class 3.

For the low-income consumer group, the average LCC impact is a loss of $97 for Product Class 1, an average LCC loss of $9 for Product Class 2, and an average LCC loss of $7 for Product Class 3. The simple payback period cannot be calculated for Product Class 1 due to a higher annual operating cost for the selected EL than the cost for baseline units, and is 2.7 years and 0.5 years for Product Class 2 and Product Class 3, respectively. The fraction of low-income consumers experiencing a net LCC cost is 95 percent for Product Class 1, 64 percent for Product Class 2 and 67 percent for Product Class 3.

At TSL 5, the projected change in industry net present value (''INPV'') ranges from a decrease of $171.5 million to an increase of $8.1 million, which corresponds to a decrease of 11.0 percent and an increase of 0.5 percent, respectively. DOE estimates that industry may need to invest $145.2 million to comply with standards set at TSL 5.

At TSL 5, compliant models are typically designed to house a cylindrical filter, and the cabinets of these units are also typically cylindrical in shape. The move to cylindrical designs would require investment in new designs and new production tooling for most of the industry, as only 3 percent of units shipped meet TSL 5 today. Manufacturers would need to invest in both updated designs and updated cabinet tooling. The vast majority of product is made from injection molded plastic and DOE expects the need for new injection molding dies to drive conversion cost for the industry.

The Secretary concludes that at TSL 5 for air cleaners, the benefits of energy savings, emission reductions, and the estimated monetary value of the

emissions reductions would be outweighed by the economic burden on many consumers (negative LCC savings of Product Class 1, a majority of consumers with net costs for all three product classes, and negative NPV of consumer benefits), and the capital conversion costs and profit margin impacts that could result in reductions in INPV for manufacturers.

DOE next considered TSL 4, which represents the second highest efficiency levels. TSL 4 comprises EL 3 for all three product classes. Specifically, DOE's expected design path for TSL 4 incorporates many of the same technologies and design strategies as described for TSL 5. At TSL 4, all three product classes would incorporate cylindrical shaped filters and BLDC motors without an optimized motor-filter relationship. The cylindrical filter, which reduces the pressure drop across the filter because it allows for a larger surface area for the same volume of filter material, provides the improvement in efficiency at TSL 4 compared to TSL 3 which utilizes rectangular shaped filters and less efficient motor designs. TSL 4 would save an estimated 4.05 quads of energy, an amount DOE considers significant. Under TSL 4, the NPV of consumer benefit would be −$3.4 billion using a discount rate of 7 percent, and −$8.4 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 4 are 128.5 Mt of CO_2, 53.2 thousand tons of SO_2, 203.7 thousand tons of NO_X, 0.3 tons of Hg, 922.8 thousand tons of CH_4, and 1.2 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 4 is $6.1 billion. The estimated monetary value of the health benefits from reduced SO_2 and NO_X emissions at TSL 4 is $3.7 billion using a 7-percent discount rate and $10.2 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 4 is $6.4 billion. Using a 3-percent discount rate for all benefits and costs, the estimated total NPV at TSL 4 is $7.9 billion. The estimated total NPV is provided for additional information, however DOE primarily relies upon the NPV of consumer benefits when determining whether a standard level is economically justified.

At TSL 4, the average LCC impact is a loss of $87 for Product Class 1, an average LCC loss of $60 for Product Class 2 and an average savings of $29 for Product Class 3. The simple payback period cannot be calculated for Product Class 1 and Product Class 2 due to the higher annual operating cost compared to the baseline units, and is 0.3 years for Product Class 3. The fraction of consumers experiencing a net LCC cost is 88 percent for Product Class 1, 75 percent for Product Class 2 and 50 percent for Product Class 3.

For the low-income consumer group, the average LCC impact is an average loss of $95 for Product Class 1, an average LCC loss of $78 for Product Class 2 and an average savings of $2 for Product Class 3. The simple payback period cannot be calculated for Product Class 1 and Product Class 2 due to a higher annual operating cost for the selected EL than the cost for baseline units, and is 0.4 years for Product Class 3. The fraction of low-income consumers experiencing a net LCC cost is 89 percent for Product Class 1, 82 percent for Product Class 2 and 61 percent for Product Class 3.

At TSL 4, the projected change in INPV ranges from a decrease of $143.7 million to a decrease of $30.2 million, which correspond to decreases of 9.2 percent and 1.9 percent, respectively. Industry conversion costs could reach $136.6 million at this TSL.

At TSL 4, compliant models are typically designed to house a cylindrical filter, and the cabinets of these units are also typically cylindrical in shape—much like TSL 5. Again, the major driver of impacts to manufacturers is the move to cylindrical designs, requiring redesign of products and investment in new production tooling for most of the industry, as only 7 percent of sales meet TSL 4 today.

Based upon the above considerations, the Secretary concludes that at TSL 4 for air cleaners, the benefits of energy savings, emission reductions, and the estimated monetary value of the health benefits and climate benefits from emissions reductions would be outweighed by negative LCC savings for Product Class 1 and Product Class 2, the high percentage of consumers with net costs for all product classes, negative NPV of consumer benefits, and the capital conversion costs and profit margin impacts that could result in reductions in INPV for manufacturers. Consequently, the Secretary has tentatively concluded that TSL 4 is not economically justified.

DOE then considered the recommended TSL (TSL3), which represents the Joint Proposal with EL 1 (Tier 1) going into effect in 2024 (compliance date December 31, 2023) and EL 2 (Tier 2) going into effect in 2026 (compliance date December 31, 2025). EL 1 comprises the lowest EL considered which aligns with the standards established by the States of Maryland, Nevada, and New Jersey, and the District of Columbia. EL 2 comprises the current ENERGY STAR V. 2.0 level and the standard adopted by the State of Washington. DOE's design path for TSL 3, which includes both EL 1 and EL 2 for all three product classes, includes rectangular shaped filters and either shaded-pole motors (''SPM'') or permanent split capacitor motors (''PSC''). Specifically, for Product Class 1, the Tier 1 standard, which is represented by EL 1, includes a rectangular filter and SPM motor with an optimized motor-filter relationship while the Tier 2 standard, which is represented by EL 2, includes a rectangular filter and PSC motor, which is generally more efficient than an SPM motor. For Product Class 2 and Product Class 3, the Tier 1 standard, which is represented by EL 1, includes a rectangular filter and PSC motor while the Tier 2 standard, which is represented by EL 2, also includes a rectangular filter and PSC motor but with an optimized motor-filter relationship, which improves the efficiency of EL 2 over EL 1. TSL 3 would save an estimated 1.80 quads of energy, an amount DOE considers significant. Under TSL 3, the NPV of consumer benefit would be $13.7 billion using a discount rate of 7 percent, and $5.8 billion using a discount rate of 3 percent.

The cumulative emissions reductions at the recommended TSL are 57.7 Mt of CO_2, 24.2 thousand tons of SO_2, 91.2 thousand tons of NO_X, 0.2 tons of Hg, 411.4 thousand tons of CH_4, and 0.6 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 the recommended TSL is $2.8 billion. The estimated monetary value of the health benefits from reduced SO_2 and NO_X emissions at the recommended TSL is $1.8 billion using a 7-percent discount rate and $4.7 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 the recommended TSL is $10.3 billion. Using a 3-percent discount rate for all benefits and costs,

the estimated total NPV at TSL 3 is $21.1 billion. The estimated total NPV is provided for additional information, however DOE primarily relies upon the NPV of consumer benefits when determining whether a standard level is economically justified.

At the recommended TSL with the two-tier approach, the average LCC impacts are average savings of $18 and $12 for Product Class 1, $38 and $50 for Product Class 2, and $105 and $94 for Product Class 3, for Tier 1 and Tier 2 respectively. The simple payback periods are below 1.4 years for the two tiers of Product Class 1, below 0.5 years for the two tiers of Product Class 2, and 0.1 for the two tiers of Product Class 3. The fraction of consumers experiencing a net LCC cost is below 6 percent for the two tiers of all three product classes.

For the low-income consumer group, the average LCC impact is a savings of $17 and $10 for the two tiers of Product Class 1, $34 and $44 for the two tiers of Product Class 2, and $85 and $76 for the two tiers of Product Class 3. The simple payback periods for the two-tier approach are 1.2 years for Tier 1 and 1.9 years for Tier 2 for Product Class 1, are 0.6 years and 0.7 years for Tier 1 and Tier 2 respectively for Product Class 2, and is 0.2 years for both tiers of Product Class 3. The fraction of low-income consumers experiencing a net LCC cost is 10 percent for Tier 2 of Product Class 1, and 0 percent for Tier 1 of Product Class 1 and all other tiers of the other product classes.

At the recommended TSL, the projected change in INPV ranges from a decrease of $66.7 million to a decrease of $40.7 million, which correspond to decreases of 4.3 percent and 2.6 percent, respectively. Industry conversion costs could reach $57.3 million at this TSL.

A sizeable portion of the market, approximately 40 percent, can currently meet the Tier 2 level. Additionally, a substantial portion of existing models can be updated to meet Tier 2 through optimization and improved components rather than a full product redesign. In particular, manufacturers may be able to leverage their existing cabinet designs, reducing the level of investment necessitated by the standard.

An even larger portion of the market, approximately 76 percent, can meet the Tier 1 level today. Efficiency improvements to meet Tier 1 are achievable by improving the motor or by optimizing the motor-filter relationship, typically by reducing the restriction of airflow (and therefore, the pressure drop across the filter) by increasing the surface area of the filter, reducing filter thickness, and/or increasing air inlet/outlet size. Manufacturers may be able to leverage their existing cabinet designs, reducing the level of investment necessitated by the standard.

After considering the analysis and weighing the benefits and burdens, the Secretary has concluded that at a standard set at the recommended TSL for air cleaners would be economically justified. At this TSL, the average LCC savings for all three product classes are positive. Only an estimated 6 percent of Product Class 1 consumers experience a net cost. No Product Class 2 and Product Class 3 consumers would experience net cost based on the estimates. The FFC national energy savings are significant and the NPV of consumer benefits is positive using both a 3-percent and 7-percent discount rate. At the recommended TSL, the NPV of consumer benefits, even measured at the more conservative discount rate of 7 percent, is over 84 times higher than the maximum estimated manufacturers' loss in INPV. The standard levels at the recommended TSL are economically justified even without weighing the estimated monetary value of emissions reductions. When those emissions reductions are included—representing $2.8 billion in climate benefits (associated with the average SC–GHG at a 3-percent discount rate), and $4.7 billion (using a 3-percent discount rate) or $1.8 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 new energy conservation standards, DOE notes that as compared to TSL 4 and TSL 5, TSL 3 has positive LCC savings for all selected standards levels, a shorter payback period, smaller percentages of consumers experiencing a net cost, a lower maximum decrease in INPV, and lower manufacturer conversion costs.

Although DOE considered new standard levels for air cleaners by grouping the efficiency levels for each product class into TSLs, DOE analyzes and evaluates all possible ELs for each product class in its analysis. For all three product classes, the adopted standard levels represent units with rectangular filter shape with a PSC motor at EL 1 and an optimized motor-filter relationship at EL 2. Additionally, for all three product classes the adopted standard levels represent the maximum energy savings that does not result in a large percentage of consumers experiencing a net LCC cost. TSL 3 would also realize an additional 0.07 quads FFC energy savings compared to TSL 2, which selects the same standard levels but with a later compliance date. The efficiency levels at the specified standard levels result in positive LCC savings for all three 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 concluded these levels are economically justified, as discussed for TSL 3 in the preceding paragraphs.

Therefore, based on the previous considerations, DOE adopts the energy conservation standards for air cleaners at the recommended TSL. The new energy conservation standards for air cleaners, which are expressed in IEF using $PM_{2.5}$ CADR/W, are shown in Table II.3.

TABLE II.3—NEW ENERGY CONSERVATION STANDARDS FOR AIR CLEANERS

Product class	IEF ($PM_{2.5}$ CADR/W)	
	Tier 1	Tier 2
PC1: $10 \leq PM_{2.5}$ CADR < 100	1.7	1.9
PC2: $100 \leq PM_{2.5}$ CADR < 150	1.9	2.4
PC3: $PM_{2.5}$ CADR ≥ 150	2.0	2.9

B. Annualized Benefits and Costs of the Adopted Standards

The benefits and costs of the adopted 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 adopted 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.

Table II.4 shows the annualized values for air cleaners under the recommended TSL, 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 standards adopted in this rule is $19.8 million per year in increased product costs, while the estimated annual benefits are $499 million in reduced product operating costs, $136 million in climate benefits, and $149 million in health benefits. In this case, the net benefit amounts to $764 million per year.

Using a 3-percent discount rate for all benefits and costs, the estimated cost of the standards is $23.4 million per year in increased equipment costs, while the estimated annual benefits are $690 million in reduced operating costs, $136 million in climate benefits, and $228 million in health benefits. In this case, the net benefit amounts to $1,030 million per year.

TABLE II.4—ANNUALIZED BENEFITS AND COSTS OF ADOPTED STANDARDS (RECOMMENDED TSL) FOR AIR CLEANERS

	Million 2021$/year		
	Primary estimate	Low-net-benefits estimate	High-net-benefits estimate
3% discount rate			
Consumer Operating Cost Savings	689.7	623.7	773.4
Climate Benefits *	135.6	124.2	149.9
Health Benefits **	228.4	210.1	251.0
Total Benefits †	1,053.6	958.1	1,174.2
Consumer Incremental Product Costs ‡	23.4	22.8	24.7
Net Benefits	1,030.2	935.3	1,149.5
7% discount rate			
Consumer Operating Cost Savings	498.8	459.8	546.9
Climate Benefits * (3% discount rate)	135.6	124.2	149.9
Health Benefits **	149.3	139.7	160.9
Total Benefits †	783.7	723.7	857.7
Consumer Incremental Product Costs ‡	19.8	19.3	20.7
Net Benefits	763.9	704.4	837.0

Note: This table presents the costs and benefits associated with air cleaners shipped in 2024–2057. These results include benefits to consumers which accrue after 2057 from the products shipped in 2024–2057. 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.F.1of 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 proposed rule). 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 sets of SC–GHG estimates. To monetize the benefits of reducing greenhouse gas emissions this analysis uses the interim 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 Interagency Working Group on the Social Cost of Greenhouse Gases (IWG).

** 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 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.

‡ Costs include incremental equipment costs as well as filter costs.

III. Public Participation

A. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule unit 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.

Although DOE welcomes comments on any aspect of the proposal in this notice and the analysis as described in the direct final rule published elsewhere in this **Federal Register**, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

1. The product classes established for air cleaners. See section IV.A.1 of the direct final rule published elsewhere in this **Federal Register**.

2. The technology options identified to improve the efficiency of air cleaners and whether there are additional technologies available that may improve air cleaner performance. See section IV.A.2 of the direct final rule published elsewhere in this **Federal Register**.

3. The baseline efficiency levels DOE identified for each product class. See section IV.C.1.a of the direct final rule published elsewhere in this **Federal Register**.

4. The max-tech efficiency levels DOE identified for each product class and the technology options available at max-tech. See section IV.C.1.b of the direct

final rule published elsewhere in this **Federal Register**.

5. The incremental manufacturer production costs DOE estimated at each efficiency level for each product class. See section IV.C.3 of the direct final rule published elsewhere in this **Federal Register**.

6. The filter costs DOE estimated at each efficiency level for each product class. See section IV.C.3 of the direct final rule published elsewhere in this **Federal Register**.

7. Consumer usage data to indicate annual energy use by household or commercial building including: average number of air cleaners per household or average number of air cleaners per commercial building square footage; average number of usage hours per day; average number months of operation per year; average number of filter changes per year; and most common fan setting. See section IV.E of the direct final rule published elsewhere in this **Federal Register**.

8. Historical shipments data and shipments growth rate by efficiency level and product class for both the residential and commercial markets. See section IV.G of the direct final rule published elsewhere in this **Federal Register**.

9. Product conversion costs, which are investments in research and development, product testing, marketing, and other non-capitalized costs necessary to update product designs to comply with energy conservation standards. See section IV.J.2.c of the direct final rule published elsewhere in this **Federal Register**.

10. Capital conversion costs, which are investments in property, plant, and equipment necessary to adapt or change existing manufacturing facilities such that compliant product designs can be fabricated and assembled. See section IV.J.2.c of the direct final rule published elsewhere in this **Federal Register**.

Submitting comments via *www.regulations.gov.* The *www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (''CBI'')). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or postal mail. Comments and documents submitted via email, hand delivery/courier, or postal mail also will be posted to *www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via postal mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No telefacsimiles (''faxes'') will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file 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).

B. Public Meeting

As stated previously, if DOE withdraws the direct final rule published elsewhere in this **Federal Register** pursuant to 42 U.S.C. 6295(p)(4)(C), DOE will hold a public meeting to allow for additional comment on this proposed rule. DOE will publish notice of any meeting in the **Federal Register**.

IV. Procedural Issues and Regulatory Review

The regulatory reviews conducted for this proposed rule are identical to those conducted for the direct final rule published elsewhere in this **Federal Register**. Please see the direct final rule for further details.

A. 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'') and a final regulatory flexibility analysis (''FRFA'') 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 (*www.energy.gov/gc/office-general-counsel*). DOE has prepared the following FRFA for the products that are the subject of this proposed rulemaking.

For manufacturers of air cleaners, 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 air cleaners is classified under NAICS 335210, ''Small Electrical 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

On July 15, 2022, DOE published a final determination (''July 2022 Final Determination'') in which it determined that air cleaners qualify as a ''covered product'' under EPCA.[8] 87 FR 42297. DOE determined in the July 2022 Final Determination that coverage of air cleaners is necessary or appropriate to carry out the purposes of EPCA, and that the average U.S. household energy use for air cleaners is likely to exceed 100 kWh/yr. *Id.* Currently, no energy conservation standards are prescribed by DOE for air cleaners.

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 significant conservation of energy. (42 U.S.C. 6295(o)(3)(B))

As previously mentioned, and the requirements under 42 U.S.C. 6295(p)(4)(A)–(B), DOE is issuing this NOPR proposing energy conservation standards for air cleaners. These standard levels were submitted jointly to DOE on August 23, 2022, by groups representing manufacturers, energy and environmental advocates, and consumer groups, hereinafter referred to as ''the Joint Stakeholders''. This collective set of comments, titled ''Joint Statement of Joint Stakeholder Proposal On Recommended Energy Conservation Standards And Test Procedure For Consumer Room Air Cleaners'' (the ''Joint Proposal''), recommends specific energy conservation standards for air cleaners that, in the commenters' view, would satisfy the EPCA requirements in 42 U.S.C. 6295(o).

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. DOE has determined the coverage of air cleaners is necessary or appropriate to carry out the purposes of EPCA. 87 FR 42297. Furthermore, once a product is determined to be a covered product, the Secretary may establish standards for such product, subject to the provisions in 42 U.S.C. 6295(o) and (p), provided that DOE determines that the additional criteria at 42 U.S.C. 6295(*l*) and 42 U.S.C. 6295(p) have been met.

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 air cleaners. DOE began its assessment by reviewing Association of Home Appliance Manufacturers' (AHAM's) database[9] of air cleaners, models in ENERGY STAR V.2.0,[10] California Air Resources Board,[11] and individual company websites. DOE then consulted publicly available data, such as manufacturer websites, manufacturer specifications and product literature, and import/export logs (*e.g.,* bills of lading from Panjiva[12]), to identify original equipment manufacturers (''OEMs'') of air cleaners. DOE further relied on public data and subscription-based market research tools (*e.g.,* Dun & Bradstreet reports[13]) to determine company, location, headcount, and annual revenue. 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 43 OEMs that sell air cleaners in the United States. Of the 43 OEMs identified, DOE tentatively determined four companies qualify as small businesses and are not foreign-owned and operated.

4. Description and Estimate of Compliance Requirements Including Differences in Cost, if Any, for Different Groups of Small Entities

DOE identified four small, domestic OEMs based on models in the ''List of CARB-Certified Air Cleaning Devices''[14] and through individual company website searches. The four companies had limited technical specifications available in their public documents. However, in some cases, DOE was able to determine likely product performance based on the available specifications, component information, and filter design.

For the first small business, DOE believes the company's range of products are likely within the scope of the test procedure and subject to the energy conservation standard. These products would meet Tier 2 levels based on the available design information. The second small business has two models that are likely within the scope of the test procedure and subject to the energy conservation standard. Again, DOE has reviewed the publicly available

[8] 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.

[9] Association of Home Appliance Manufacturers. ''Find a Certified Room Air Cleaner.'' Available at: *https://ahamverifide.org/directory-of-air-cleaners/* Last accessed January 24, 2022.

[10] Available at: *https://data.energystar.gov/Active-Specifications/ENERGY-STAR-Certified-Room-Air-Cleaners/jmck-i55n/data.* Last accessed May 31, 2022.

[11] The California Air Resources Board. ''List of CARB-Certified Air Cleaning Devices.'' Available at: *https://ww2.arb.ca.gov/list-carb-certified-air-cleaning-devices* Last accessed May 31, 2022

[12] S&P Global. Panjiva Market Intelligence is available at: *panjiva.com/import-export/United-States* (Last accessed May 5, 2022).

[13] The Dun & Bradstreet Hoovers login is available at *app.dnbhoovers.com.*

[14] The California Air Resources Board. ''List of CARB-Certified Air Cleaning Devices.'' Available at: *https://ww2.arb.ca.gov/list-carb-certified-air-cleaning-devices* Last accessed May 31, 2022

information and determined that both models would likely meet Tier 2 levels.

DOE determined that the third small business has two models that are within the scope of the test procedure and subject to the energy conservation standard. DOE suspects these two models would likely meet Tier 1, but not Tier 2 standards. DOE determined the fourth small business likely has five models that are within the scope of the test procedure and subject to the energy conservation standard. Based on the product specifications, three of those models may need redesign to meet Tier 2 standards.

To meet the required efficiencies, DOE estimated conversion costs for the third small business by using model counts to scale the industry conversion costs. The third small business accounts for 0.1 percent of models on the market that DOE identified. Based on a review of publicly available information, DOE believes the first small business utilizes soft tooling and flexible manufacturing techniques for production. Therefore, DOE anticipates this small manufacturer would have limited capital expenditures. To be conservative, DOE assumes this small manufacturer accounts to 0.1 percent of industry capital conversion costs at TSL 3, totaling $10,350. Product conversion costs may be necessary for developing, qualifying, sourcing, and testing new components. To be conservative, DOE assumed the manufacturer would incur 1 percent of industry product conversion costs. DOE estimates that the third small business may incur $10,350 in capital conversion costs and $18,000 in product conversion costs to meet Tier 2 standards for those two models. Based on subscription-based market research reports,[15] the first small business has an annual revenue of approximately $1.31 million. The total conversion costs of $28,350 are approximately 0.7 percent of the third small business's revenue over the 3-year conversion period.

Based on a review of publicly available information, DOE estimated conversion costs for the fourth small business by using model counts to scale the industry conversion costs. The third small business accounts for 0.4 percent of models on the market that DOE identified. To be conservative, DOE assumed 1 percent of industry capital conversion costs and 1 percent of industry product conversion costs for the relevant product classes at TSL 3 would be attributable to this small business. The conversion costs total $121,500. Based on subscription-based market research reports,[16] the fourth small business has an annual revenue of approximately $272.64 million. The total conversion costs of $121,500 are approximately 0.01 percent of the first small business's revenue over the 3-year conversion period.

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 rule being considered.

6. Significant Alternatives to the Rule

The discussion in the previous section analyzes impacts on small businesses that would result from the adopted standards, represented by TSL 3. In reviewing alternatives to the adopted standards, DOE examined energy conservation standards set at lower efficiency levels. While TSL 1 and TSL 2 would reduce the impacts on small business manufacturers, it would come at the expense of a reduction in energy savings. TSL 1 achieves 29 percent lower energy savings compared to the energy savings at TSL 3. TSL 2 achieves 18 percent lower energy savings compared to the energy savings at TSL 3.

Establishing standards at TSL 3 balances the benefits of the energy savings at TSL 3 with the potential burdens placed on air cleaner manufacturers, including small business manufacturers. Accordingly, DOE is not adopting 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 direct final rule 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.

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed rulemaking.

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 March 22, 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 March 24, 2023.

Treena V. Garrett,

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

For the reasons stated 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. Section 5.1.2 of appendix FF to subpart B of part 430 is revised to read as follows:

Appendix FF to Subpart B of Part 430–Uniform Test Method for Measuring the Energy Consumption of Air Cleaners

* * * * *

5. Active Mode CADR and Power Measurement

* * * * *

5.1.2. For determining compliance only with the standards specified in 10

[15] D&B Hoovers | Company Information | Industry Information | Lists, *app.dnbhoovers.com/* (Last accessed November 29, 2022).

[16] D&B Hoovers | Company Information | Industry Information | Lists, *app.dnbhoovers.com/* (Last accessed November 29, 2022).

CFR 430.32(ee)(1), $PM_{2.5}$ CADR may alternately be calculated using the smoke CADR and dust CADR values determined according to Sections 5 and 6, respectively, of AHAM AC–1–2020, according to the following equation:

$$PM_{2.5}CADR = \sqrt{Smoke\ CADR\ (0.1 - 1\ \mu m) \times Dust\ CADR\ (0.5 - 3\ \mu m)}$$

* * * * *

■ 3. Amend § 430.32 by adding paragraph (ee) to read as follows:

§ 430.32 Energy and water conservation standards and their compliance dates.

* * * * *

(ee) *Air Cleaners.*

(1) Conventional room air cleaners as defined in § 430.2 with a $PM_{2.5}$ clean air delivery rate (CADR) between 10 and 600 (both inclusive) cubic feet per minute (cfm) and manufactured on or after December 31, 2023 and before December 31, 2025, shall have an integrated energy factor (IEF) in $PM_{2.5}$ CADR/W, as determined in § 430.23(hh)(4) that meets or exceeds the following values:

Product capacity	IEF ($PM_{2.5}$ CADR/W)
(i) $10 \leq PM_{2.5}$ CADR < 100 ..	1.7
(ii) $100 \leq PM_{2.5}$ CADR < 150	1.9
(iii) $PM_{2.5}$ CADR ≥ 150	2.0

(2) Conventional room air cleaners as defined in § 430.2 with a $PM_{2.5}$ clean air delivery rate (CADR) between 10 and 600 (both inclusive) cubic feet per minute (cfm) and manufactured on or after December 31, 2025, shall have an integrated energy factor (IEF) in $PM_{2.5}$ CADR/W, as determined in § 430.23(hh)(4) that meets or exceeds the following values:

Product capacity	IEF ($PM_{2.5}$ CADR/W)
(i) $10 \leq PM_{2.5}$ CADR < 100 ..	1.9
(ii) $100 \leq PM_{2.5}$ CADR < 150	2.4
(iii) $PM_{2.5}$ CADR ≥ 150	2.9

[FR Doc. 2023–06498 Filed 4–10–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Part 474

[EERE–2021–VT–0033]

RIN 1904–AF47

Petroleum-Equivalent Fuel Economy Calculation

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

ACTION: Notice of proposed rulemaking; request for comment.

SUMMARY: The U.S. Department of Energy (''DOE'') proposes to revise its regulations regarding procedures for calculating a value for the petroleum-equivalent fuel economy of electric vehicles (or ''EVs'') for use in the Corporate Average Fuel Economy (CAFE) program administered by the Department of Transportation (DOT). This Notice of proposed rulemaking (''NOPR'') also grants a petition for rulemaking submitted by the Natural Resources Defense Council (NRDC) and Sierra Club and responds to comments submitted on that petition.

DATES: DOE will accept comments regarding this NOPR on or before June 12, 2023. See section IV, ''Public Participation,'' for details.

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 RIN 1904–AF47, by any of the following methods:

Federal eRulemaking Portal: www.regulations.gov/docket/EERE-2021-VT-0033. Follow the instructions for submitting comments.

Email: pefpetition2021vt0033@ee.doe.gov. Include the RIN 1904–AF47 in the subject line of the message.

Postal Mail: U.S. Department of Energy, 1904–AF47, 1000 Independence Avenue SW, Washington, DC 20585. 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: U.S. Department of Energy, Attention: Kevin Stork, 1000 Independence Avenue SW, Room 5G–030, Washington, DC 20585. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimilies (faxes) will be accepted. For detailed instructions on submitting comments and additional information on the rulemaking process, see section IV, Public Participation, for details.

Docket: The docket, 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 page can be found at the *www.regulations.gov* web page associated with RIN 1904–AF47. The docket web page contains simple instructions on how to access all documents, including public comments, in the docket. See Public Participation for information on how to submit comments through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

Mr. Kevin Stork, U.S. Department of Energy, Vehicle Technologies Office, EE–3V, 1000 Independence Avenue SW, Washington, DC 20585. Telephone: (202) 586–8306. Email: *Kevin.Stork@ee.doe.gov.*

Mr. Matthew Ring, U.S. Department of Energy, Office of the General Counsel, Forrestal Building, GC–33, 1000 Independence Avenue SW, Washington, DC 20585. Telephone: (202) 586–2555. Email: *Matthew.Ring@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

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I. Introduction

In an effort to conserve energy through improvements in the energy efficiency of motor vehicles, Congress, in 1975, passed the Energy Policy and Conservation Act (EPCA), Public Law 94–163. Title III of EPCA amended the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 *et seq.*) (the Motor Vehicle Act) by mandating fuel economy standards for automobiles produced in, or imported into, the United States. This legislation, as amended, requires that every manufacturer meet applicable specified corporate average fuel economy (CAFE) standards for their fleets of light-duty vehicles under 8,500 lbs. that the

manufacturer manufactures in any model year.[1] The Secretary of Transportation (through the National Highway Traffic Safety Administration, or NHTSA) is responsible for prescribing the CAFE standards and enforcing the penalties for failure to meet these standards. (49 U.S.C. 32902). The Administrator of the Environmental Protection Agency (EPA) is responsible for calculating a manufacturer's CAFE value. (49 U.S.C. 32902 and 32904)

On January 7, 1980, President Carter signed the Chrysler Corporation Loan Guarantee Act of 1979 (Pub. L. 96–185). Section 18 of the Chrysler Corporation Loan Guarantee Act of 1979 added a new paragraph (2) to section 13(c) of the Electric and Hybrid Vehicle Research, Development, and Demonstration Act of 1976 (Pub. L. 94–413). Part of the new section 13(c) added paragraph (a)(3) to section 503 of the Motor Vehicle Act. That subsection, now codified at 49 U.S.C. 32904(a)(2), provides that, if a manufacturer manufactures an electric vehicle, [2] the Administrator of EPA must include in the calculation of average fuel economy the equivalent petroleum-based fuel economy values determined by the Secretary of Energy for various classes of electric vehicles. (49 U.S.C. 32904(a)(2)(B)) The Secretary of Energy must review those values each year and determine and propose necessary revisions based on the following factors:

(i) The approximate electrical energy efficiency of the vehicle, considering the kind of vehicle and the mission and weight of the vehicle.

(ii) The national average electrical generation and transmission efficiencies.

(iii) The need of the United States to conserve all forms of energy and the relative scarcity and value to the United States of all fuel used to generate electricity.

(iv) The specific patterns of use of electric vehicles compared to petroleum-fueled vehicles.

Id.

Section 18 of the Chrysler Corporation Loan Guarantee Act of 1979 further amended the Electric and Hybrid Vehicle Research, Development and Demonstration Act of 1976 by adding a new paragraph (3) to section 13(c) that directed the Secretary of Energy, in consultation with the Secretary of Transportation and the Administrator of the Environmental Protection Agency, to conduct a seven-year evaluation program of the inclusion of electric vehicles in the calculation of average fuel economy. In May 1980, as required by section 503(a)(3) of the Motor Vehicle Act, DOE proposed a method of calculating the petroleum-equivalent fuel economy of electric vehicles utilizing a ''petroleum equivalency factor'' or ''PEF'' in a new 10 CFR part 474 on May 21, 1980. 45 FR 34008. The rule was finalized on April 21, 1981, and effective May 21, 1981. 46 FR 22747. The seven-year evaluation program was completed in 1987, and the calculation of the annual petroleum equivalency factors was not extended past 1987.

DOE published a proposed rule for a permanent PEF for use in calculating petroleum-equivalent fuel economy values of electric vehicles on February 4, 1994 (59 FR 5336) and obtained oral and written comments from interested parties. Following consideration of comments, DOE's own internal re-examination of the assumptions underlying the proposed rule, and existing regulations for other classes of alternative fuel vehicles, DOE decided to modify the PEF calculation approach proposed in 1994. The 1994 proposed rule was withdrawn, and DOE proposed a modified approach in a July 14, 1999, notice of proposed rulemaking (1999 NOPR). 64 FR 37905. DOE published a final rule on June 12, 2000, amending 10 CFR part 474 (June 2000 Final Rule). 65 FR 36985. The PEF adopted by DOE in the 2000 Final Rule is based, in part, on the existing regulatory approach at 49 U.S.C. 32905, which provides procedures determining the petroleum-equivalent fuel economy of non-EV alternative fueled vehicles.[3] The calculation procedure converts the measured electrical energy consumption of an electric vehicle into a raw gasoline-equivalent fuel economy value, and then divides this value by 0.15 to arrive at a final petroleum-equivalent fuel economy value which may then be included in the calculation of the manufacturer's corporate average fuel economy. 65 FR 36985, 36987. DOE also included a provision for DOE to review part 474 five years after the date of publication of the June 2000 Final Rule to determine whether any updates and/or revisions are necessary. *See* 10 CFR 474.5. DOE has not updated part 474 since the June 2000 Final Rule.

On October 22, 2021, DOE received a petition for rulemaking from the Natural Resources Defense Council (NRDC) and Sierra Club (Petitioners) requesting that DOE update its regulations at 10 CFR part 474. In their petition, the Petitioners propose that DOE should update its regulations for calculating the PEF for electric vehicles. Petitioners assert that the data underlying the current regulation are outdated, resulting in higher imputed values of fuel economy for electric vehicles. The Petitioners assert that with this higher imputed value, a smaller number of Evs enable fleetwide compliance at lower real-world average fuel economy across an automaker's overall fleet. The Petitioners assert that the PEF should be based upon statutory factors at 49 U.S.C 32904, rather than the existing regulatory approach based upon 49 U.S.C. 32905. The Petitioners requested that DOE review the PEF calculation and approach and work with NHTSA to ensure PEF regulations support the goals of the CAFE program (as described by the Petitioners). DOE published notice of receipt of the petition on December 29, 2021 and solicited comment on the petition and whether DOE should proceed with a rulemaking. 86 FR 73992. DOE received 10 comments on the petition from interested stakeholders.

In light of the petition and supporting comments, and for reasons discussed later in this document, DOE grants the petition from NRDC and Sierra Club and is undertaking this proposed rulemaking to update part 474. DOE agrees with the Petitioners that the inputs upon which the calculations and PEF values in current part 474 are based are outdated, and the technology and market penetration of electric vehicles has significantly changed since part 474 was last updated in the 2000 Final Rule. As discussed further in section II of this document, DOE is proposing to update part 474 and the PEF values to reflect these changes in accordance with the statutory factors in 49 U.S.C. 32904(a)(2)(B).

II. Discussion of the Proposed Rule

A. Review Factors

In accordance with 49 U.S.C. 32904, DOE has reviewed the current PEF value and approach in 10 CFR part 474. DOE's approach used to calculate the current

[1] The relevant provisions of the CAFE program, including DOE's establishment of equivalent petroleum-based fuel economy values were transferred to Title 49 of the U.S. Code by Public Law 103–272 (July 5, 1984). *See* 49 U.S.C. 32901 *et seq.* The authority for DOE's establishment of equivalent petroleum-based fuel economy values was transferred to 49 U.S.C. 32904(a)(2)(B).

[2] For purposes of paragraph (a)(2) of 49 U.S.C. 32904, EPCA defines an ''electric vehicle'' as ''a vehicle powered primarily by an electric motor drawing electrical current from a portable source.''

[3] 49 U.S.C. 32905 prescribes procedures for determining the petroleum-equivalent fuel economy of non-EV alternative fuel vehicles. Under section 32905, the petroleum equivalent fuel economy of E85 and M85 powered vehicles is determined by dividing the measured fuel economy value by a fuel content factor of 0.15. Section 32905 extends this approach to gaseous fueled vehicles (*e.g.,* compressed natural gas), whereby a conversion factor is applied, and the resulting figure divided by 0.15 to obtain the petroleum equivalent fuel economy.

PEF value is described in the June 2000 Final Rule. 65 FR 36987–36988. As discussed previously, in reviewing the PEF value, DOE must consider four factors, as enumerated in 49 U.S.C. 32904:

a. Energy efficiency of the electric vehicle,
b. National average electricity generation and transmission efficiency,
c. The need of the United States to conserve all forms of energy and the relative scarcity and value to the United States of all fuel used to generate electricity, and,
d. Driving patterns of electric vehicles compared to those of gasoline vehicles.

DOE reviewed the methodology used to develop the current PEF value and its approach in light of these factors and has tentatively concluded that some inputs should be updated to reflect more recent data, and that some components of the derived PEF value are not relevant to today's vehicles. DOE addresses its consideration of the statutory factors and DOE's conclusions in the following sections.

1. Energy Efficiency of the Electric Vehicle

In the June 2000 Final Rule, DOE established a methodology to measure the energy consumption of an EV in terms of gallons of gasoline based upon the electricity consumption quantified by using the Highway Fuel Economy Driving Schedule (HFEDS) and Urban Dynamometer Driving Schedule (UDDS) test cycles established by EPA at 40 CFR parts 86 and 600. *See* 10 CFR 474.3 and 474.4. Obtaining the value of electric efficiency (measured in Watt-hours per mile) is critical to translating the electrical energy efficiency of the EV into a petroleum-equivalent fuel economy using the PEF equation. *See, e.g.,* Example 1 of appendix A in 10 CFR part 474. DOE is proposing not to amend the testing requirements and use of the resulting value in the PEF equation. DOE believes the current methodology provides an accurate measure of the electrical energy efficiency of the relevant EV during typical use and is appropriately utilized in the PEF equation. DOE requests comment on its proposal not to amend the testing methodology under 10 CFR 474.4 and use of the resulting value for purposes of the PEF equation.

Additionally, the June 2000 Final Rule incorporated an accessory factor into the PEF calculation. This factor was added to the PEF calculation to account for petroleum-fueled on-board accessories, such as cabin heaters, defrosters, or air-conditioning. These accessories were envisioned as an approach to avoid low energy-density and/or low power-density limitations of battery technology at the time.[4] No EVs currently produced include such accessories, nor are future EVs likely to include them. Petroleum-fueled on-board accessories are distinct from gasoline consumption in plug-in hybrid electric vehicles, which are rated for fuel economy separately for charge-depleting and charge-sustaining modes of operation, with a fuel economy weighted according to the expected percentage of driving attributed to each mode. In this NOPR, DOE proposes to set this factor equal to 1.00 in its calculation. DOE may adjust this factor in the future if market conditions merit updates. DOE requests comment on its proposal to set the accessory factor at 1.00.

2. National Average Electricity Generation and Transmission Efficiency

To compare electricity and gasoline on an equivalent basis it is necessary to consider the full energy-cycle energy efficiency from the point of primary energy production through end-use to power a vehicle for both gasoline and electricity. This approach is necessary because electricity is generated upstream of the vehicle and stored onboard whereas conventional vehicles convert fuel to useful energy onboard the vehicle. Assessing the full energy cycle of electricity and conventional fuel requires a holistic approach to address energy conservation when energy losses occur at different stages of an energy cycle for different energy products and fuels, such as electricity and gasoline. In the June 2000 Final Rule, DOE included a term for expressing the relative energy efficiency of the full energy cycles of gasoline and electricity, the gasoline-equivalent energy content of electricity factor, which included factors to account for average fossil-fuel electricity generation efficiency, average electricity transmission efficiency, and petroleum refining and distribution efficiency. 65 FR 36987.

DOE agrees with the Petitioners that the inputs to account for the generation and transmission efficiency factor should be updated to reflect the most recent data. Therefore, DOE is proposing to update the inputs for generation and transmission efficiencies and relative grid mix projections to account for updated data and recent policy changes. Further description of DOE's proposed changes may be found in section II.B of this document. DOE requests comment on its proposal concerning the generation and transmission efficiency factor.

3. Need of the U.S. To Conserve Energy and Relative Scarcity and Value of Fuels

In handling the consideration of scarcity of resources, DOE focuses on the primary energy sources used to power conventional, hybrid-electric, and battery-electric vehicles—such as crude oil, natural gas, fissile nuclear material, sunlight, water, and wind—and considers their potential scarcity implications. Some energy sources are mined or otherwise produced (crude oil, natural gas, coal, uranium); others, such as sunlight and wind, are captured passively. Some sources are finite with energy resource depletion as a societal concern (*e.g.,* the fossil resources). Other primary energy sources are renewable and are not subject to resource depletion (*e.g.,* solar or wind energy). Yet other primary energy sources, such as uranium, are naturally abundant on a global basis, though not necessarily abundant domestically.[5]

In the 1999 NOPR and June 2000 Final Rule, DOE concluded that scarcity did not appear to be a concern and should not be a guiding factor in the PEF at that time. DOE arrived at this conclusion after conducting research on the issue based on comments received on the 1994 NOPR that were critical of DOE's prior consideration of scarcity. 64 FR 37907. In the 1994 NOPR, DOE included a scarcity factor as an intermediate factor that used a complex approach to quantify the relative scarcity and value of all fuels used to generate electricity in the United States. This proposed scarcity factor was based on estimates of the U.S. share of world reserves of fossil fuels and estimated rates of depletion of world reserves. The scarcity factor was derived by determining the U.S. percent and numeric share of the world reserve market and calculating the rate at which the United States is depleting each fuel

[4] For example, in the mid-1990s, the experimental Ford Ecostar vehicle, a two-door, small van, included a diesel-powered heater while being powered primarily by a sodium-sulfur battery with notable power density limitations and a very high operating temperature.

[5] The most recent ''Red Book'' assessment of uranium resources, periodically published jointly by the OECD Nuclear Energy Agency and the International Atomic Energy Agency, concludes that conventional uranium resources are sufficient ''to support even the most aggressive scenarios of growth in nuclear generating capacity. However, the majority of this in-ground uranium cannot be brought to the market without improved market conditions. Unattractive market conditions also slow uranium exploration investment, which, in turn, can affect further delineation of additional identified resources in the short term.'' (NEA (2020), Uranium 2020: Resources, Production and Demand, OECD Publishing, Paris, p.72). The same study assesses unconventional uranium resources, such as that in sea water, as ''almost inexhaustible'' (Ibid., p. 38.)

source's reserves. These values were then normalized to obtain the relative scarcity value for each fuel source. 59 FR 5338–5339. Nevertheless, DOE re-examined the scarcity issue in response to these comments, which led to DOE's removal of the scarcity factor from the 1999 NOPR and June 2000 Final Rule.

While DOE did not expressly incorporate scarcity in the 1999 NOPR and the June 2000 Final Rule, DOE added the current 1.0/0.15 fuel-content factor, in part, to help address scarcity issues by rewarding electric vehicles' benefits to the Nation relative to petroleum-fueled vehicles, in a manner consistent with the regulatory treatment of other types of alternative fueled vehicles and the authorizing legislation. *Id.* at 65 FR 36988. DOE explained that it chose the 1.0/0.15 ratio for the fuel-content factor (1) for consistency with existing regulatory and statutory procedures for alternative fuel vehicles under 49 U.S.C. 32905, (2) to provide similar treatment of all types of alternative fueled vehicles, and (3) for simplicity and ease of use in calculating the PEF. In the July 1999 NOPR, DOE examined 49 U.S.C. 32905, which prescribes procedures for determining the petroleum-equivalent fuel economy of non-EV alternative fueled vehicles. DOE noted that two of the most common light-duty liquid alternative fuels at that time were M85 (85 percent methanol and 15 percent unleaded gasoline by volume) and E85 (85 percent ethanol and 15 percent unleaded gasoline by volume).[6] Under section 32905, the petroleum equivalent fuel economy of E85 and M85 powered vehicles is determined by dividing the measured fuel economy value by 0.15. DOE also noted that section 32905 extends this approach to gaseous fueled vehicles (*e.g.,* compressed natural gas), whereby a conversion factor is applied, and the resulting figure divided by 0.15 to obtain the petroleum equivalent fuel economy. DOE commented in the July 1999 NOPR that the true energy efficiency of both liquid and gaseous fueled alternative fuel vehicles is intentionally and substantially overstated by the methods specified in section 32905, since only 15 percent of their actual energy consumption is accounted for in determining their petroleum-equivalent fuel economy, and that the use of the 0.15 factor for both vehicle types provides a similar regulatory treatment to both types of alternative fuel vehicles. DOE then determined to include the 1.0/0.15 factor into its PEF calculation, noting that this would be the most equitable approach among alternative fuel vehicles and that all alternative fuel types help the Nation avoid having all its transportation ''eggs'' in the petroleum ''basket.'' *Id.* DOE noted, however, that EVs would still enjoy favorable regulatory treatment under DOE's proposal because EVs are exempt from caps on the amount alternative fuel vehicles are allowed to contribute to raising a manufacturer's overall fleet fuel economy. *Id.* at 65 FR 36989.

Consistent with the requirements of section 32904, in this proposed rule, DOE has considered the need of the United States to conserve all forms of energy and the relative scarcity and value to the United States of all fuel used to generate electricity.[7] DOE recognizes the need of the nation to conserve all forms of energy, and more specifically, finite resources such as fossil fuels, including petroleum consumed by ICE vehicles. Supply and demand of fossil fuels can change rapidly and be subject to market constraints. In contrast, DOE notes that current and future sources of electricity generation are and will be in relative abundance, most notably due to recent market and policy changes (*e.g.,* the Infrastructure Investment and Jobs Act (Pub. L. 117–58) and the Inflation Reduction Act (117–169)) resulting in, and likely to further result in, growth and reliance on renewable sources of electricity generation which are not subject to resource depletion like fossil fuels.[8] See section II.B of this document for further discussion of these policy changes. DOE has preliminarily determined that there is a need to conserve finite energy resources, such as petroleum, given their limited nature and susceptibility to changing market constraints. Oil and petroleum fuels are a global market, and the nation is exposed to fluctuations in that global market. That the United States may produce more petroleum in a given period does not in and of itself protect the nation from the exposures it faces on the global market. Accordingly, the nation must conserve petroleum to guard against the exposures it faces in the global market. Moreover, DOE believes the current and future addition of renewable generation sources onto the grid allows for greater conservation of the finite resources, as renewable generation replaces those sources on the grid for use in electrified end uses, such as EVs. In this proposed rule, DOE is proposing changes to the PEF calculation (described more in this section) to address the need of the nation to conserve energy and the relative scarcity of fuels used to generate electricity consistent with these determinations.

As part of its review of the need to conserve all forms of energy and relative scarcity of fuels used to generate electricity, DOE reconsidered the inclusion of the fuel-content factor in the PEF equation and determined that the fuel-content factor is no longer warranted in deriving the PEF value. As noted previously, DOE added the current 1.0/0.15 fuel-content factor, in part, to help address scarcity issues by rewarding electric vehicles' benefits to the Nation relative to petroleum-fueled vehicles, in a manner consistent with the treatment of other types of alternative fueled vehicles. For the following reasons DOE believes the fuel content factor no longer accurately addresses the need to conserve energy and relative scarcity issues and is no longer appropriate for use in the PEF derivation:

- *The fuel content factor does not accurately represent current EV technology or market penetration.*

With the fuel content factor, the current PEF value is not representative of current EV technology, capabilities, and market penetration, and leads to overvaluation of EVs in determining CAFE fleet compliance that is not related to their actual fuel saving capabilities. Since the 2000 Final Rule, EV technology has matured substantially and the market share of EVs is now significant and growing. For example, sales of both plug-in hybrid-electric vehicles (PHEVs) and battery-electric vehicles (BEVs) combined in the United States have increased significantly in the past decade (from 18,000 per year in 2011 to over 600,000 per year in 2021),[9] while there have also been significant advances in driving range and available charging

[6] These percentages are nominal values not usually seen in practice. The percentage alcohol can vary widely due to gasoline volatility requirements. E85, for example, is typically a mixture of between 51% and 83% ethanol with the balance being gasoline. With specialized gasoline blendstocks 85% ethanol blending is possible. M85 fuel and vehicles are no longer available in the U.S.

[7] DOE also explored a ''scarcity approach'' based on proved reserves of primary energy resources to deriving the PEF value but is not proposing to use that approach due to significant uncertainties and typically high volatility in proved reserves data. *See* section II.D.5 of this document.

[8] DOE notes that, for purposes of this proposed rule, DOE views scarcity and the need to conserve energy mainly as a consideration of depletion of energy resources (*e.g.,* fossil fuels), and has not necessarily considered other concerns, such as environmental impacts, in reviewing this factor.

[9] *See* Gohlke, David, Yan Zhou, Xinyi Wu, and Calista Courtney. ''Assessment of Light-Duty Plug-in Electric Vehicles in the United States, 2010–2021.'' Argonne National Laboratory technical report ANL–22/71. November 2022. Available at *https://www.osti.gov/biblio/1898424.*

infrastructure.[10] Over the past 20 years, electrification technology for light-duty vehicles has seen significant advances in performance, efficiency, and cost reduction. Twenty years ago, battery electric vehicles were not generally available for mass-market sale in all U.S. markets, with models being limited to a handful of low-production vehicles generally only offered in California (such as the Toyota RAV4 EV, Chevrolet S–10 EV, and Ford Ranger EV) to meet state ZEV regulations,[11] or the GM EV–1, which could only be leased in select markets. Vehicles of this era were capable of less than 100 miles of range [12] and charging power was typically limited to 6.6kW [13] to 8kW.[14] Sales volumes were low, with the first-generation RAV4 EV selling a total of 328 units over six years of production.[15] Battery technology has improved significantly from early lead-acid and nickel-based chemistries, seeing energy density improve by more than four times, from 28 Wh/kg [16] to nearly 120 Wh/kg,[17] and pack costs reduced by 90% since 2008.[18] Vehicles with DC fast charging capability have begun to penetrate the market at an increasing rate,[19] with charge power levels of 150kW+ being common.[20] Recent trends in market penetration of plug-in electric vehicles (PHEVs and BEVs) suggest that demand for these vehicles is rapidly increasing, with monthly sales reaching 7.4% of all light-duty sales,[21] and with 32 BEV models available across eight manufacturers in September of 2022,[22] 14 with a range of 300 miles or greater.[23]

As zero-emission transportation policies have begun to be implemented across the world, some U.S. states have taken action to transition the light-duty vehicle fleet to zero-emissions technologies. In 2022, California finalized the Advanced Clean Cars II rule [24] that will require all new light-duty vehicles sold in the state to be zero-emission by 2035, with New York, Massachusetts, and Washington state following suit. Internationally, countries that have set a target of 100 percent light-duty zero-emission vehicle sales by 2035 represent at least 25 percent of today's global light-duty vehicle market,[25] and in late 2022 the European Union approved a measure to phase out sales of internal combustion engine (ICE) passenger vehicles in its 27 member countries by 2035.[26]

Additionally, recent Federal policy changes such as the Inflation Reduction Act [27] and the Infrastructure Investment and Jobs Act [28] provide significant incentives for EVs and other alternative fueled vehicles (as well as additional sources of non-petroleum energy) that make the current fuel-content factor redundant for purposes of incentivizing manufacture of such vehicles and conserving the energy resources of the nation.[29]

Over the past several years, automakers have increasingly incorporated a higher degree of electrification in their vehicle powertrains. All indications are that this trend will accelerate in the future. The diversity of partially- and fully-electrified vehicle offerings is increasing,[30] with combined offerings of PHEVs and BEVs nearly doubling from 31 models in 2016 to 60 models in 2021 [31] and expected to double again between 2022 and 2024.[32] Recent announcements from GM,[33] VW,[34] Honda,[35] Ford,[36] and Stellantis,[37] further attest to the trend of increasing electrification.

As used in the PEF value determination, the fuel content factor is not representative of this current EV technology nor current market penetration, but is instead based upon the fuel content of non-EV alternative fuel vehicles, which have significantly different technologies and penetration in the current market. As described more below in this section, counter to the need of the nation to conserve energy, including the fuel content factor in the PEF determination can lead to increased petroleum consumption. Moreover, as noted throughout this document, incentives for EV production and EV infrastructure have changed markedly since 2000, and DOE believes that treating EVs similarly to other alternative fuel vehicles in DOE's PEF rule is no longer appropriate.

• *The fuel content factor allows for continued production of inefficient ICE vehicles, thereby encouraging increased petroleum usage.*

Applying the current PEF value and equation to EVs results in miles per gallon equivalent ratings significantly higher than a similar ICE vehicle. For

[10] In 2021, the sales-weighted range for new BEVs was 290 miles—which is the highest value to date that it has ever been. Additionally, there are 49,509 public EV charging stations in the United States in the AFDC database. *Id.*

[11] *https://www.cnn.com/interactive/2019/07/business/electric-car-timeline/index.html.*

[12] *https://www.fueleconomy.gov/feg/Find.do?action=sbs&id=19296.*

[13] *https://www.thedrive.com/tech/38331/the-toyota-rav4-ev-was-a-breakthrough-electric-crossover-20-years-before-that-was-a-thing.*

[14] *https://www.motortrend.com/features/mercedes-benz-eqxx-gm-ev1-feature/.*

[15] *https://www.thedrive.com/tech/38331/the-toyota-rav4-ev-was-a-breakthrough-electric-crossover-20-years-before-that-was-a-thing.*

[16] *http://www.evchargernews.com/CD-A/gm_ev1_web_site/specs/specs_specs_top.htm.*

[17] *https://ev-database.org/car/1555/Tesla-Model-3.*

[18] *https://www.energy.gov/eere/vehicles/articles/fotw-1272-january-9-2023-electric-vehicle-battery-pack-costs-2022-are-nearly.*

[19] *https://electrek.co/2022/07/08/fastest-charging-evs/.*

[20] *Rapid charging electric vehicles—EV Database (ev-database.org) (https://ev-database.org/uk/compare/rapid-charging-electric-vehicle-quickest#sort:path~type~order=.fastcharge_speed~number~desc|range-slider-range:prev~next=0~600|range-slider-towweight:prev~next=0~2500|range-slider-acceleration:prev~next=2~23|range-slider-fastcharge:prev~next=0~1100|range-slider-eff:prev~next=150~500|range-slider-topspeed:prev~next=60~260|paging:currentPage=0|paging:number=9).*

[21] *https://www.energy.gov/eere/vehicles/articles/fotw-1275-january-30-2023-monthly-plug-electric-vehicle-sales-united-states.*

[22] *https://evadoption.com/ev-models/bev-models-currently-available-in-the-us/.*

[23] *https://www.energy.gov/eere/vehicles/articles/fotw-1253-august-29-2022-fourteen-model-year-2022-light-duty-electric.*

[24] California Air Resources Board, "California moves to accelerate to 100% new zero-emission vehicle sales by 2035," Press Release, August 25, 2022. Accessed on Nov. 3, 2022 at *https://ww2.arb.ca.gov/news/california-moves-accelerate-100-new-zero-emission-vehicle-sales-2035.*

[25] International Energy Agency, "Global EV Outlook 2022," p. 57, May 2022. Accessed on November 18, 2022 at *https://iea.blob.core.windows.net/assets/e0d2081d-487d-4818-8c59-69b638969f9e/GlobalElectricVehicleOutlook2022.pdf.*

[26] Reuters, "EU approves effective ban on new fossil fuel cars from 2035," October 28, 2022. Accessed on Nov. 2, 2022 at *https://www.reuters.com/markets/europe/eu-approves-effective-ban-new-fossil-fuel-cars-2035-2022-10-27/.*

[27] Public Law 117–169 (2022).

[28] Public Law 117–58 (2021).

[29] *See also* Executive Order 14037, "Strengthening American Leadership in Clean Cars and Trucks" (August 5, 2021). 86 FR 43583.

[30] Muratori, Matteo, et al., "The rise of electric vehicles—2020 status and future expectations," Progress in Energy, v3n2 (2021), March 25, 2021. Available at *https://iopscience.iop.org/article/10.1088/2516-1083/abe0ad.*

[31] See *Fueleconomy.gov* website: *https://fueleconomy.gov/feg/pdfs/guides/FEG2016.pdf pp. 31–35 and https://fueleconomy.gov/FEG/pdfs/guides/FEG2021.pdf* pp. 40–46.

[32] *https://www.visualcapitalist.com/the-number-of-ev-models-will-double-by-2024/.*

[33] General Motors, "General Motors, the Largest U.S. Automaker, Plans to be Carbon Neutral by 2040," Press Release, January 28, 2021.

[34] Volkswagen Newsroom, "Strategy update at Volkswagen: The transformation to electromobility was only the beginning," March 5, 2021. Available at *https://www.volkswagen-newsroom.com/en/stories/strategy-update-at-volkswagen-the-transformation-to-electromobility-was-only-the-beginning-6875.*

[35] Honda News Room, "Summary of Honda Global CEO Inaugural Press Conference," Available at *https://global.honda/newsroom/news/2021/c210423eng.html.*

[36] Ford Motor Company, "Superior Value From EVs, Commercial Business, Connected Services is Strategic Focus of Today's 'Delivering Ford+' Capital Markets Day," Press Release, May 26, 2021.

[37] Stellantis, "Stellantis Intensifies Electrification While Targeting Sustainable Double-Digit Adjusted Operating Income Margins in the Mid-Term," Press Release, July 8, 2021.

example, applying the PEF to the current EV version of the Kia Niro results in a rating of 394.3 miles per gallon equivalent. The Hyundai Kona, a very similar ICE vehicle,[38] is rated at 41.2 miles per gallon.

This approach demonstrates how the current PEF value leads to overvaluation of EVs in determining fleetwide CAFE compliance, which allows manufacturers to maintain less efficient ICE vehicles in their fleet by utilizing a few EV models to comply with the CAFE standards. As noted in the Petition, ''excessively high imputed fuel economy values for EVs means that a relatively small number of EVs [could] mathematically guarantee compliance without meaningful improvements in the real-world average fuel economy of automakers' overall fleets.'' 86 FR 73995. This runs counter to the need of the nation to conserve energy, particularly petroleum. Encouraging adoption of EVs can reduce petroleum consumption but giving too much credit for that adoption can lead to increased net petroleum use because it enables lower fuel economy among conventional vehicles, which represent by far the majority of vehicles sold. Moreover, contrary to the original intent behind the fuel content factor, ''excessively high imputed fuel economy values for EVs'' can also act as a disincentive to manufacturers to produce additional EVs if manufacturers can achieve CAFE compliance with a relatively small number of EVs.

As DOE stated in the 1999 NOPR, the ''true energy efficiency of both liquid and gaseous fueled alternative fuel vehicles is intentionally and substantially overstated by the methods specified in 49 U.S.C. 32905'' (*i.e.,* the 1.0/015 fuel content factor). With current EV technology, using those same methods for the PEF calculation overstates the PEF value and encourages increased consumption of petroleum, which is counter to the need of the nation to conserve energy.

• *The current fuel content factor lacks legal support.*

The basis for the current fuel content factor is attached to statutory provisions not pertinent to EVs. As noted, the 1.0/0.15 fuel content factor is based on that same factor for non-EV alternative fuel vehicles under section 32905. Section 32905 does not apply that factor to EVs, nor do the relevant provisions of section 32904. Accordingly, while DOE sought to treat EVs the same as other alternative fuel vehicles by using the same fuel content factor in the 2000 Final Rule, there is no basis in 32905 or 32904 to do so. While DOE could potentially utilize a fuel content factor under the four factors of section 32904, that is not the basis for the current 1.0/0.15 fuel content factor.

For the foregoing reasons, DOE proposes to remove this factor from the PEF determination. DOE requests comment on its treatment of the need of the Nation to conserve energy and relative scarcity and value of fuels. DOE requests comment on its proposal to remove the fuel-content factor from its derivation of the PEF value.

4. Driving Patterns of Electric Vehicles Compared to Those of Gasoline Vehicles

In the June 2000 Final Rule, DOE established a driving pattern factor to account for the statutory criterion in 49 U.S.C. 32904(a)(2)(B)(iv). The purpose of the driving pattern factor is to recognize the fact that electric vehicles may be used differently than gasoline vehicles, primarily due to their shorter range and longer ''refueling'' times. However, then-existing EPA regulations did not make driving-pattern-based adjustments to the fuel economy of various classes of gasoline vehicles when calculating a manufacturer's CAFE value, even though gasoline-powered vehicles are also used in a large variety of different ways. 64 FR 37908. Therefore, DOE set the driving pattern factor at 1.00 because it believed that EVs offer capabilities like those of conventional gasoline-powered vehicles. 65 FR 36987.

DOE continues to believe that current EVs are equivalently capable vehicles that are likely to be used similarly to gasoline-powered or hybrid-electric vehicles. In addition, the deployment of a national charging network, enabled by the DOT's National Electric Vehicle Infrastructure program along with additional private investment, will help meet the President's goal of 500,000 chargers [39] and ensure vehicles can match the utility and driving demands of an ICE vehicle. Therefore, DOE is not proposing a change to the driving pattern factor and proposes to continue setting this factor at 1.00. DOE may adjust this factor in the future if market conditions merit updates.[40]

DOE requests comment on its proposal to keep the driving pattern factor at a value of 1.00.

B. Discussion of DOE Analysis of PEF and New Approach

To compare electricity and gasoline on an equivalent basis, DOE considers the full energy-cycle energy efficiency from the point of primary energy production through end-use to power a vehicle for both gasoline and electricity. DOE does not consider the conversion efficiency from primary energy to electricity for renewable energy sources.[41] That is, renewable energy sources are treated as effectively 100% efficient. For fossil and nuclear energy, DOE considers the energy required to mine or otherwise produce the primary energy as part of the life-cycle energy. However, in this analysis, DOE treats nuclear electricity generation as effectively 100% efficient—that is, DOE does not use the thermal efficiency of steam to electricity in nuclear power plants—because like solar and wind, there is no practical, aggregate resource-availability limitation for nuclear materials. On the other hand, fossil energy sources used to generate electricity are large but finite and are non-renewable. DOE considers the combustion efficiency of electric generation as part of the full energy lifecycle. Renewable gaseous fuel burned for electricity, though expected to be a small contributor to renewable electricity, are treated similarly to fossil natural gas with respect to combustion efficiency.

Energy conversion and transmission efficiencies are derived from Argonne National Laboratory's GREET model (*https://greet.anl.gov*). The GREET® (Greenhouse gases, Regulated Emissions, and Energy use in Technologies) model has been developed by Argonne National Laboratory with the support of DOE. GREET is a life-cycle analysis tool, structured to systematically examine the energy and environmental effects of a wide variety of transportation fuels and vehicle technologies in major transportation sectors (*i.e.,* road, air, marine, and rail) and other end-use sectors, and energy systems. Development of GREET has been supported by multiple offices of DOE, DOT, and other agencies over the past 28 years. It is a widely used life-cycle analysis model for vehicle technologies and transportation fuels and has more

[38] There is no ICEV version of the Kia Niro so the Hyundai Kona is used in the example.

[39] FACT SHEET: Biden-Harris Administration Announces New Standards and Major Progress for a Made-in-America National Network of Electric Vehicle Chargers—The White House.

[40] An example of a situation in which an EV might merit application of the driving factor would be a low-range EV, sometimes called a ''neighborhood electric vehicle'', which lacks full range and functionality of a passenger car.

[41] Note that while the conversion equipment has varying efficiency, this should be reflected in the cost of the electricity and use of renewables, such as solar or wind, does not effectively diminish the available resource.

than 50,000 registered GREET users worldwide. It has been used in regulation development and evaluation by DOE, EPA, DOT, and California Air Resources Board. Conversion and transmission efficiency values from GREET have been incorporated into a spreadsheet-based PEF calculation tool that implements the calculation and allows use of various projections of electric generation. (The PEF calculation tool is included in the docket for this rule.)

After setting the driving pattern and accessory factors to 1.00 and removing the fuel-content factor as described previously, the remaining PEF equation is simply the gasoline-equivalent energy content of electricity on a full life-cycle basis. The units of the PEF remain the same (Wh/gal-equivalent) and the CAFE calculation would be conducted as before.

Although DOE will conduct the required annual reviews, consistent with 42 U.S.C. 32904(a)(2)(B) (discussed more in following sections), the Department does not anticipate that the result of that review will be particularly significant at least as compared to the revisions proposed today. The primary factor that would change the PEF calculation is a change in projected grid mix. However, DOE believes the grid mix projections that DOE has considered in this proposed rule provide the best projections available, and DOE believes it unlikely that grid mix projections would deviate so significantly from the projected values as to result in significant changes in the PEF value in a given year, particularly for the dates for which this proposed rule would take effect (*i.e.,* model years 2027–2031).

DOE is proposing that the new PEF take effect with model year 2027 vehicles. NHTSA's next CAFE regulation is expected to cover the model years 2027–2031.[42] The proposed PEF value would be the applicable PEF for calculating electric vehicle fuel economy in those model years,[43] subject to DOE's annual reviews. In order to calculate a PEF usable in the next CAFE regulation, DOE calculations consider a forward-looking approach based on projections for the electricity generation grid in the future. As such, the average of the annually calculated value of the PEF, based on calendar-year projections for the electric grid,[44] will be applied for model years 2027 through 2031 over the entire CAFE compliance period. Having a fixed value for the CAFE standards period improves the ability of DOT to determine CAFE standards that are ''the maximum feasible average fuel economy level'' and provides greater certainty to stakeholders from year to year. DOE requests comment on this approach.

Grid Mix Projections

An important variable impacting the value of the PEF under the new approach is the mix of electricity sources. DOE considered numerous projections available in 2022 and selected the projection model 2021 Electrification 95 by 2050, Standard Scenario, from the National Renewable Energy Laboratory (NREL),[45] in which the United States achieves 95% renewable generation of electricity by 2050 and increasing electrification economy-wide.[46] This projection accounts for the anticipated improvements in generation efficiency of electricity generating units. Transmission efficiency is not expected to improve over this time and thus remain constant in this projection. DOE selected this projection to better account for recent policy changes with respect to renewable energy penetration and electrification, such as the Inflation Reduction Act[47] and the Infrastructure Investment and Jobs Act.[48] DOE believes the NREL 95 by 2050 model provides a projection more representative of the likely future grid mix after these recent policy changes become impactful, particularly with the likelihood that these changes will result in a substantial addition of renewable resources onto the grid.

DOE also considered several scenarios from the Annual Energy Outlook (AEO) 2022 as developed by the Energy Information Administration (EIA)—*i.e.,* the reference case and the low-renewables-cost case. While DOE generally regards AEO as one of the best available projections for future grid mix and energy prices, the AEO 2022 cases (prepared in early 2022) are not representative of more recent policy changes (*e.g.,* the Inflation Reduction Act), and therefore do not fully address DOE's current expectations for the development of the grid due to subsequent developments. DOE notes that the PEF value using the AEO 2022 model is fairly close to the proposed PEF value using the NREL 95 by 2050 projection.[49] Ultimately, this proposed rule uses the 95 by 2050 model because DOE believes it is more representative of the most recent policy changes affecting grid mix projections, particularly the likely addition of more renewables into the grid mix in the near term. DOE is aware that AEO 2023 is expected to be published in the Spring of 2023 and may be more reflective of recent policy changes than AEO 2022. DOE will consider AEO 2023 for possible use in the final PEF rule.

DOE also considered more renewable-aggressive grid mixes, such as the NREL Standard Scenarios 2021 Electrification 95 by 2035 scenario. However, DOE determined that the NREL 95 by 2035 scenario is a slight outlier for the MY2027–2031 period DOE is targeting in this proposed rule, primarily given lack of lead time (despite recently created statutory incentives) for grid mix improvements, and also given DOE's analysis suggesting that a PEF value using the 95 by 2035 scenario would be 10–15 percent higher than the PEF value using any of the other grid projection scenarios considered. These facts indicated to DOE that a more conservative approach (that still accounted for recent policy changes) would be more appropriate in this time frame, and thus, DOE chose the NREL 95 by 2050 scenario for the grid mix assumptions on which the current proposal is based. DOE notes that DOE will review the PEF value annually and can adjust the grid mix inputs if renewable generation increases at a faster or slower pace than DOE anticipates, although the agency does not anticipate that the result of that annual review will be particularly significant—at least as compared to the revisions proposed today.

[42] NHTSA last finalized CAFE standards for model years 2024–2026 in May 2022. In accordance with 49 U.S.C. 32902, NHTSA will propose standards for MYs 2027 and beyond in an upcoming notice.

[43] In accordance with 49 U.S.C. 32904, the Administrator of the Environmental Protection Agency is responsible for measuring manufacturer's fuel economy levels in each model year.

[44] DOE used grid projections based on calendar years, which do not perfectly align with the model years used for CAFE compliance. However, DOE believes that the impacts of the calendar and model year differential is negligible for purposes of calculating the PEF value.

[45] DOE used the 2021 version of the NREL 95 by 2050 projection scenario. The 2022 versions of these scenarios were made available in December of 2022. See *https://www.nrel.gov/news/program/2022/the-2022-standard-scenarios-are-now-available.html.* DOE will consider the 2022 version of the NREL scenarios in the final rule.

[46] The specific scenario is the Electrification 95 by 2050 scenario in the Standard Scenarios 2021 dataset publicly available at *https://scenarioviewer.nrel.gov/.*

[47] Public Law 117–169 (2022).

[48] Public Law 117–58 (2021).

[49] Over the MY2027–2031 period, AEO22 Reference Case value would be 21,808 Wh/gal vs. the proposed value of 23,160 Wh/gal using the NREL 95-by-2050 Scenario. These represent values 26.6% and 28.2% of the current PEF value of 82,049 Wh/gal, respectively. For a 2022 Kia Niro using the 2029 grid mix projections this represents a difference of 6.5 MPGe (104.8 MPGe vs. 111.3 MPGe, respectively).

DOE requests comment on its selection of grid mix forecast and welcomes comments on alternative forecasts for the electricity grid mix.

PEF Value

In consideration of all factors in the analysis and those described above, the proposed PEF for the anticipated period 2027–2031 is 23,160 Wh/gal. The following discussion describes how DOE arrived at this value.

For a process, GREET defines efficiency as the ratio of energy product output(s) to energy input(s) (including energy in both processing fuels and feedstock). The energy outputs and inputs for facilities (such as electric power plants and petroleum refineries) are obtained from agency statistics such as EIA and EPA databases. The reciprocal of efficiency is defined as the energy intensity of this process. Using efficiency factors developed for the GREET model, DOE determined that crude oil production and transportation has an efficiency of 93.96%, that gasoline refining has an efficiency of 87.01%, and that gasoline transportation and distribution has an energy efficiency of 99.52%.[50] Multiplying these three terms to get an overall well-to-tank efficiency of 81.36%. That is, the total energy, including the energy used to produce, transport, and distribute gasoline and the energy content of gasoline is 1/0.8136 = 1.2291 times greater than the useable energy in the final product.

For electricity, using the Electrification 95 by 2050 projection model described previously, DOE calculates an annual PEF value. As discussed previously, DOE is proposing to retain the PEF value for the period covered by the applicable CAFE standard, the most recent of which covers 2027 to 2031. To simplify compliance with the CAFE standard, DOE takes an average value of the PEF over the covered period to apply for the entire period. DOE will review the PEF annually to determine if updates are needed based on changes to the grid mix and/or market conditions for EVs. DOE requests comment on this approach.

The following table shows the relative forecast generation share of the grid mix for nine different fuels in 2029[51] using the Electrification 95 by 2050 projection model. The fraction of electricity generated by source under the projection is labeled the Generation Share, efficiencies for production and generation for each source are listed, and the required input of that source of energy to produce that amount of electricity is labeled Energy Input Required. Energy Input Required is calculated as:

$$Energy\ Input\ Required = \frac{Generation\ Share}{Production\ Efficiency * Generation\ Efficiency}$$

WEIGHTED GENERATION EFFICIENCY BASED ON FRACTION OF GENERATION SOURCE

[2029 Projected electric mix]

Fuel	Generation share 2029[52] (fraction of delivered electricity)	Production efficiency[53] (%)	Generation efficiency (%)	Energy input required
Natural gas	0.3102	91.81	47.34	0.7137
Coal	0.1376	97.90	34.55	0.4068
Oil	0.0094	88.41	31.92	0.0332
Biomass	0.0003	97.54	21.65	0.0016
Nuclear	0.1602	97.40	100	0.1644
Solar	0.1554	100	100	0.1554
Wind	0.1569	100	100	0.1569
Hydroelectric	0.0631	100	100	0.0631
Geothermal	0.0069	100	100	0.0069
Total	1.000			1.7021

The sum of the Generation Shares is 1.0. Summing the Energy Input Required yields the total required energy given the generation mix, as a fraction of energy generated. Thus, the table indicates that for every 1.0 units of output energy as electricity, 1.702 units of input energy are required (averaged across generation mix), for an electricity efficiency of 58.75% at the plant gate (*i.e.,* 1/1.702 = 0.5875). This is further multiplied by the electricity transmission and distribution efficiency of 95.14%, yielding a total electricity efficiency of 55.89%, meaning that one Watt-hour of electricity delivered to the user requires roughly 1.7892 Wh of primary energy (1/.5589 = 1.7892).

The energy content of a gallon of gasoline is 115,000 British Thermal Units (Btu). With a standard conversion factor of 3.412 Btu/Wh, the same gallon of gasoline can be said to have an energy content of 33,705 Wh. By a similar calculation as was used for full-cycle electricity, delivering one gallon of gasoline to a consumer requires starting

[50] The GREET model includes efficiencies for electricity generation and transmission as well as petroleum production, refining, and distribution, and comparable processes for other alternative fuels such as biofuels, that enable full-cycle comparisons of the pathways from primary energy source through end-use in vehicles, often called ''well-to-wheels'' analysis.

[51] DOE uses the 2021 Electrification 95 by 2050 Standard Scenario projected grid mix for 2029, the midpoint year of the 2027 to 2031 CAFE compliance period, to illustrate its calculation of the PEF value because the average value over the 2027–2031 period under DOE's proposed methodology is within 3/100 of 1% of the calculated PEF value in 2029. DOE notes that the change in PEF values under the proposed methodology is approximately linear over the compliance period.

[52] Generation share taken from NREL 2021 Standard Scenario Electrification 95-by-2050.

[53] Efficiencies from GREET. ''Production'' in this table includes efficiencies producing the raw material and transport to the electricity generation facility. ''Generation'' includes conversion of the limited resources into electricity, *e.g.,* by combustion, heating a boiler, and turning a turbine. Several non-fossil resources are treated as 100% efficient—due to lack of scarcity, as explained in the text.

with 22.91% more energy. Thus, a gallon of gasoline is equivalent to 141,347 Btu over a full fuel cycle.

The PEF can then be calculated as the ratio of full-cycle efficiencies of gasoline and electricity: (141,347 Btu/gal)/(6.105 Btu/Wh) = 23,153 Wh/gal.[54]

Proposed Process for Reviewing PEF on an Annual Basis

The value of the PEF will be annually reviewed and updated, if needed, based on changes in the various factors impacting it. 49 U.S.C. 32904(B). At this time, DOE intends to keep the factor stable over the period of the standard setting years, unless there is a compelling reason to change the factor as a result of this review. DOE does not anticipate that the result of that review will be particularly significant, at least as compared to the revisions proposed today. The primary factor that would change the PEF calculation is changes to the projected grid mix. However, DOE believes the grid mix projections considered in this proposed rule provide the best projections available at the time of drafting, and DOE believes it unlikely that grid mix projections would deviate so significantly from the projected values as to result in significant changes in the PEF value in a given year, particularly for the years affected by this proposed rule (*i.e.,* model years 2027–2031). DOE requests comment on other considerations for DOE's review of the PEF value.

To this end, DOE is also proposing to delete section 10 CFR 474.5. Section 474.5 currently states that DOE will review part 474 every five years to determine whether any updates and/or revisions are necessary, and publish notice of DOE's review, findings, and any resulting adjustments to part 474 in the **Federal Register**. DOE will review the PEF value annually, subject to its statutory requirements, and should DOE determine a change may be needed to the PEF value, DOE will engage in the rulemaking process to revise part 474. DOE also intends to seek stakeholder input for its annual reviews through available methods (*e.g.,* requests for information). If a stakeholder believes the PEF value should be changed in a given year, stakeholders may always petition DOE to address such change. DOE requests comment on its proposal to delete § 474.5.

Example PEF Calculation

To demonstrate the PEF calculation in accordance with 10 CFR part 474 (*i.e.,* the PEF value divided by the combined energy consumption value) and provide a real-world example, DOE considered how the fuel economy of different powertrains would compare, using both the current PEF value of 82,049 Wh/gal and the proposed PEF value of 23,160 Wh/gal for the CAFE regulatory period of 2027–2031 (using data from 2022 vehicle models). DOE compared the rated fuel economy for five BEVs and five PHEVs to their most-comparable internal combustion engine vehicle (ICEV) and hybrid electric vehicles (HEV). The table below shows the unadjusted, combined fuel economy for each vehicle. As shown in the table, BEVs would still have a fuel economy much greater than conventional gasoline-fueled vehicles for CAFE calculations. In all cases, the fuel economy across powertrains rises from ICEV to HEV to PHEV to BEV. In the left column, the vehicles being compared on a given row are identified. The column headings indicate which vehicle listed in the left column is intended, and for plug-in vehicles, under which PEF value the MPG-eq was calculated.

COMPARISON OF VARIOUS MY2022 POWERTRAIN OPTIONS USING CURRENT AND NEW PEF VALUES

Vehicles	2022 ICEV (MPG)	2022 HEV (MPGe)	2022 PHEV (MPGe)		2022 BEV (MPGe)	
			Current PEF (82,049 Wh/gal)	Proposed PEF (23,160 Wh/gal)	Current PEF (82,049 Wh/gal)	Proposed PEF (23,160 Wh/gal)
VW Tiguan ICEV vs. VW ID.4 BEV	34.3	.....	.....	.....	380.6	107.4
RAV4 ICEV vs. RAV4 HEV vs. Prime PHEV	37.5	55.8	127.4	75.6	.....	.....
Jeep Wrangler ICEV vs. Wrangler 4xe PHEV	31.4	.....	47.9	35.5	.....	.....
Kia Niro HEV vs. PHEV vs. BEV	.....	71.1	113.6	79.6	390.6	110.3
Hyundai Kona ICEV vs. BEV	43.2	.....	.....	.....	426.5	120.4
Nissan Versa ICEV vs. Nissan Leaf BEV	48.7	.....	.....	.....	374.4	105.7
Ford F150 ICEV vs. HEV vs. Lightning BEV	25.9	31.2	.....	.....	237.7	67.1
BMW 330i ICEV vs. 330e PHEV	40.2	.....	66.6	50.2	.....	.....
Chrysler Pacifica ICEV vs. PHEV	29.2	.....	88.2	59.5	.....	.....

C. Responses to Comments Received on the NRDC and Sierra Club Petition for Rulemaking

This section summarizes the comments received on DOE's December 28, 2021, request for public comments on the 2021 NRDC and Sierra Club petition.

Comments of the Alliance for Automotive Innovation

The Alliance for Automotive Innovation (Auto Innovators) requested that DOE take careful consideration in determining whether to grant the petition to update the PEF for electric vehicles. Auto Innovators noted that the PEF is included in the calculation of the maximum feasible standards for fleet-average fuel economy. Therefore, Auto Innovators requested that the PEF be updated in concert with CAFE standards, with a lead-time of at least 18 months. Auto Innovators also requested that the docket supporting the prior PEF rulemaking be made available for electronic public viewing.

In general, Auto Innovators requested an increase in the PEF if it is changed, counter to the requests of other commenters. Auto Innovators noted that EPA greenhouse gas (GHG) standards treat electric vehicles as having zero tailpipe emissions,[55] due to their lack of tailpipe emissions. For greater harmonization between the EPA GHG standards and the NHTSA CAFE standards, Auto Innovators suggests a higher PEF that would result in fuel economy approaching an equivalent to a zero-tailpipe emission value. Auto Innovators asserts that inclusion of a fuel content factor is within DOE's ''statutory considerations.'' Auto Innovators noted that updating factors relating to electricity generation and

[54] The calculated value for 2029 in the spreadsheet model DOE uses results in 23,154 Wh/gal. The difference of 1 Wh/gal, or four one-thousandths of a percent, is due to rounding.

[55] DOE notes that commenter's statement seems to ignore non-tailpipe emissions that are accounted for by EPA, such as AC refrigerant.

transmission while maintaining the fuel content factor of 6.67 (or 1.0/0.15) would increase the overall PEF value.

Auto Innovators stated that Congress's intent has been to incentivize the use of alternative fuel vehicles. They suggest that an increased value for the PEF would result in higher sales of electric vehicles that would substitute for petroleum-fueled vehicles, as automakers would have a greater regulatory incentive to sell the electric vehicles.

DOE Response

As noted previously, the Department agrees that values for electricity generation and transmission efficiencies, along with petroleum refining and transportation, should be updated, which would increase the value defined as the gasoline-equivalent energy content of electricity in the June 2000 rulemaking. However, DOE is proposing to remove the fuel-content factor from the PEF calculation because it artificially inflates the PEF value such that the current PEF value is not reflective of current EV efficiency or market penetration. While DOE could potentially include a fuel-content factor under one or more factors of section 32904(a)(2)(B), DOE does not believe a fuel-content factor is necessary to include in the PEF calculation at this time. While the reasons for including the factor in the 2000 Final Rule may have been compelling at that time, DOE believes they no longer justify inclusion of the fuel-content factor because of current EV technology and market penetration. This is particularly true in light of recent policy changes, such as the Inflation Reduction Act, that greatly incentivize the production and use of EVs and growth of EV infrastructure (*e.g.,* charging stations), enabled both by the Bipartisan Infrastructure Law investment of $7.5B along with private investment to support the President's goal of a national charging network of 500,000 chargers.[56] These policy changes will act as a far greater incentive for EVs than the fuel-content factor, while continued inclusion of the fuel-content factor to artificially inflate the PEF could hinder continued increases in combustion engine fuel economies under the CAFE standards. Moreover, DOE notes that the EPA regulations for greenhouse gases are separate from the DOT regulations for fuel economy, and while it may be desirable for the two sets of regulations to be harmonized with each other to the extent appropriate for regulatory simplification, the regulations ultimately have different purposes.

With respect to the effective date of the proposed PEF changes, DOE notes that 49 U.S.C. 32904(a)(2)(b) requires DOE to review and propose necessary revisions to the PEF annually. While an immediate update of the PEF would be possible, DOE agrees that this would lead to a sudden change in the compliance determination under the CAFE standards. Such a quick change in the compliance determination could be problematic given the lead times necessary for manufacturers in creating CAFE compliant models. DOE notes that the Auto Innovators' suggested lead time of 18 months before the model year for which CAFE standards are prescribed is based upon the requirements of 49 U.S.C. 32902(a). Section 32904(a)(2) does not contain a requirement for a similar compliance lead time. Nevertheless, DOE is establishing the PEF consistent with the period covered by the next round of CAFE standards for the reasons stated above.

Additionally, in response to the Auto Innovators request, DOE has included the prior rulemaking docket (EE–RM–99–PEF) in the docket for this NOPR.

Comments of the American Biogas Council

The American Biogas Council supports granting the petition to update the PEF for electric vehicles. Specifically, the American Biogas Council urges the DOE review the PEF annually and propose necessary revisions based on the latest available data.

DOE Response

The agency agrees with the assessment of the American Biogas Council that update and continual review is important. The agency believes that the approach to reviewing the PEF described above balances the lead time necessary for automakers to plan their automotive fleets with the latest available data.

Comments of the American Council for an Energy-Efficient Economy

The American Council for an Energy-Efficient Economy (ACEEE) supports granting the petition to update the PEF for electric vehicles. ACEEE believes the inclusion of the fuel-content factor (6.67 multiplier—or 1.0/0.15) in the PEF is unacceptable. ACEEE notes that DOE should consider how to factor renewable electricity generation into the calculation of grid generation efficiency, and how to incorporate carbon intensity and the time of day in which EVs are charged and the resultant effect on energy sourcing into the PEF, if this is appropriate. ACEEE also notes that the national average for electricity consumption may not be appropriate. Additionally, ACEEE urges DOE to propose necessary revisions based on the latest available data, and to consider how changes in grid composition and technology have changed and may change in the near future.

DOE Response

The Department agrees with ACEEE's assessment that updating and continual PEF review is important. DOE is proposing to consider updated values for the lifecycle energy consumption of both electricity and petroleum and is proposing an updated value for the PEF that does not include a fuel-content factor of 6.67. Moreover, DOE's proposed methodology considers renewable energy generation as 100 percent efficient, while also utilizing a grid projection scenario that better accounts for the likely increase in renewable generation placed on the grid due to recent policy changes such as the Inflation Reduction Act. DOE also notes that the national average electrical generation and transmission efficiencies is a factor specified in section 32904. 42 U.S.C. 32904(a)(2)(B)(ii). While DOE acknowledges that charging times of EVs may impact the grid mix in a given region, DOE has used national grid mix projections based on the factor in section 32904. Therefore, DOE has not incorporated carbon intensity or effects on energy sourcing based on the time of day during which EVs are likely to be charged. DOE believes such considerations may introduce complexity into the PEF methodology that could create confusion and uncertainty for stakeholders, particularly during DOE's annual review process. Moreover, ACEEE did not provide or point to any information that might inform the inclusion of such considerations into the PEF methodology. However, DOE welcomes comments and information that could allow for the clear and consistent use of considerations such as carbon intensity and charging time of day in the PEF methodology.

Comments of the American Petroleum Institute

The American Petroleum Institute supports granting the petition to update the PEF for electric vehicles. The American Petroleum Institute requests that DOE update the PEF based on the latest available data. Specifically, the

[56] FACT SHEET: Biden-Harris Administration Announces New Standards and Major Progress for a Made-in-America National Network of Electric Vehicle Chargers—The White House.

American Petroleum Institute suggests that the calculation of the PEF should not include a fuel content factor and should be updated with a well-to-wheels lifecycle analysis, considering both the energy and greenhouse gas (GHG) impacts of electric and conventional vehicles.

DOE Response

As described previously, DOE agrees with eliminating the fuel-content factor. In this NOPR, the agency uses a lifecycle approach for electricity and petroleum as the primary regulatory option for the PEF. The preferred lifecycle approach is one that is based on total energy content, including upstream energy usage, and based on updated input data. DOE's PEF methodology does not explicitly account for lifecycle GHGs. As discussed in section D.3 of this document DOE explored a GHG-related alternative, but ultimately determined not to use such alternative. Further, as discussed previously, DOE must base the PEF value on the factors of section 32904(a)(2), which do not explicitly reference GHGs or lifecycle GHGs. DOE requests comment and information on inclusion of lifecycle GHG emissions in the PEF calculation methodology and data in support of using such an approach.

Comments of the International Council on Clean Transportation

The International Council on Clean Transportation (ICCT) supports updating values used to calculate the PEF for electric vehicles. ICCT suggests that DOE use the latest values for electricity generation efficiency, transmission and distribution loss, petroleum refining, and distribution efficiency. Additionally, ICCT suggests that DOE consider electricity generation sources other than fossil fuels.

DOE Response

The Department agrees with the ICCT on the need to use values that represent today's electricity and petroleum markets. As suggested, DOE uses values derived from the GREET model by Argonne National Laboratory for many of the inputs noted. As non-fossil fuels now comprise approximately 40% of the national electricity generation [57] and are forecast to have higher market penetration in the future, DOE also considers all sources of electricity in determining electricity generation efficiency, rather than only using fossil fuels.

Comments of the NRDC and Sierra Club

NRDC and Sierra Club submitted public comments supplementing their initial petition for rulemaking and reiterating their request to the petition for rulemaking to update the PEF for electric vehicles. In this comment, they note that the input values determining the PEF are out of date and that DOE has the obligation to review these values over time. NRDC and Sierra Club claim that maintaining a fuel content factor undermines the goals of the CAFE program and that the existence of the fuel content factor is inconsistent with statute.

DOE Response

The agency agrees that the input values for determining PEF are out of date and should be updated. While DOE recognizes that a fuel-content factor is not specified in section 32904 as it is in section 32905, DOE believes that such a factor could be considered within one of the four enumerated factors in section 32904(a)(2)(B). As suggested in the June 2000 Final Rule, the fuel content factor can be taken to, in part, represent the requirement to consider ''the relative scarcity and value to the United States of all fuel used to generate electricity'' (49 U.S.C. 32904(a)(2)(iii)). However, as noted above, DOE proposes an updated methodology where the fuel content factor is no longer included in the PEF calculation.

In their mathematical examples of the impacts of various PEF factors, NRDC and Sierra Club suggest that 33,705 Wh/gallon could be used as the appropriate value for the PEF, as this is the energy content contained in one gallon of gasoline used in the Monroney window sticker for consumer understanding. However, use of this value neglects upstream inefficiencies of gasoline refining and distribution and of electricity generation and transmission. Accordingly, DOE is proposing the PEF value of 23,160 Wh/gal.

Comments of Tesla

Tesla supports granting the petition to update the PEF for electric vehicles. Tesla supports stringent CAFE standards for light-duty vehicles for efficiency gains.

DOE Response

For the reasons described previously, DOE is proposing an updated PEF value which is more reflective of current EV technology and market penetration.

Comments of State-Level and Municipal Governments

The States of California, Delaware, Hawaii, Illinois, Maine, Maryland, Michigan, Minnesota, Nevada, New York, Oregon, Rhode Island, and Vermont; the Commonwealth of Pennsylvania; the District of Columbia; and the Cities of Los Angeles, New York, and Oakland (collectively, ''the governments'') support granting the petition to update the PEF for electric vehicles. The governments note that the current PEF undermines the congressional intent of the CAFE program to conserve energy and incentivize production of electric vehicles. The governments' request that DOE reevaluate the expression of the need to conserve energy and the relative scarcity and value of fuel used for electricity in the PEF, replacing the existing fuel-content factor. The governments also note that data are available to inform DOE's consideration of the use of electric vehicles compared to petroleum-fueled vehicles.

DOE Response

The agency agrees with the governments on the need for updated inputs in the PEF methodology and has addressed those updates in this proposed rule. DOE notes that different metrics for considering scarcity and value were evaluated in order to develop DOE's preferred approach for the PEF. DOE acknowledges that there is considerably more data available today regarding the increased use and evolving technology surrounding EVs. These changes are reflected, in part, by DOE's removal of the fuel-content factor and update of grid mix projections reflective of recent policy changes. However, as previously noted, DOE is maintaining the driving pattern factor at 1.00 because DOE continues to believe that current EVs are fully capable vehicles which are likely to be used similarly to gasoline-powered or hybrid-electric vehicles. DOE also notes that with the proposed lower value for PEF, there is little incentive for an automaker to develop an electric vehicle that would not be used in a manner consistent with conventional gasoline-fueled vehicles in order to maximize its average fuel economy.

Comments of Anonymous Members of the Public

Members of the public can comment without being publicly identified. Two comments were received this way. Each of the commenters requested that DOE grant the petitioners' request to update

[57] Derived from EIA, ''Electric Power Monthly, November 2022'', (published January 2023), Table 1.2.A. *https://www.eia.gov/electricity/monthly/current_month/january2023.pdf.*

the PEF and use updated values as appropriate.

DOE Response

The Department agrees with the commenters on the need for updated values and appreciates the input of the public in the regulatory rulemaking process.

D. Alternative Approaches for Calculation of PEF

Section II.C of this document presents the DOE rationale for the selection of 23,160 Wh/gal as the updated value of the PEF for CAFE calculations for the 2027–2031 CAFE regulatory period. DOE considered other approaches to determining the PEF value based upon the four factors enumerated in section 32904, particularly the transmission and generation efficiency factor and the scarcity factor. DOE briefly describes below the alternative approaches it considered.

1. Approach Based on the Current Electricity Generation Mix

A calculation for PEF similar to that proposed but based on the generation mix in 2020 yields a PEF of 20,136 Wh/gal, about 13% lower than the proposed value of 23,160 Wh/gal.[58] DOE views this value as an appropriate comparison of the relative energy today, but notes that a typical vehicle sold today will be expected to be on the road for well over a decade, at which point the PEF value would not account for improvements in overall grid efficiency as the grid decarbonizes. In particular, in the latter part of this decade, during which the revised PEF is expected to apply, the grid mix is likely to be significantly different from today's grid mix. In contrast, the proposed PEF value and DOE's proposed review approach would better account for the electricity generation mix of models sold throughout the CAFE compliance period and over the course of the vehicle's useful life. Accordingly, DOE did not pursue the approach based on current generation mix.

2. Approach Based on Fossil Energy Consumption

As the renewables that are on the grid are not scarce in the same way as physical combustion fuels, DOE considered an approach which only accounts for fossil fuel in the calculation of the electrical grid efficiency, ignoring the electricity generated by renewable and nuclear sources. This is different than the proposed approach, which includes current and projected renewable generation in the projected grid mixes used in DOE's methodology. See section II.B of this document.

In 2020, fossil fuel combustion supplied 60% of U.S. electricity. Following the same methodology in section II.C of this document, the PEF value would be 25,702 Wh/gal based on the 2020 grid, and 34,020 Wh/gal, averaged from 2027–2031. However, as the electric grid decarbonizes, this metric would rapidly increase and present a problem of artificially amplifying the PEF value like the current PEF value. With a highly renewable grid, automakers would be able to use electric vehicles in their fleet to improve their average fuel economy rather than improving the fuel economy of conventional gasoline-fueled vehicles, leading to a likely increase in national fuel consumption, counter to the goals of both EPCA and the CAFE program. Accordingly, DOE did not pursue this approach based on fossil energy consumption.

3. Approach Based on Equivalent Greenhouse Gas Emissions

It is the policy of the Biden Administration to confront the global climate crisis and exert leadership in addressing climate change impacts. See Executive Order 14008, 86 FR 7619 (Feb. 1, 2021) (''Tackling the Climate Crisis at Home and Abroad''). This can be accomplished in part by reducing emissions of greenhouse gases. As most electricity-related emissions are from fossil fuel combustion, the greenhouse gas equivalent approach that DOE considered is very similar to the approach based on fossil energy consumption. Like that approach, DOE does not consider this to be an ideal approach as the PEF value would eventually diverge from the actual generation mix as the grid decarbonized. Moreover, this approach also deviates from the approach of the CAFE standards, which are designed to maximize feasible average fuel economy, while EPA regulates emissions of greenhouse gases from light-duty vehicles.

4. Approach Based on the Relative Scarcity of Each Energy Carrier

For purposes of this proposal, DOE considered energy scarcity to be a matter of primary energy availability. Scarcity can then be measured in terms of proved reserves, which is a measure of working inventory. By comparing total annual consumption with the quantity of proved reserves, we can estimate the number of years of each energy source available in the United States, comparing electricity sources with petroleum. Using the NREL Electrification 95 by 2050 projection, DOE calculates a PEF value of 105,039 Wh/gallon over the 2027–2031 regulatory period using this approach. This number is much higher than the proposed PEF, owing to the relative scarcity of domestically produced oil, at 6.1 years, compared to other fuels used to generate electricity.[59] Such a high value for the PEF—28% higher than the current level—would likely increase total petroleum usage, as automakers could produce less efficient gasoline-fueled vehicles and still meet CAFE standards by selling a small number of EVs.

Using proved reserves of resources also has significant drawbacks that make them unsuitable for use in calculating the PEF. First, future reserves are very difficult to predict as they are subject to commodity price fluctuations. Second, proved reserves change over relatively small timeframes,[60] making this a source of regulatory uncertainty for automakers. Further, the amount of proved reserves are ill-defined for renewable energy. Therefore, DOE did not pursue this alternative.

III. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

Executive Order (''E.O.'') 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993), as supplemented and reaffirmed by E.O. 13563, ''Improving Regulation and Regulatory Review,'' 76 FR 3821 (Jan. 21, 2011), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some

[58] DOE used 2020 generation mix data for this alternative because it was the most recent available data at the time the analysis was undertaken. While there has been some change in grid mix since that time, DOE believes it is a relatively small difference in the context of comparing the current (2023) grid to a notional future projected grid mix used in the calculation of the new PEF value.

[59] The United States had 44,418 million barrels of proved reserves of crude oil plus lease condensate at the end of 2021. In 2021, the U.S. consumed 19.9 million barrels of petroleum-derived products per day. At this usage rate, the United States has reserves of 6.1 years of petroleum. Citations: Proved Reserves of Crude Oil and Natural Gas in the United States, Year-End 2021 (*eia.gov*) Table 6 (*https://www.eia.gov/naturalgas/crudeoilreserves/pdf/usreserves_2021.pdf* see page 19); U.S. Product Supplied for Crude Oil and Petroleum Products (*eia.gov*) Data Tables (*https://www.eia.gov/dnav/pet/pet_cons_psup_dc_nus_mbblpd_a.htm*).

[60] Proved reserves reported by EIA were up more than 16% between the end of 2020 and the end of 2021. Compare these values at: *https://www.eia.gov/naturalgas/crudeoilreserves/pdf/usreserves_2021.pdf,* Table 6.

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'') within the Office of Management and Budget (OMB) has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, this proposed regulatory action is consistent with these principles.

Section 6(a) of E.O. 12866 also requires agencies to submit ''significant regulatory actions'' to the OIRA for review. OIRA has determined that this proposed action constitutes a 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, Accordingly, this action was subject to review by OIRA.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the 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). The Department has made its procedures and policies available on the Office of General Counsel's website: *www.energy.gov/gc/office-general-counsel*.

The proposed rule would revise DOE's regulations on electric vehicles regarding procedures for calculating a value for the petroleum-equivalent fuel economy of (EVs for use in the CAFE program administered by DOT. While the PEF value is an important part of the CAFE compliance calculation, its use and the weight given to it are determined by NHTSA's implementation of the CAFE standards program. Moreover, the downstream effects, including effects on small manufacturers, are ultimately determined by NHTSA's implementation of the CAFE program. Because this proposed rule would not directly regulate small entities but instead only amends a factor used to calculate compliance with DOT's CAFE standards, DOE certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities, and, therefore, no regulatory flexibility analysis is required.[61] *Mid-Tex Elec. Co-Op, Inc.* v. *F.E.R.C.,* 773 F.2d 327 (1985). The method for earning credits applies equally across manufacturers and does not place small entities at a significant competitive disadvantage. Accordingly, DOE did not prepare an IRFA for this proposed rulemaking. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

The proposed rule would impose no new information or record keeping requirements. Accordingly, OMB clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq*).

D. Review Under the National Environmental Policy Act of 1969

DOE is analyzing this proposed 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 amending an existing rule or regulation that does not change the environmental effect of the rule or regulation being amended. 10 CFR part 1021, subpart D, appendix A5. DOE anticipates that this rulemaking qualifies for categorical exclusion A5 because it is a rulemaking that is amending an existing rule or regulation that does not change the environmental effect of the rule or regulation being amended, 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. While the PEF value is an important aspect of the CAFE compliance calculation, in and of itself DOE's rulemaking to set the PEF value does not result in environmental effects. The use of and the weight given to the PEF value are determined by NHTSA, and any environmental effects would be from NHTSA's implementation of the CAFE standards program. Thus, DOE concludes that this action does not result in an environmental effect. DOE will complete its NEPA review before issuing the final rule.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The E.O. 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. (*See* 65 FR 13735.) DOE examined this proposed rule and determined that it would not preempt State law and 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. No further action is required by E.O. 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O.

[61] DOE notes that passenger vehicle manufacturers that manufacture fewer than 10,000 vehicles per year can petition NHTSA to have alternative CAFE standards. *See* 49 U.S.C. 32902(d).

12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct, rather than a general standard and promote simplification and burden reduction. Section 3(b) of E.O. 12988 specifically requires that executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies its 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 its 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 E.O. 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, the proposed rule would meet 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) (Pub. L. 104–4) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments and the private sector. 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) and (b)). The section of UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a proposed ''significant intergovernmental mandate'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA (62 FR 12820) (also available at *www.energy.gov/gc/office-general-counsel*). This proposed rule contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of $100 million or more in any year by State, local, and tribal governments, in the aggregate, or by the private sector, so these requirements under the Unfunded Mandates Reform Act do not apply.

H. Review Under the Treasury and General Government Appropriations Act of 1999

Section 654 of the Treasury and General Government Appropriations Act of 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under E.O. 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (Mar. 18, 1988), that this proposed rule would not result in any takings which might require compensation under the Fifth Amendment to the United States 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 agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed the proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) is a significant regulatory action under E.O. 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. The proposed rule would amend a factor used to calculate compliance with DOT's CAFE standards but does not meet the second criterion. Additionally, OIRA has not designated this proposed rule as a significant energy action. Accordingly, the requirements of E.O. 13211 do not apply.

IV. Public Participation

DOE will accept comments, data, and information regarding this proposed rule on or before 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 General Counsel staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence

containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information the disclosure of which 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 below.

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 if 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 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, postal mail, or hand delivery/courier 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'' that deletes the information believed to be confidential. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and will treat it according to its determination.

It is DOE's policy that all comments, including any personal information provided in the comments, may be included in the public docket, without change and as received, except for information deemed to be exempt from public disclosure.

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this Notice of proposed rulemaking and request for comment.

List of Subjects in 10 CFR Part 474

Corporate average fuel economy, Electric (motor) vehicle, Electric power, Energy conservation, Fuel economy, Motor vehicles, Research.

Signing Authority

This document of the Department of Energy was signed on March 28, 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 March 29, 2023.

Treena V. Garrett,

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

For the reasons stated in the preamble, DOE is proposing to amend part 474 of Chapter II of Title 10 of the Code of Federal Regulations as set forth below:

PART 474—ELECTRIC AND HYBRID VEHICLE RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAM; PETROLEUM-EQUIVALENT FUEL ECONOMY CALCULATION

■ 1. The authority citation for part 474 continues to read as follows:

Authority: 49 U.S.C. 32901 *et seq.*

■ 2. Amend § 474.3 by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 474.3 Petroleum-equivalent fuel economy calculation.

* * * * *

(b) The value of the petroleum-equivalency factor for electric vehicles is 23,160 Watt-hours per gallon.

(c) The value of the petroleum-equivalency factor for electric vehicles in paragraph (b) of this section is effective for model year 2027 and later model year electric vehicles.

§ 474.5 [Removed and Reserved]

■ 3.Remove and reserve § 474.5.

■ 4. Appendix A to part 474 is revised to read as follows:

Appendix to Part 474—Sample Petroleum-Equivalent Fuel Economy Calculations

Example 1:

An electric vehicle is tested in accordance with Environmental Protection Agency procedures and is found to have an Urban Dynamometer Driving Schedule energy consumption value of 265 Watt-hours per mile and a Highway Fuel Economy Driving Schedule energy consumption value of 220 Watt-hours per mile. The vehicle is not equipped with any petroleum-powered accessories. The combined electrical energy consumption value is determined by averaging the Urban Dynamometer Driving Schedule energy consumption value and the Highway Fuel Economy Driving Schedule energy consumption value using weighting factors of 55 percent urban, and 45 percent highway:

combined electrical energy consumption value = (0.55 * urban) + (0.45 * highway) = (0.55 * 265) + (0.45 * 220) = 244.75 Wh/mile

The value of the petroleum equivalency factor is 23,160 Watt-hours per gallon, and the petroleum-equivalent fuel economy is:

(23,160 Wh/gal) ÷ (244.75 Wh/mile) = 94.63 mile/gal (or, mpg)

[FR Doc. 2023–06869 Filed 4–10–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–0669; Project Identifier MCAI–2022–01238–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2006–10–13, which applies to all Airbus SAS Model A330–223, –321, –322, and –323 airplanes. AD 2006–10–13 requires repetitive inspections of the firewall of the lower aft pylon fairing (LAPF), and corrective actions if necessary. AD 2006–10–13 also provides an optional terminating action for the repetitive inspections. Since the FAA issued AD 2006–10–13, an updated LAPF was designed, the installation of which constitutes terminating action for the repetitive inspection required by AD 2006–10–13. This proposed AD would continue to require the actions specified in AD 2006–10–13, provide new optional terminating actions, and change the applicability to exclude certain airplanes, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). 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 May 26, 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–2023–0669; 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 the AD identified in this NPRM, you may 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.* It is also available at *regulations.gov* under Docket No. FAA–2023–0669.
- 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: Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3229; email *vladimir.ulyanov@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–2023–0669; Project Identifier MCAI–2022–01238–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 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 Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3229; email *vladimir.ulyanov@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

The FAA issued AD 2006–10–13, Amendment 39–14597 (71 FR 28250, May 16, 2006) (AD 2006–10–13), for all Airbus SAS Model A330–223, –321, –322, and –323 airplanes. AD 2006–10–13 was prompted by MCAI originated by the Direction Générale de l'Aviation Civile (DGAC), which is the former airworthiness authority for France. DGAC issued French airworthiness directive F–2004–028 R2, dated October 26, 2005 (DGAC France AD F–2004–028 R2), to correct an unsafe condition identified as cracking of the LAPF firewall.

AD 2006–10–13 requires repetitive detailed inspections for cracking of the LAPF firewall, and corrective actions if necessary. AD 2006–10–13 also provides an optional terminating action for the repetitive inspections. The FAA issued AD 2006–10–13 to address cracking of the LAPF firewall, which could reduce the effectiveness of the firewall and result in an uncontrolled engine fire.

Actions Since AD 2006–10–13 Was Issued

Since the FAA issued AD 2006–10–13, EASA, which is the Technical Agent for the Member States of the European Union superseded DGAC France AD F–2004–028 R2 and issued EASA AD 2022–0190, dated September 14, 2022 (EASA AD 2022–0190) (referred to after this as the MCAI), to correct an unsafe condition on certain Airbus SAS Model A330–223, A330–321, A330–322, and

A330–323 airplanes. The MCAI states that since DGAC France AD F–2004–028 R2 was issued, Airbus designed an updated LAPF, the installation of which also constitutes terminating action for the repetitive inspections required by DGAC France AD F–2004–028 R2. EASA AD 2022–0190 retains the requirements of DGAC France AD F–2004–028 R2, and includes reference to an additional optional terminating action modification. EASA AD 2022–0190 also excludes airplanes on which the optional terminating action was embodied in production from its applicability.

In AD 2006–10–13, the FAA included requirements related to crack lengths greater than 1.5 inches or to multiple cracks with a combined length greater than or equal to 1.5 inches, as well as a requirement to repair before further flight if a crack is greater than 1.5 inches long or if multiple cracks are found with a combined length of greater than 1.5 inches. AD 2006–10–13 also omitted a requirement to stop-drill the crack or cracks and apply sealant before further flight for cracks that extended to greater than 1.2 inches long but less than or equal to 1.5 inches long. The FAA has since determined that this AD should match DGAC France AD F–2004–028 R2 and EASA AD 2022–1190 and require actions (including stop-drilling any cracks and applying sealant) based on any crack length being less than or equal to 30.48mm (1.2 inches) or greater than or equal to 30.48mm (1.2 inches). The FAA has determined that the stop-drilling and sealant application are adequate to address any cracks and maintain the fire safety and capability of the firewall until the required LAPF firewall repair is done as specified in EASA AD 2022–1190. This proposed AD would include a grace period for airplanes to switch to the new proposed requirements.

The FAA is proposing 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–2023–0669.

Explanation of Retained Requirements

Although this proposed AD does not explicitly restate the requirements of AD 2006–10–13, this proposed AD would retain certain of the requirements of AD 2006–10–13. Those requirements are referenced in EASA AD 2022–0190, which, in turn, is referenced in paragraph (g) of this proposed AD.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0190 specifies procedures for repetitively inspecting each LAPF firewall for cracks, and performing corrective actions, including stop-drilling the crack and applying sealants, and repairing the LAPF firewall. EASA AD 2022–0190 also specifies terminating actions for the repetitive inspections, including modifying and reidentifying the LAPF or replacing the LAPF with an LAPF having part number 72A100–713. 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 the State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would retain certain requirements of AD 2006–10–13. This proposed AD would require accomplishing the actions specified in EASA AD 2022–0190 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2022–0190 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2022–0190 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2022–0190 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 2022–0190. Service information required by EASA AD 2022–0190 for compliance will be available at regulations.gov under Docket No. FAA–2023–0669 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 41 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from AD 2006–10–13	7 work-hours × $85 per hour = $595	$0	$595	$24,395

ESTIMATED COSTS FOR OPTIONAL ACTIONS

Labor cost	Parts cost	Cost per product
14 work-hours × $85 per hour = $1,190	$120,000	$121,190

The FAA estimates the following costs to do any necessary on-condition actions that would be required based on the results of any required or optional 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
7 work-hours × $85 per hour = $595	$120,000	$120,595

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2006–10–13, Amendment 39–14597 (71 FR 28250, May 16, 2006); and

■ b. Adding the following new AD:

Airbus SAS: Docket No. FAA–2023–0669; Project Identifier MCAI–2022–01238–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by May 26, 2023.

(b) Affected ADs

This AD replaces AD 2006–10–13, Amendment 39–14597 (71 FR 28250, May 16, 2006) (AD 2006–10–13).

(c) Applicability

This AD applies to Airbus SAS Model A330–223, A330–321, A330–322, and A330–323 airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2022–0190, dated September 14, 2022 (EASA AD 2022–0190).

(d) Subject

Air Transport Association (ATA) of America Code 54, Nacelles/pylons.

(e) Unsafe Condition

This AD was prompted by reports of cracking of the lower aft pylon fairing (LAPF) firewall, and by the development of an optional terminating replacement. The FAA is issuing this AD to address this cracking, which could reduce the effectiveness of the firewall and result in an uncontrolled engine fire.

(f) Compliance

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

(g) Requirements

Except as specified in paragraphs (h) and (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2022–0190.

(h) Exceptions to EASA AD 2022–0190

(1) Where EASA AD 2022–0190 refers to ''28 February 2004 [the effective date of DGAC France AD F–2004–028 at original issue],'' this AD requires using June 20, 2006 (the effective date of AD 2006–10–13).

(2) For any airplane on which a crack has been found and a stop-drill of the crack and sealant application has not been done as specified in paragraph (4.1) of EASA AD 2022–0190 as of the effective date of this AD: Within 30 days after the effective date of this AD, accomplish the actions specified in paragraph (4.1) of EASA AD 2022–0190.

(3) Where paragraph (2) of EASA AD 2022–0190 specifies a crack length, replace the text ''up to 30.48 mm'' with ''less than or equal to 30.48 mm (1.2 inches)''

(4) This AD does not adopt the ''Remarks'' section of EASA AD 2022–0190.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2022–0190 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) 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 (k) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

(i) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office. (ii) AMOCs approved previously for AD 2006–10–13 in FAA Letters ANM–116–17–235 and AIR–676–20–117 are approved as AMOCs for the corresponding provisions of EASA AD 2022–0190 that are required by paragraph (g) of this AD.

(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 (j)(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.

(k) Additional Information

For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3229; email *vladimir.ulyanov@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0190, dated September 14, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0190, 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 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 April 5, 2023.

Christina Underwood,

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

[FR Doc. 2023–07531 Filed 4–10–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–0667; Project Identifier MCAI–2022–00735–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 supersede Airworthiness Directive (AD) 2022–19–03, which applies to all Pilatus Aircraft Ltd. (Pilatus) Model PC–12, PC–12/45, PC–12/47, and PC–12/47E airplanes. AD 2022–19–03 requires incorporating new revisions to the airworthiness limitation section (ALS) of the existing airplane maintenance manual (AMM) or Instructions for Continued Airworthiness (ICA) to establish a 5-year life limit for certain main landing gear (MLG) actuator bottom attachment bolts and new life limits for the rudder bellcrank. Since the FAA issued AD 2022–19–03, the FAA has determined that new or more restrictive airworthiness limitations are necessary. This proposed AD would require revising the ALS section of the existing AMM or ICA for your airplane, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this NPRM by May 26, 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–2023–0667; 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 material that is proposed for IBR in this NPRM, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +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, 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–2023–0667; Project Identifier MCAI–2022–00735–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 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 Doug Rudolph, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 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 FAA issued AD 2022–19–03, Amendment 39–22172 (87 FR 57809, September 22, 2022), (AD 2022–19–03), for all Pilatus Model PC–12, PC–12/45, PC–12/47, and PC–12/47E airplanes. AD 2022–19–03 was prompted by MCAI originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA issued AD 2021–0214, dated September 17, 2021 (EASA AD 2021–0214). The unsafe condition in EASA AD 2021–0214 is failure of MLG actuator bottom attachment bolts and failure to accomplish a new life limit for the rudder bellcrank. This prompted the FAA to issue AD 2022–19–03.

AD 2022–19–03 requires incorporating new revisions to the ALS of the existing AMM or ICA to establish a 5-year life limit for certain MLG actuator bottom attachment bolts and new life limits for the rudder bellcrank. The FAA issued AD 2022–19–03 to prevent MLG collapse during all phases of airplane operations, including take-off and landing and also to prevent rudder bellcrank failure, which could lead to loss of airplane control.

Actions Since AD 2022–19–03 Was Issued

Since the FAA issued AD 2022–19–03, EASA superseded EASA AD 2021–0214 and issued EASA AD 2022–0103, dated June 9, 2022 (EASA AD 2022–0103) (referred to after this as the MCAI), for all Pilatus Model PC–12, PC–12/45, PC–12/47, and PC–12/47E airplanes. The MCAI states that new or more restrictive tasks and limitations have been developed. These new or more restrictive airworthiness limitations include repetitive inspections for cracks in the lower main spar connection of the horizontal stabilizer. The FAA is issuing this AD to address failure of certain parts, which could result in loss of airplane control. Additionally, the actions required to address the unsafe condition in AD 2022–19–03 are included in ''the applicable ALS,'' as defined in EASA AD 2022–0103. You may examine the MCAI in the AD docket at regulations.gov under Docket No. FAA–2023–0667.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0103 requires certain actions and associated thresholds and intervals, including life limits and maintenance tasks. EASA AD 2022–0103 also requires doing corrective actions if any discrepancy (as defined in the applicable ALS) is found during accomplishment of any task required by paragraph (1) of EASA AD 2022–0103 and revising the approved aircraft maintenance program (AMP) by incorporating the limitations, tasks, and associated thresholds and intervals described in ''the applicable ALS'' as defined in EASA AD 2022–0103. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

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 the State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI described above. The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would retain none of the requirements of AD 2022–19–03. This proposed AD would require revising the ALS of the existing AMM or ICA for your airplane as specified in EASA AD 2022–0103, described previously, except as discussed under ''Differences Between this Proposed AD and EASA AD 2022–0103.'' The owner/operator (pilot) holding at least a private pilot certificate may revise the ALS of the existing AMM or ICA for your airplane, and performance of this incorporation must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.9(a) and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2022–0103 by reference in the FAA final rule. Service information required by the EASA AD for compliance will be available at *regulations.gov* by searching for and locating Docket No. FAA–2023–0667 after the FAA final rule is published.

Differences Between This AD and EASA AD 2022–0103

Paragraph (2) of EASA AD 2022–0103 requires corrective actions in accordance with the applicable Pilatus maintenance documentation or contacting Pilatus for approved instructions and accomplishing those instructions accordingly. Paragraph (3) of EASA AD 2022–0103 requires revising the approved AMP. Paragraph (4) of EASA AD 2022–0103 provides credit for performing actions in accordance with previous revisions of the Pilatus AMM. Paragraph (5) of EASA AD 2022–0103 explains that after revision of the approved AMP, it is not necessary to record accomplishment of individual actions for demonstration of AD compliance. This proposed AD would not require compliance with paragraphs (2) through (5) of EASA AD 2022–0103.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 1,030 airplanes of U.S. registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates that revising the ALS of the existing AMM or ICA for your airplane would require about 1 work-hour for an estimated cost on U.S. operators of $87,550 or $85 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 2022–19–03, Amendment 39–22172 (87 FR 57809, September 22, 2022); and

■ b. Adding the following new AD:

Pilatus Aircraft Ltd.: Docket No. FAA–2023–0667; Project Identifier MCAI–2022–00735–A.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by May 26, 2023.

(b) Affected ADs

This AD replaces AD 2022–19–03, Amendment 39–22172 (87 FR 57809, September 22, 2022); (AD 2022–19–03).

(c) Applicability

This AD applies to Pilatus Aircraft Ltd. Model PC–12, PC–12/45, PC–12/47, and PC–12/47E airplanes, all serial numbers, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 0500, Time Limits/Maintenance Checks.

(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 states that failure to revise the airworthiness limitations section (ALS) of the existing aircraft maintenance manual (AMM) by introducing new and more restrictive instructions and maintenance tasks as specified in the component limitations section, which includes repetitive inspections for cracks in the lower main spar connection of the horizontal stabilizer, could result in an unsafe condition. The FAA is issuing this AD to address failure of certain parts, which could result in loss of airplane control.

(f) Compliance

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

(g) Required Actions

(1) Before further flight after the effective date of this AD, revise the ALS of the existing AMM or Instructions for Continued Airworthiness for your airplane by incorporating the requirements specified in paragraph (1) of European Union Aviation Safety Agency AD 2022–0103, dated June 9, 2022 (EASA AD 2022–0103).

(2) The actions required by paragraph (g)(1) of this AD may be performed by the owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.9(a) and 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439.

(h) Provisions for Alternative Requirements (Airworthiness Limitations)

After the actions required by paragraph (g) of this AD have been done, no alternative requirements (airworthiness limitations) are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2022–0103.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in § 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 International Validation Branch, send it to the attention of the person identified in paragraph (j) 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 responsible Flight Standards Office.

(2) Global AMOC AIR–730–22–357, dated September 28, 2022, and Global AMOC AIR–730–23–054 R1, dated February 10, 2023, were approved as AMOCs for the requirements for AD 2022–19–03, and are approved as AMOCs for the requirements of paragraph (g) of this AD. Other AMOCs previously issued for the requirements of AD 2022–19–03 are not approved as an AMOC for the requirements of this AD.

(j) Additional Information

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.*

(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 the AD specifies otherwise.

(i) European Union Aviation Safety Agency AD 2022–0103, dated June 9, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0103, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +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 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 April 5, 2023.

Christina Underwood,

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

[FR Doc. 2023–07539 Filed 4–10–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

Docket No. FAA–2023–0534; Airspace Docket No. 21–AWP–52

RIN 2120–AA66

Amendment of V–388 Near Paradise, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Very High Frequency (VHF) Omnidirectional Range (VOR) Federal airway V–388 between the Paradise, CA, VOR/Tactical Air Navigation (VORTAC) and the Palm Springs, CA, VORTAC navigational aids. The FAA is proposing this action to extend V–388 westward to the Seal Beach, CA, VORTAC.

DATES: Comments must be received on or before May 26, 2023.

ADDRESSES: Send comments identified by FAA Docket No. [FAA–2023–0534] and Airspace Docket No. 21–AWP–52 using any of the following methods:

* *Federal eRulemaking Portal:* Go to *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, 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.

Docket: Background documents or comments received may be read at *www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the 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.

FAA Order JO 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/.* You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Steven Roff, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the airway structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments it receives.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Availability of Rulemaking Documents

An electronic copy of this document may be downloaded through the internet at *www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Operations office (see **ADDRESSES** section for address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the office of the Western Service Center, Federal Aviation Administration, 2200 South 216th St., Des Moines, WA 98198.

Incorporation by Reference

VOR Federal Airways are published in paragraph 6010 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022 and effective September 15, 2022. These updates would be published in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

Background

FAA proposes to extend V–388 westward from the Paradise VORTAC to the Seal Beach VORTAC following the standard route to enhance safety. The standard routing used by air traffic control (ATC) and issued to aircraft flying between the Paradise VORTAC and the Seal Beach VORTAC is from the Paradise VORTAC northwest along the

Paradise VORTAC 285°(T)/270°(M) radial to the DOWDD Fix, then southwest along the Pomona, CA, VORTAC 202°(T)/187°(M) radial to the AHEIM Fix, then westward to the Seal Beach VORTAC. The airspace in which this extension would transition is highly congested and equally complex. To mitigate potential safety risks while maintaining the highest level of efficiency as possible, the controlling ATC facilities have devised specific traffic flows and utilize the standard routing noted previously. This extension of V–388 would overlap the routing issued to aircraft today, reduce ATC and pilot computer entries, simplify ATC clearances, and reduce the workload of pilots and aviators thus enhancing aviation safety as a whole.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to extend V–388 westward beyond the Paradise, CA, VORTAC to the Seal Beach, CA, VORTAC. This action would incorporate the standard routing used by ATC into the VOR Federal airways enroute structure to preserve the safe and efficient flow of air traffic in southern CA. The proposed extension is described below.

V–388: V–388 currently extends between the Paradise, CA, VORTAC and the Palm Springs, CA, VORTAC. The FAA proposes to extend the airway westward from the Paradise, CA, VORTAC to the Seal Beach, CA, VORTAC. The proposed extension would extend from the Paradise VORTAC to the intersection of the Paradise VORTAC 285°(T)/270°(M) and Pomona, CA, VORTAC 202°(T)/187°(M) radials (DOWDD Fix), then to the intersection of the Pomona, CA, VORTAC 202°(T)/187°(M) and Seal Beach, CA, VORTAC 073°(T)/058°(M) radials (AHEIM Fix), then to the Seal Beach, CA, VORTAC. As amended, the airway would extend between the Seal Beach VORTAC and the Palm Springs VORTAC.

Existing NAVAID radials in the V–388 description below are unchanged and stated in degrees True north. New intersection NAVAID radials are stated in degrees True north (T)/Magnetic north (M).

VOR Federal airways are published in paragraph 6010(a) of FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022, which is incorporated by reference in 14 CFR 71.1. The V–388 airway action listed in this document would be published subsequently in FAA Order JO 7400.11.

FAA Order JO 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–388 [Amended]

From Seal Beach, CA; INT Seal Beach 073° and Pomona, CA, 202° radials; INT Pomona 202° and Paradise, CA, 285° radials; Paradise; INT Paradise, CA 087° and Palm Springs, CA, 287° radials; to Palm Springs.

* * * * *

Issued in Washington, DC, on April 3, 2023.

Brian Konie,

Acting Manager, Airspace Rules and Regulations.

[FR Doc. 2023–07544 Filed 4–10–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–109309–22]

RIN 1545–BQ44

Micro-Captive Listed Transactions and Micro-Captive Transactions of Interest

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that identify transactions that are the same as, or substantially similar to, certain micro-captive transactions as listed transactions, a type of reportable transaction, and certain other micro-captive transactions as transactions of interest, another type of reportable transaction. Material advisors and certain participants in these listed transactions and transactions of interest are required to file disclosures with the IRS and are subject to penalties for failure to disclose. The proposed regulations affect participants in these transactions as well as material advisors. This document also provides notice of a public hearing on the proposed regulations.

DATES: Electronic or written comments must be received by June 12, 2023. The public hearing on these proposed regulations is scheduled to be held by teleconference on July 19, 2023, at 10 a.m. ET. Requests to speak and outlines of topics to be discussed at the public hearing must be received by June 12, 2023. If no outlines are received by June 12, 2023, the public hearing will be cancelled. Requests to attend the public hearing must be received by 5 p.m. ET on July 17, 2023. The telephonic public hearing will be made accessible to people with disabilities. Requests for special assistance during the telephonic hearing must be received by July 14, 2023.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and REG–109309–22). 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 any comments to the public docket. Send paper submissions to: CC:PA:LPD:PR (REG–109309–22), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

For those requesting to speak during the hearing, send an outline of topic submissions, electronically via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and REG–109309–22).

Individuals who want to testify (by telephone) at the public hearing must send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG–109309–22 and the word TESTIFY. For example, the subject line may say: Request to TESTIFY at Hearing for REG–109309–22. The email should include a copy of the speaker's public comments and outline of discussion topics. Individuals who want to attend (by telephone) the public hearing must also send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG–109309–22 and the word ATTEND. For example, the subject line may say: Request to ATTEND hearing for REG–109309–22. To request special assistance during the telephonic hearing, contact the Publications and Regulations Branch of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to *publichearings@irs.gov* (preferred) or by telephone at (202) 317–6901 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Elizabeth M. Hill of the Office of Associate Chief Counsel (Financial Institutions & Products), (202) 317–4458; concerning the submission of comments or the hearing, Vivian Hayes at (202) 317–6901 (not toll-free numbers) or by email at *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed additions to 26 CFR part 1 (Income Tax Regulations) under section 6011 of the Internal Revenue Code (Code) regarding transactions identified as listed transactions and transactions of interest for purposes of section 6011.

I. Overview of the Reportable Transaction Regime

Section 6011(a) generally provides that, when required by regulations prescribed by the Secretary of the Treasury or her delegate (Secretary), ''any person made liable for any tax imposed by this title, or with respect to the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary. Every person required to make a return or statement shall include therein the information required by such forms or regulations.''

On February 28, 2000, the Treasury Department and the IRS issued a series of temporary regulations (TD 8877; TD 8876; TD 8875) and cross-referencing notices of proposed rulemaking (REG–103735–00; REG–110311–98; REG–103736–00) under sections 6011, 6111, and 6112. The temporary regulations and cross-referencing notices of proposed rulemaking were published in the **Federal Register** (65 FR 11205, 65 FR 11269; 65 FR 11215, 65 FR 11272; 65 FR 11211, 65 FR 11271) on March 2, 2000 (2000 Temporary Regulations). The 2000 Temporary Regulations were modified several times before March 4, 2003, the date on which the Treasury Department and the IRS, after providing notice and opportunity for public comment and considering the comments received, published final regulations (TD 9046) in the **Federal Register** (68 FR 10161) under sections 6011, 6111, and 6112 (2003 Final Regulations). The 2000 Temporary Regulations and 2003 Final Regulations consistently provided that reportable transactions include listed transactions and that a listed transaction is a transaction that is the same as or substantially similar to one of the types of transactions that the IRS has determined to be a tax avoidance transaction and has identified by notice, regulation, or other form of published guidance as a listed transaction.

Following the 2003 promulgation of § 1.6011–4, Congress passed the American Jobs Creation Act of 2004 (AJCA), Public Law 108–357, 118 Stat. 1418 (October 22, 2004), which added sections 6707A, 6662A, and 6501(c)(10) to the Code, and revised sections 6111, 6112, 6707, and 6708 of the Code. *See* sections 811–812 and 814–817 of the AJCA. The AJCA's legislative history explains that Congress incorporated in the statute the method that the Treasury Department and the IRS had been using to identify reportable transactions, and provided incentives, via penalties, to encourage taxpayer compliance with the new disclosure reporting obligations. As the Committee on Ways and Means explained in its report accompanying H.R. 4520, which became the AJCA:

> The Committee believes that the best way to combat tax shelters is to be aware of them. The Treasury Department, using the tools available, issued regulations requiring disclosure of certain transactions and requiring organizers and promoters of tax-engineered transactions to maintain customer lists and make these lists available to the IRS. Nevertheless, the Committee believes that additional legislation is needed to provide the Treasury Department with additional tools to assist its efforts to curtail abusive transactions. Moreover, the Committee believes that a penalty for failing to make the required disclosures, when the imposition of such penalty is not dependent on the tax treatment of the underlying transaction ultimately being sustained, will provide an additional incentive for taxpayers to satisfy their reporting obligations under the new disclosure provisions.

House Report 108–548(I), 108th Cong., 2nd Sess. 2004, at 261 (June 16, 2004) (House Report).

In Footnote 232 of the House Report, the Committee on Ways and Means notes that the statutory definitions of ''reportable transaction'' and ''listed transaction'' were intended to incorporate the pre-AJCA regulatory definitions while providing the Secretary with leeway to make changes to those definitions:

> The provision states that, except as provided in regulations, a listed transaction means a reportable transaction, which is the same as, or substantially similar to, a transaction specifically identified by the Secretary as a tax avoidance transaction for purposes of section 6011. For this purpose, it is expected that the definition of ''substantially similar'' will be the definition used in Treas. Reg. sec. 1.6011–4(c)(4). However, the Secretary may modify this definition (as well as the definitions of ''listed transaction'' and ''reportable transactions'') as appropriate.

Id. at 261 n.232.

Section 6707A(c)(1) defines a ''reportable transaction'' as ''any transaction with respect to which information is required to be included with a return or statement because, as determined under regulations prescribed under section 6011, such transaction is of a type which the Secretary determines as having a potential for tax avoidance or evasion.'' A ''listed transaction'' is defined by section 6707A(c)(2) as ''a reportable

transaction which is the same as, or substantially similar to, a transaction specifically identified by the Secretary as a tax avoidance transaction for purposes of section 6011.''

Section 6111(a), as revised by the AJCA, provides that each material advisor with respect to any reportable transaction must make a return setting forth (1) information identifying and describing the transaction, (2) information describing any potential tax benefits expected to result from the transaction, and (3) such other information as the Secretary may prescribe. Such return must be filed not later than the date specified by the Secretary. Section 6111(b)(2) provides that a reportable transaction has the meaning given to such term by section 6707A(c).

Section 6112(a), as revised by the AJCA, provides that each material advisor with respect to any reportable transaction (as defined in section 6707A(c)) must (whether or not required to file a return under section 6111 with respect to such transaction) maintain a list (1) identifying each person with respect to whom such advisor acted as a material advisor, and (2) containing such other information as the Secretary may by regulations require.

On November 2, 2006, the Treasury Department and the IRS published a notice of proposed rulemaking (REG–103038–05) in the **Federal Register** (71 FR 64488) under section 6011 (November 2006 Transaction of Interest (TOI) Regulations) proposing to add a new category of reportable transaction requiring disclosure under section 6011. The preamble to the November 2006 TOI Regulations (71 FR 64488) explains that these transactions, referred to as transactions of interest, are transactions that the Treasury Department and the IRS believe have the potential for tax avoidance or evasion, but for which the Treasury Department and the IRS lack enough information to determine whether the transaction should be identified as a listed transaction. The November 2006 TOI Regulations proposed that transactions of interest would be identified by the IRS via notice, regulation, or other form of published guidance.

On the same date that the November 2006 TOI Regulations were published, the Treasury Department and the IRS also published two separate notices of proposed rulemaking (REG–103039–05; REG–103043–05) in the **Federal Register** (71 FR 64496, 71 FR 64501) under sections 6111 and 6112, respectively (November 2006 Regulations). The November 2006 Regulations proposed to modify the then-existing regulations relating to the disclosure of reportable transactions by material advisors under section 6111, and the list maintenance requirements of material advisors with respect to reportable transactions under section 6112, in part, to account for the changes made by the AJCA and, in part, to make corresponding updates to the material advisor rules to account for the treatment of transactions of interest as reportable transactions as proposed by the November 2006 TOI Regulations.

After providing notice and opportunity for public comment and considering the comments received, on August 3, 2007, the Treasury Department and the IRS published the November 2006 Regulations and the November 2006 TOI Regulations as final regulations (TD 9350, TD 9351, and TD 9352) in the **Federal Register** (72 FR 43146, 72 FR 43157, and 72 FR 43154) under sections 6011, 6111, and 6112.

II. Disclosure of Reportable Transactions by Participants and Penalties for Failure To Disclose

Section 1.6011–4(a) provides that every taxpayer that has participated in a reportable transaction within the meaning of § 1.6011–4(b) and who is required to file a tax return must file a disclosure statement within the time prescribed in § 1.6011–4(e).

Sections 1.6011–4(d) and (e) provide that the disclosure statement—Form 8886, *Reportable Transaction Disclosure Statement* (or successor form)—must be attached to the taxpayer's tax return for each taxable year for which a taxpayer participates in a reportable transaction. A copy of the disclosure statement must be sent to IRS's Office of Tax Shelter Analysis (OTSA) at the same time that any disclosure statement is first filed by the taxpayer pertaining to a particular reportable transaction.

Reportable transactions include listed transactions, confidential transactions, transactions with contractual protection, loss transactions, and transactions of interest. *See* § 1.6011–4(b)(2) through (6). Consistent with the definitions previously provided in the 2000 Temporary Regulations and later in the 2003 Final Regulations, as promulgated in 2007, § 1.6011–4(b)(2) continues to define a ''listed transaction'' as a transaction that is the same as or substantially similar to one of the types of transactions that the IRS has determined to be a tax avoidance transaction and identified by notice, regulation, or other form of published guidance as a listed transaction. Section 1.6011–4(b)(6) defines a ''transaction of interest'' as a transaction that is the same as or substantially similar to one of the types of transactions that the IRS has identified by notice, regulation, or other form of published guidance as a transaction of interest.

Section 1.6011–4(c)(4) provides that a transaction is ''substantially similar'' if it is expected to obtain the same or similar types of tax consequences and is either factually similar or based on the same or similar tax strategy. Receipt of an opinion regarding the tax consequences of the transaction is not relevant to the determination of whether the transaction is the same as or substantially similar to another transaction. Further, the term substantially similar must be broadly construed in favor of disclosure. For example, a transaction may be substantially similar to a listed transaction or a transaction of interest even though it may involve different entities or use different Code provisions.

Section 1.6011–4(c)(3)(i)(A) provides that a taxpayer has participated in a listed transaction if the taxpayer's tax return reflects tax consequences or a tax strategy described in the published guidance that lists the transaction under § 1.6011–4(b)(2). Published guidance also may identify other types or classes of persons that will be treated as participants in a listed transaction. Published guidance may identify types or classes of persons that will not be treated as participants in a listed transaction. Section 1.6011–4(c)(3)(i)(E) provides that a taxpayer has participated in a transaction of interest if the taxpayer is one of the types or classes of persons identified as participants in the transaction in the published guidance describing the transaction of interest.

Section 1.6011–4(e)(2)(i) provides that if a transaction becomes a listed transaction or a transaction of interest after the filing of a taxpayer's tax return reflecting the taxpayer's participation in the transaction and before the end of the period of limitations for assessment for any taxable year in which the taxpayer participated in the transaction, then a disclosure statement must be filed with OTSA within 90 calendar days after the date on which the transaction becomes a listed transaction or transaction of interest. This requirement extends to an amended return and exists regardless of whether the taxpayer participated in the transaction in the year the transaction became a listed transaction or transaction of interest. The Commissioner of Internal Revenue may also determine the time for disclosure of listed transactions and transactions of interest in the published guidance identifying the transaction.

Participants required to disclose these transactions under § 1.6011–4 who fail to do so are subject to penalties under section 6707A. Section 6707A(b) provides that the amount of the penalty is 75 percent of the decrease in tax shown on the return as a result of the reportable transaction (or which would have resulted from such transaction if such transaction were respected for Federal tax purposes), subject to minimum and maximum penalty amounts. The minimum penalty amount is $5,000 in the case of a natural person and $10,000 in any other case. For listed transactions, the maximum penalty amount is $100,000 in the case of a natural person and $200,000 in any other case. For other reportable transactions, including transactions of interest, the maximum penalty is $10,000 in the case of a natural person and $50,000 in any other case.

Additional penalties may also apply. In general, section 6662A imposes a 20 percent accuracy-related penalty on any understatement (as defined in section 6662A(b)(1)) attributable to an adequately disclosed reportable transaction. If the taxpayer had a requirement to disclose participation in the reportable transaction but did not adequately disclose the transaction in accordance with the regulations under section 6011, the taxpayer is subject to an increased penalty rate equal to 30 percent of the understatement. *See* section 6662A(c). Section 6662A(b)(2) provides that section 6662A applies to any item which is attributable to any listed transaction and any reportable transaction (other than a listed transaction) if a significant purpose of such transaction is the avoidance or evasion of Federal income tax.

Participants required to disclose listed transactions who fail to do so are also subject to an extended period of limitations under section 6501(c)(10). That section provides that the time for assessment of any tax with respect to the transaction shall not expire before the date that is one year after the earlier of the date the participant discloses the transaction or the date a material advisor discloses the participation pursuant to a written request under section 6112(b)(1)(A).

III. Disclosure of Reportable Transactions by Material Advisors and Penalties for Failure To Disclose

Section 301.6111–3(a) of the Procedure and Administration Regulations provides that each material advisor with respect to any reportable transaction, as defined in § 1.6011–4(b), must file a return as described in § 301.6111–3(d) by the date described in § 301.6111–3(e).

Section 301.6111–3(b)(1) provides that a person is a material advisor with respect to a transaction if the person provides any material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, insuring, or carrying out any reportable transaction, and directly or indirectly derives gross income in excess of the threshold amount as defined in § 301.6111–3(b)(3) for the material aid, assistance, or advice. Under § 301.6111–3(b)(2)(i) and (ii), a person provides material aid, assistance, or advice if the person provides a tax statement, which is any statement (including another person's statement), oral or written, that relates to a tax aspect of a transaction that causes the transaction to be a reportable transaction as defined in § 1.6011–4(b)(2) through (7).

Material advisors must disclose transactions on Form 8918, *Material Advisor Disclosure Statement* (or successor form), as provided in § 301.6111–3(d) and (e). Section 301.6111–3(e) provides that the material advisor's disclosure statement for a reportable transaction must be filed with OTSA by the last day of the month that follows the end of the calendar quarter in which the advisor becomes a material advisor with respect to a reportable transaction or in which the circumstances necessitating an amended disclosure statement occur. A person may become a material advisor with respect to transactions that are later identified as listed transactions or transactions of interest. See § 301.6111–3(b)(4). The disclosure statement must be sent to OTSA at the address provided in the Instructions for Form 8918 (or successor form).

Section 301.6111–3(d)(2) provides that the IRS will issue to a material advisor a reportable transaction number with respect to the disclosed reportable transaction. Receipt of a reportable transaction number does not indicate that the disclosure statement is complete, nor does it indicate that the transaction has been reviewed, examined, or approved by the IRS. Material advisors must provide the reportable transaction number to all taxpayers and material advisors for whom the material advisor acts as a material advisor as defined in § 301.6111–3(b). The reportable transaction number must be provided at the time the transaction is entered into, or, if the transaction is entered into prior to the material advisor receiving the reportable transaction number, within 60 calendar days from the date the reportable transaction number is mailed to the material advisor.

Additionally, material advisors must prepare and maintain lists identifying each person with respect to whom the advisor acted as a material advisor with respect to the reportable transaction in accordance with § 301.6112–1(b) and furnish such lists to the IRS in accordance with § 301.6112–1(e).

Section 6707(a) provides that a material advisor who fails to file a timely disclosure, or files an incomplete or false disclosure statement, is subject to a penalty. Pursuant to section 6707(b)(2), for listed transactions, the penalty is the greater of (A) $200,000, or (B) 50 percent of the gross income derived by such person with respect to aid, assistance, or advice which is provided with respect to the listed transaction before the date the return is filed under section 6111. Pursuant to section 6707(b)(1), the penalty for other reportable transactions, including transactions of interest, is $50,000.

A material advisor may also be subject to a penalty under section 6708 for failing to maintain a list under section 6112(a) and failing to make the list available upon written request to the Secretary in accordance with section 6112(b) within 20 business days after the date of such request. Section 6708(a) provides that the penalty is $10,000 per day for each day of the failure after the 20th day. However, no penalty will be imposed with respect to the failure on any day if such failure is due to reasonable cause.

IV. Micro-Captive Transactions and Notice 2016–66

As enacted by section 1024 of the Tax Reform Act of 1986, Public Law 99–514, 100 Stat. 2085, 2405 (October 22, 1986), section 831(a) generally imposes tax on the taxable income (determined under the special rules for calculating taxable income of insurance companies in part II of subchapter L of chapter 1 of the Code) of every insurance company other than a life insurance company (nonlife insurance company), for each taxable year computed as provided in section 11 of the Code. However, certain small nonlife insurance companies may elect to be subject to the alternative tax imposed by section 831(b).

Upon election by an eligible nonlife insurance company (eligible electing company) to be taxed under section 831(b), in lieu of the tax otherwise imposed by section 831(a), section 831(b) imposes tax on the company's income computed by multiplying the taxable investment income of the eligible electing company (determined under section 834 of the Code) for the

taxable year by the rates provided in section 11(b) of the Code. Premium income of a nonlife insurance company is included in taxable income under section 831(a), but not taxable investment income under section 834. Thus, an eligible electing company pays no tax on premium income for taxable years for which its election is in effect.

Congress enacted section 333 of the Protecting Americans from Tax Hikes Act of 2015 (PATH Act), div. Q. of Public Law 114–113, 129 Stat. 2242, 3040 (December 18, 2015), to both tighten and expand the requirements for qualifying under section 831(b), effective for taxable years beginning after December 31, 2016. As amended by the PATH Act, section 831(b) requires an eligible electing company to be an insurance company (within the meaning of section 816(a) of the Code) having net written premiums or, if greater, direct written premiums, for the taxable year not exceeding $2.2 million as adjusted for inflation (net written premium limitation) and to meet the diversification requirements of section 831(b)(2)(B). The last sentence of section 831(b)(2)(A) provides that an election under section 831(b) applies to the taxable year for which it is made and all subsequent taxable years for which the net written premium limitation and the diversification requirements are met and may be revoked only with the Secretary's consent. In addition, section 831(d) requires every eligible electing company that has a section 831(b) election in effect to furnish to the Secretary ''at such time and in such manner as the Secretary shall prescribe such information for such taxable year as the Secretary may require with respect to'' the diversification requirements of section 831(b)(2)(B).

On November 21, 2016, the Treasury Department and the IRS published Notice 2016–66, 2016–47 I.R.B 745, which identified certain micro-captive transactions as transactions of interest. On January 17, 2017, the IRS published Notice 2017–08, 2017–3 I.R.B. 423, which modified Notice 2016–66 by providing for an extension of time for participants and material advisors to file their disclosures.

Notice 2016–66 alerted taxpayers and their representatives pursuant to § 1.6011–4(b)(6) and for purposes of § 1.6011–4(b)(6) and sections 6111 and 6112, that the Treasury Department and the IRS identified as transactions of interest certain micro-captive transactions in which a taxpayer attempts to reduce the aggregate taxable income of the taxpayer, related persons, or both, using contracts that the parties treat as insurance contracts and a related company that the parties treat as an insurance company. Notice 2016–66 also alerted persons involved with the identified transactions that certain responsibilities may arise from their involvement.

Notice 2016–66 describes the following micro-captive transaction as a transaction of interest: (1) a company that the parties treat as an insurance company (Captive) elects to exclude premiums from taxable income under section 831(b); (2) at least 20 percent of the voting power or value of the outstanding stock of Captive is directly or indirectly owned by the insured entity (Insured), owners of Insured, or persons related to Insured or its owners (20-percent relationship factor); and (3) either or both of the following apply: (i) Captive has at any time during a defined Computation Period (referred to as the Notice Computation Period) directly or indirectly made available as financing, or otherwise conveyed or agreed to make available or convey, to certain related persons in a transaction that did not result in taxable income or gain to the recipient any portion of the payments treated as premiums, such as through a guarantee, a loan, or other transfer of Captive's capital (financing factor), or (ii) the amount of liabilities incurred by Captive for insured losses and claim administration expenses during the Notice Computation Period is less than 70 percent of the amount equal to premiums earned by Captive during that period less policyholder dividends paid by Captive during that period (70-percent loss ratio factor).

Notice 2016–66 defines the Notice Computation Period as the most recent five taxable years of Captive or, if Captive has been in existence for less than five taxable years, the entire period of Captive's existence. For purposes of the preceding sentence, if Captive has been in existence for less than five taxable years and Captive is a successor to one or more Captives created or availed of in connection with a transaction described in the notice, taxable years of such predecessor entities are treated as taxable years of Captive. A short taxable year is treated as a taxable year.

Notice 2016–66 also provides that the arrangement is not treated as a transaction of interest if the micro-captive arrangement provides insurance for employee compensation or benefits and the arrangement is one for which the Employee Benefits Security Administration of the U.S. Department of Labor has issued a Prohibited Transaction Exemption. A Prohibited Transaction Exemption may be granted by the U.S. Department of Labor on an individual basis or may fall under the class exemption for captives. The Prohibited Transaction Exemption procedures are published as final regulations in the **Federal Register** (76 FR 66637). The Department of Labor's proposed amendments to the Prohibited Transaction Exemption procedures were published on March 15, 2022, in the **Federal Register** (87 FR 14722).

Notice 2016–66 requires disclosure of the information specified in § 1.6011–4(d) and the Instructions to Form 8886 (or successor form), which includes identifying and describing the transaction in sufficient detail for the IRS to be able to understand the tax structure of the reportable transaction and identity of all parties involved in the transaction. Notice 2016–66 provides that for all participants, describing the transaction in sufficient detail includes, but is not limited to, describing on Form 8886 (or successor form) when and how the taxpayer became aware of the transaction. The notice further provides that for Captive, describing the transaction in sufficient detail includes, but is not limited to, describing the following on Form 8886 (or successor form): (1) whether Captive is reporting because (i) the 70-percent loss ratio factor is met for the taxable year; (ii) the financing factor is met for the taxable year; or (iii) both (i) and (ii); (2) under what authority Captive is chartered; (3) all the type(s) of coverage provided by Captive during the year or years of participation (if disclosure pertains to multiple years); (4) how the amounts treated as premiums for coverage provided by Captive during the year or years of participation (if disclosure pertains to multiple years) were determined, including the name and contact information of any actuary or underwriter who assisted in these determinations; (5) any claims paid by Captive during the year or years of participation (if disclosure pertains to multiple years), and the amount of, and reason for, any reserves reported by Captive on the annual statement; and (6) the assets held by Captive during the year or years of participation (if disclosure pertains to multiple years).

V. Comments Submitted in Response to Notice 2016–66

Comments submitted in response to Notice 2016–66 were carefully considered in the development of these proposed regulations. Although the Administrative Procedure Act (APA), 5 U.S.C. 551–559, does not require a response to those comments, the comments are described here in an effort to assist taxpayers in understanding the provisions of the

proposed regulations described in the Explanation of Provisions section.

First, some commenters suggested that changes to the Form 1120–PC, *U.S. Property and Casualty Insurance Company Income Tax Return,* would be better suited to capture the information sought by Notice 2016–66. Other commenters indicated that the information sought could be readily obtained from the existing Forms 1120–PC being filed, so any additional reporting would be unnecessarily duplicative and burdensome. However, changes to the Form 1120–PC would at a minimum impact all nonlife insurance companies that make section 831(b) elections, not only participants in the micro-captive transactions described in the proposed regulations. Also, some of the requested information is not readily available from filed Forms 1120–PC, such as the descriptions of the types of coverages provided by a Captive and the name and contact information of any actuary or underwriter who assisted Captive in the determination of amounts treated as premiums. Additionally, limiting the collection of information to only those entities filing the Form 1120–PC would be insufficient to gather relevant information, as information regarding Insureds and promoters of the transactions would not be included.

Second, commenters also suggested that the reporting requirements under Notice 2016–66 are contrary to Congressional intent in enacting section 333 of the PATH Act, which, as noted earlier, effective for taxable years beginning after December 31, 2016, modified the section 831(b) eligibility rules for a property and casualty insurance company to elect to be taxed only on taxable investment income. The provision increased the limit on net written premiums (or, if greater, direct written premiums) from $1,200,000 to $2,200,000 and indexed that amount for inflation. The provision also added diversification requirements to the eligibility rules. However, nothing in the statutory language or legislative history of the PATH Act suggests that Congress intended to provide the benefits of section 831(b) to companies that do not qualify as insurance companies for Federal income tax purposes. As exemplified by the transactions described in *Avrahami* v. *Commissioner,* 149 T.C. 144 (2017), *Syzygy Insurance Co., Inc.* v. *Commissioner,* T.C. Memo. 2019–34, and *Caylor Land & Development, Inc.* v. *Commissioner,* T.C. Memo. 2021–30, some companies claiming the benefits of section 831(b) do not meet these basic eligibility requirements for such treatment. *See also Reserve Mechanical Corp.* v. *Commissioner,* 34 F.4th 881 (10th Cir. 2022) (concluding company filing as a tax-exempt entity under section 501(c)(15) did not qualify as an insurance company for Federal income tax purposes using similar analysis). The proposed regulations, like Notice 2016–66, would apply to entities that claim the benefits of section 831(b) when certain factors indicate that they do not or may not qualify as insurance companies for Federal income tax purposes.

Third, other commenters indicated that the reporting requirements were unduly burdensome, as well as duplicative, because the information sought could be readily obtained from a smaller subgroup of the participants in a transaction. However, the reporting and recordkeeping required for reportable transactions from each participant ensure that the Service can identify all of the participants of a particular transaction and that all participants are aware of their participation in a reportable transaction. Nevertheless, the proposed regulations significantly narrow the information sought from participants compared to that required by Notice 2016–66 and provide a disclosure safe harbor to a significant number of participants, thereby reducing the burden in reporting to the maximum extent consistent with sound tax administration. *See* proposed § 1.6011–10(e)(2) and (f) and proposed § 1.6011–11(e)(2) and (f).

Fourth, additional commenters on Notice 2016–66 expressed concerns regarding certain arrangements in which a service provider, automobile dealer, lender, or retailer (Seller) sells insurance contracts to its customers in connection with the products or services being sold (Consumer Coverage). These commenters recommended that such Consumer Coverage arrangements be excepted from the disclosure requirements. The proposed regulations provide a limited exception for certain participants in Consumer Coverage arrangements. *See* proposed §§ 1.6011–10(d)(2) and 1.6011–11(d)(2).

Finally, commenters argued that the 20-percent relationship factor and the 70-percent loss ratio factor described in sections 2.01(d) and 2.01(e)(2) of Notice 2016–66, respectively, are overly broad and arbitrary. However, the Treasury Department and the IRS have determined that the factors are objective and reasonably determined based on existing statutory provisions and available industry data. The 20-percent relationship factor was based on the diversification requirements established by section 333 of the PATH Act. While one part of the PATH Act diversification requirements is based on the percentage of premiums from related insureds, requiring that no more than 20 percent of net written premiums (or if greater, direct written premiums) for a taxable year is attributable to any one policyholder, the 20-percent threshold in Notice 2016–66 is based on concentration of ownership of stock in a Captive when Insured or Insured's owner owns Captive's stock or is related to Captive's owner. Both requirements are based on a lack of diversification and identify a threshold at which a lack of diversification may facilitate abuse.

Similarly, the 70-percent loss ratio factor was informed by, but is less burdensome than, the 85 percent medical loss ratio test enacted by Congress in section 833(c)(5) of the Code for Blue Cross and Blue Shield organizations and other health insurers that are entitled to certain tax benefits that are not available to other nonlife insurance companies, as well as the medical loss ratio computed under section 2718(b) of the Public Health Service Act, 42 U.S.C. 300gg–18. The loss ratio factor in Notice 2016–66 compares claims and expenses to premiums charged in a manner similar to the medical loss ratio test in section 833(c)(5) of the Code and the medical loss ratio computed under section 2718(b) of the Public Health Service Act. However, the medical loss ratio has a narrower focus than the Notice 2016–66 loss ratio factor and is computed as a percentage of the total premium revenue (excluding Federal and State taxes and licensing or regulatory fees) an issuer expends (1) on reimbursement for clinical services provided to enrollees under such coverage and (2) for activities that improve health care quality of enrollees.

The Treasury Department and IRS also considered data from the National Association of Insurance Commissioners (NAIC) in determining the applicable loss ratio factor. NAIC, in its 2021 Annual Property & Casualty and Title Insurance Industries Report (2021 NAIC P&C Report), indicated that annual loss ratios for property and casualty companies averaged 72.5 percent for that year. *See Insurance Industry Snapshots and Analysis Reports* ((July 21, 2022), *https://content.naic.org/cipr_topics/topic_insurance_industry_snapshots_and_analysis_reports.htm* (last visited April 3, 2023). The 2021 NAIC P&C Report is ''produced from insurer statutory filings and represent[s] approximately 99% of all insurers expected to file the NAIC Financial Data Repository.'' *Id.* The single-year average

loss ratio for property and casualty companies ranged between 67.2 and 76.2 percent per year from 2012 to 2021. *See U.S. Property & Casualty and Title Insurance Industries—2021 Full Year Results* (2022), *https://content.naic.org/sites/default/files/inline-files/2021%20Annual%20Property%20%26%20Casualty%20and%20Title%20Insurance%20Industry%20Report.pdf* (last visited April 3, 2023).

Commenters indicated that some Captives electing the alternative tax under section 831(b) have loss ratios that fall below the industry-wide average during a given year of operation and suggested that the loss ratio in Notice 2016–66 is set too high. However, the average loss ratio reported by the NAIC and the loss ratio factor in Notice 2016–66 are computed differently and are not directly comparable. First, the average loss ratio reported by the NAIC reflects the ratio of net losses incurred and loss expenses incurred to net premiums earned, without adjustment for policyholder dividends paid, whereas Captive's loss ratio factor under Notice 2016–66 subtracts policyholder dividends paid from premiums earned by Captive. This means that, for an entity that pays policyholder dividends, the loss ratio factor under Notice 2016–66 would be higher than its NAIC loss ratio. Second, the loss ratio factor in Notice 2016–66 reflects the ratio of insured losses and claims administration expenses during the Notice Computation Period, which may be as long as five years. By contrast, the average loss ratio reported by the NAIC is a single-year average. Accordingly, even Captives electing the alternative tax under section 831(b) that have loss ratios that fall below the industry-wide average for property and casualty companies in any particular year may not have loss ratio factors that cause a transaction to be described in Notice 2016–66 or the proposed regulations. The Treasury Department and the IRS therefore view the average loss ratio data reported by the NAIC as supportive of the loss ratio factors provided in Notice 2016–66 and in these proposed regulations. *See* proposed §§ 1.6011–10(c)(2) and 1.6011–11(c).

Despite commenters' objections to the 20-percent relationship factor and 70-percent loss ratio factor, the commenters did not identify different factors or industry-wide standards for small insurers that would distinguish abusive from non-abusive transactions or provide examples of non-abusive transactions for which disclosure was required as a result of these factors. These objective factors in Notice 2016–66 have been effective in identifying transactions for which disclosure should be required and are reasonable given existing statutory provisions and available industry data.

To better ensure non-abusive transactions are not required to be reported under the proposed regulations, however, the proposed regulations lower the loss ratio factor for both the micro-captive transactions identified in proposed § 1.6011–10(a) as listed transactions (Micro-captive Listed Transactions) and the micro-captive transactions identified in proposed § 1.6011–11(a) as transactions of interest (Micro-captive Transactions of Interest) from 70 percent to 65 percent. *See* proposed §§ 1.6011–10(c)(2) and 1.6011–11(c). Additionally, the computation period used to determine the loss ratio factor is extended from a Notice Computation Period of up to five taxable years to a computation period of up to nine taxable years (referred to as the Transaction of Interest Computation Period) for the Micro-captive Transaction of Interest. *See* proposed § 1.6011–11(b)(2). For the Micro-captive Listed Transaction, the computation period used to determine the loss ratio factor (referred to as the Loss Ratio Factor Computation Period) is ten taxable years. *See* proposed § 1.6011–10(b)(2)(ii).

For the foregoing reasons, the IRS intends to challenge the purported tax benefits from transactions identified in proposed § 1.6011–10(c) as listed transactions, and the IRS may challenge the purported tax benefits from transactions identified in proposed § 1.6011–11(c) as transactions of interest. The IRS may also challenge the purported tax benefits from these transactions based on the economic substance, business purpose, or other rules or doctrines if applicable based on the facts of a particular case.

VI. Purpose of Proposed Regulation

On March 3, 2022, the Sixth Circuit issued an order in *Mann Construction* v. *United States,* 27 F.4th 1138, 1147 (6th Cir. 2022), holding that Notice 2007–83, 2007–2 C.B. 960, which identified certain trust arrangements claiming to be welfare benefit funds and involving cash value life insurance policies as listed transactions, violated the APA, because the notice was issued without following the notice-and-comment procedures required by section 553 of the APA. The Sixth Circuit concluded that Congress did not clearly express an intent to override the notice-and-comment procedures required by section 553 of the APA when it enacted the AJCA. 27 F.4th at 1148. The Sixth Circuit reversed the decision of the district court, which held that Congress had authorized the IRS to identify listed transactions without notice and comment. *See Mann Construction, Inc.* v. *United States,* 539 F.Supp.3d 745, 763 (E.D. Mich. 2021).

In *CIC Services, LLC* v. *IRS,* the United States District Court for the Eastern District of Tennessee, which is located in the Sixth Circuit, viewed the analysis in *Mann Construction* as controlling and vacated Notice 2016–66, holding that the IRS failed to comply with the APA's notice-and-comment procedures. The Court also held that the IRS acted arbitrarily and capriciously based on the administrative record. *CIC Services, LLC* v. *IRS,* 2022 WL 985619 (E.D. Tenn. March 21, 2022), *as modified by* 2022 WL 2078036 (E.D. Tenn. June 2, 2022); *see also Green Valley Investors, LLC, et al.* v. *Commissioner,* 159 T.C. No. 5 (Nov. 9, 2022) (relying on *Mann Construction* in holding that Notice 2017–10, 2017–4 I.R.B. 544 (identifying certain syndicated conservation easements as listed transactions) was improperly issued because it was issued without following the APA's notice-and-comment procedures); *Green Rock, LLC* v. *IRS,* No. 2:21–cv–01320–ACA, 2023 U.S. Dist. LEXIS 17670 (N.D. Ala. Feb. 2, 2023) (holding that notice and comment procedures were required before issuance of Notice 2017–10).

In light of the decision by the district court in *CIC Services,* the IRS will not enforce the disclosure requirements or penalties that are dependent upon the procedural validity of Notice 2016–66. Thus, the Treasury Department and the IRS are issuing these proposed regulations to identify certain micro-captive transactions as Micro-captive Transactions of Interest. In addition, this document obsoletes Notice 2016–66 (as modified by Notice 2017–08). The obsoletion of the notice, however, has no effect on the merits of the tax benefits claimed from the transactions themselves and related litigation, or income tax examinations and promoter investigations relating to micro-captive transactions.

The Treasury Department and the IRS disagree with the Sixth Circuit's decision in *Mann Construction* and the Tax Court's decision in *Green Valley* and are continuing to defend the validity of notices identifying transactions as listed transactions in circuits other than the Sixth Circuit. However, to help allow for consistent enforcement throughout the nation, the Treasury Department and the IRS are proposing to identify certain other

micro-captive transactions as Micro-captive Listed Transactions by regulation.

Explanation of Provisions

A. Micro-Captive Listed Transactions and Micro-Captive Transactions of Interest

This section generally describes the micro-captive transactions that are the focus of the proposed regulations and why the Micro-captive Listed Transactions are abusive and the Micro-captive Transactions of Interest have the potential for abuse. This section also describes the proposed regulations identifying Micro-captive Listed Transactions and Micro-captive Transactions of Interest.

1. In General

The Treasury Department and the IRS are aware of a micro-captive transaction, in which a taxpayer attempts to reduce the aggregate taxable income of the taxpayer, persons related to the taxpayer, or both, using contracts that the parties treat as insurance contracts and a related Captive. In some cases, Captive enters into a contract with a related entity that the parties treat as an insurance contract. In other cases, Captive and a related entity enter into separate contracts with one or more unrelated intermediaries. For example, the related entity and an intermediary may enter into a contract that the parties treat as an insurance contract, and Captive may then enter into a separate contract with the intermediary that the parties treat as a reinsurance contract covering the ''risks'' under the contract between the related entity and the intermediary. Each entity that makes payments to an intermediary or Captive under these contracts treats the payments as insurance premiums that are within the scope of § 1.162–1(a) and deducts the payments as ordinary and necessary business expenses under section 162. Captive treats the payments received from the related entity or intermediary under a contract treated as an insurance contract or reinsurance contract as premiums for insurance coverage.

Captive asserts that it is taxable as a nonlife insurance company under the Code and, if it is not a domestic corporation, makes an election under section 953(d) of the Code to be treated as a domestic corporation for purposes of the Code. Captive makes an election under section 831(b) to be taxed only on taxable investment income (defined in section 834). Captive accordingly excludes from the computation of its taxable income the payments received from the related entity or intermediary treated as premiums. For each taxable year in which the micro-captive transaction is in effect, the transaction is structured so that Captive does not have net premiums written (or, if greater, direct premiums written) that exceed the statutory limit. For taxable years beginning after December 31, 2016, the statutory limit is $2,200,000, adjusted annually for inflation ($2,650,000 for taxable years beginning in 2023).

Since the publication of Notice 2016–66, examinations of taxpayers and promoters and information received through disclosures filed in response to Notice 2016–66 have clarified the Treasury Department's and the IRS's understanding of micro-captive transactions, including the scope of participation. Further, in the three section 831(b) micro-captive cases decided on their merits since the publication of Notice 2016–66, the U.S. Tax Court held that the micro-captive transactions at issue did not meet the requirements for treatment as insurance for Federal income tax purposes. *See Avrahami* v. *Commissioner,* 149 T.C. at 144; *Syzygy* v. *Commissioner,* T.C. Memo. 2019–34; and *Caylor* v. *Commissioner,* T.C. Memo. 2021–30; *see also Reserve Mechanical Corp.* v. *Commissioner,* 34 F.4th at 881 (concluding transactions entered into by company filing as a tax-exempt entity under section 501(c)(15) did not meet the requirements for treatment as insurance for Federal income tax purposes using similar analysis). Taking into account only the years in issue in these decisions, the information included in the Court's opinions indicates that the transactions at issue had the elements that would require disclosure under Notice 2016–66. Accordingly, the Treasury Department and the IRS have determined that certain micro-captive transactions are abusive tax avoidance transactions and certain other micro-captive transactions have the potential for tax avoidance or evasion.

As further discussed in sections B.1. through B.3. of this Explanation of Provisions, the Treasury Department and the IRS have determined that two categories of micro-captive transactions, described in proposed § 1.6011–10(c)(1) and (c)(2), are tax avoidance transactions, and thus propose to identify such transactions as listed transactions. The transactions in both categories involve related parties, including a Captive, at least 20 percent of the voting power or the value of the outstanding stock or equity interest of which is owned, directly or indirectly, by an Insured, an Owner, or persons Related to an Insured or an Owner. *See* proposed § 1.6011–10(b)(1)(iii). The first category of these transactions is identified by the presence of a financing factor, described in proposed § 1.6011–10(c)(1). The second category of these transactions is identified by a loss ratio factor that falls below 65 percent based on a Loss Ratio Computation Period of ten taxable years, as described in proposed § 1.6011–10(c)(2). The proposed regulations therefore identify transactions that are the same as, or substantially similar to, the Micro-captive Listed Transaction described in proposed § 1.6011–10(a) as listed transactions for purposes of § 1.6011–4. As noted previously, a transaction is ''substantially similar'' if it is expected to obtain the same or similar types of tax consequences and is either factually similar or based on the same or similar tax strategy, even though it may involve different entities or use different Code provisions.

As further discussed in section B.1. and B.3. of this Explanation of Provisions, the Treasury Department and the IRS have also determined that a third category of micro-captive transactions, described in proposed § 1.6011–11(c), has a potential for tax avoidance or evasion, and thus propose to identify such transactions as transactions of interest. This category of micro-captive transactions also involves related parties as described in proposed § 1.6011–10(b)(1)(iii) and is identified by the presence of a loss ratio factor that falls below 65 percent over a shorter Transaction of Interest Computation Period, generally because Captives involved have been in operation for a shorter period of time. With respect to this third category of transactions, the Treasury Department and the IRS require more information to determine if the transactions are being used for tax avoidance or evasion. The proposed regulations therefore identify transactions that are the same as, or substantially similar to, the Micro-captive Transaction of Interest described in proposed § 1.6011–11(a) as transactions of interest for purposes of § 1.6011–4(b)(6).

2. Abuses

In Micro-captive Listed Transactions and Micro-captive Transactions of Interest, related parties claim the Federal income tax benefits of treating the contracts as insurance (or reinsurance) contracts. Insured deducts premiums paid to Captive under section 162, while the related Captive excludes the premium income from its taxable income by electing under section 831(b)

to be taxed only on its taxable investment income.

Neither the Code nor the regulations thereunder define the terms ''insurance'' or ''insurance contract.'' The Supreme Court has explained that for an arrangement to constitute insurance for federal income tax purposes, both risk shifting and risk distribution must be present. *Helvering* v. *Le Gierse,* 312 U.S. 531 (1941). The risk transferred must be risk of economic loss. *Allied Fidelity Corp.* v. *Commissioner,* 572 F.2d 1190, 1193 (7th Cir. 1978). The risk must contemplate the fortuitous occurrence of a stated contingency, *Commissioner* v. *Treganowen,* 183 F.2d 288, 290–91 (2d Cir. 1950), and must not be merely an investment or business risk. Rev. Rul. 2007–17, 2007–2 C.B. 127. In addition, the arrangement must constitute insurance in the commonly accepted sense. *See, e.g., Rent-A-Center, Inc.* v. *Commissioner,* 142 T.C. 1, 10–13 (2014).

In many micro-captive transactions, however, the manner in which the contracts are interpreted, administered, and applied is inconsistent with arm's length transactions and sound business practices. Captive typically does not behave as an insurance company commonly would, indicating that Captive is not issuing insurance contracts and the transaction does not constitute insurance for Federal income tax purposes. For example, Captive may fail to adequately distribute risk or fail to employ actuarial techniques to establish premium rates that appropriately reflect the risk of loss and costs of conducting an insurance business. Captive may also use its premium income for purposes other than administering and paying claims under the contract(s), including routing funds that have not been taxed to the Insured or a person related to the Insured or its owners. A micro-captive transaction may share other characteristics with the purported insurance transactions considered by the Tax Court in *Avrahami, Syzygy,* and *Caylor,* or with the transactions considered in other cases in which the courts determined the transactions were not insurance for Federal income tax purposes. *See, e.g., Reserve Mechanical Corp.* v. *Commissioner,* 34 F.4th 881 (10th Cir. 2022). The net effect of participating in this transaction is that the Insured claims a tax deduction for transferring amounts treated as premiums to Captive, which is owned by parties related to Insured, and Captive is not taxed on the corresponding income.

If the transaction does not constitute insurance, Insured is not entitled to deduct under section 162 as a trade or business expense the amount treated as an insurance premium. In addition, if Captive does not actually provide insurance, it does not qualify as an insurance company and its elections to be taxed only on its taxable investment income under section 831(b) and to be treated as a domestic insurance company under section 953(d) are invalid.

These proposed regulations inform taxpayers that participate in transactions described in proposed §§ 1.6011–10(c) and 1.6011–11(c), and substantially similar transactions, and persons who act as material advisors with respect to these transactions, and substantially similar transactions, that they must disclose in accordance with the rules provided in § 1.6011–4(a) and section 6111(a), respectively. Material advisors must also maintain lists as required by section 6112.

As previously noted, the IRS intends to challenge the claimed tax benefits from Micro-captive Listed Transactions, and may challenge the claimed tax benefits from Micro-captive Transactions of Interest. Examinations of these micro-captive transactions may result in adjustments including full disallowance of claimed micro-captive insurance premium deductions, inclusion in income of amounts received by Captive, imposition of withholding tax liability under section 1461 of the Code for failing to deduct and withhold tax on payments made to a foreign Captive, imposition of a 20 percent or 40 percent penalty for lack of economic substance under section 6662(b)(6) or (i)(1) of the Code, which may not be avoided by a reasonable cause exception, and imposition of other applicable taxes and penalties.

3. Micro-Captive Listed Transactions

Proposed § 1.6011–10(a) provides that transactions that are the same as, or substantially similar to, transactions described in proposed § 1.6011–10(c) are identified as listed transactions for purposes of § 1.6011–4(b)(2), except as provided in proposed § 1.6011–10(d). Proposed § 1.6011–10(b) provides definitions of terms used to describe Micro-captive Listed Transactions, including Captive, Financing Computation Period, Loss Ratio Computation Period, Contract, Insured, Intermediary, Recipient, and Related. In particular, Captive is defined as an entity that elects under section 831(b) to be taxed as an insurance company only on its taxable investment income; issues a Contract to an Insured, reinsures a Contract of an Insured issued by an Intermediary, or both; and has at least 20 percent of its assets or voting power or the value of its outstanding stock or equity interests directly or indirectly, individually or collectively, owned by an Insured, an Owner, or persons Related to an Insured or Owner. The term Related is defined in proposed § 1.6011–10(b)(8) by reference to sections 267(b), 707(b), 2701(b)(2)(C), and 2704(c)(2). The definition incorporates the constructive ownership rules in those sections. Proposed § 1.6011–10(b) also provides the rules for persons that hold derivatives and for the treatment of beneficiaries of trusts and estates. The treatment of beneficiaries of trusts in proposed § 1.6011–10(b) does not affect the application of Subpart E of Subchapter J of Chapter 1 of Subtitle A, which provides rules concerning when a grantor or another person is treated as the owner of a portion of that trust.

A transaction is described in proposed § 1.6011–10(c) if it is described in proposed § 1.6011–10(c)(1), or (c)(2), or both. Proposed § 1.6011–10(c)(1) describes transactions that involve a Captive that, at any time during the Financing Computation Period, directly or indirectly made available as financing or otherwise conveyed or agreed to make available or convey to a Recipient, in a transaction that did not result in taxable income or gain to the Recipient, any portion of the payments under the Contract, such as through a guarantee, a loan, or other transfer of Captive's capital, including such financings or conveyances made prior to the Financing Computation Period that remain outstanding as of the taxable year in which disclosure is required. Any amounts that a Captive made available as financing or otherwise conveyed or agreed to make available or convey to a Recipient are presumed to be portions of the payments under the Contract to the extent such amounts when conveyed or made available are in excess of Captive's cumulative after-tax net investment earnings minus any outstanding financings or conveyances. *See* section B.2. of this Explanation of Provisions. The Financing Computation Period is the most recent five taxable years of Captive, or all taxable years of Captive, if Captive has been in existence for less than five taxable years. For purposes of determining the Financing Computation Period, each short taxable year is a separate taxable year and taxable years of predecessor entities are treated as taxable years of Captive.

Proposed § 1.6011–10(c)(2) describes transactions that involve a Captive for which the amount of liabilities incurred for insured losses and claim administration expenses during a Loss

Ratio Computation Period is less than 65 percent of the amount equal to premiums earned by Captive during the Loss Ratio Computation Period less policyholder dividends paid by Captive during the Loss Ratio Computation Period. *See* section B.3. of this Explanation of Provisions. The Loss Ratio Computation Period is the most recent ten taxable years of Captive, each short taxable year is a separate taxable year, and the taxable years of predecessor entities are treated as taxable years of Captive. Proposed § 1.6011–10(c)(2) does not apply to any Captive that has been in existence for less than ten taxable years, including taxable years of predecessor entities.

Proposed § 1.6011–10(d) provides that a transaction described in proposed § 1.6011–10(c) is not classified as a listed transaction if the transaction (1) provides insurance for employee compensation or benefits and is one for which the Employee Benefits Security Administration of the U.S. Department of Labor has issued a Prohibited Transaction Exemption, or (2) is a Consumer Coverage reinsurance arrangement described in proposed § 1.6011–10(d)(2). *See* section B.6. of this Explanation of Provisions.

Proposed § 1.6011–10(e)(1) provides the rules for determining who is a participant in a listed transaction described in proposed § 1.6011–10(a). Proposed § 1.6011–10(e)(2) provides a safe harbor from the disclosure requirements for certain persons. *See* section B.5. of this Explanation of Provisions.

Proposed § 1.6011–10(f) describes information that participants must provide to satisfy the disclosure requirements of § 1.6011–4(d). *See* section B.4. of this Explanation of Provisions.

Proposed § 1.6011–10(g) provides the applicability date for the proposed regulations.

4. Micro-Captive Transactions of Interest

Proposed § 1.6011–11(a) provides that transactions that are the same as, or substantially similar to, transactions described in proposed § 1.6011–11(c) are identified as transactions of interest for purposes of § 1.6011–4(b)(6), except as provided in proposed § 1.6011–11(d). Proposed § 1.6011–11(b) provides definitions of terms used to describe Micro-captive Transactions of Interest by reference to the relevant definitions in proposed § 1.6011–10(b), except for the definition of the computation period. Proposed § 1.6011–11(b)(2) defines the Transaction of Interest Computation Period for Micro-captive Transactions of Interest as the most recent nine taxable years, or the entire period of Captive's existence if Captive has been in existence for less than nine taxable years. For this purpose, each short taxable year is a separate taxable year, and the taxable years of predecessor entities are treated as taxable years of Captive.

A transaction is described in proposed § 1.6011–11(c) if it involves the issuance of a Contract to an Insured by a Captive, or the reinsurance by a Captive of a Contract issued to an Insured by an Intermediary, and involves a Captive for which the amount of liabilities incurred for insured losses and claim administration expenses during the Transaction of Interest Computation Period is less than 65 percent of the amount equal to premiums earned by Captive during the Transaction of Interest Computation Period less policyholder dividends paid by Captive during the Transaction of Interest Computation Period. *See* section B.3. of this Explanation of Provisions.

Proposed § 1.6011–11(d) provides that a transaction described in proposed § 1.6011–11(c) is not classified as a ''transaction of interest'' if the transaction (1) provides insurance for employee compensation or benefits and is one for which the Employee Benefits Security Administration of the U.S. Department of Labor has issued a Prohibited Transaction Exemption, or (2) is a Consumer Coverage reinsurance arrangement described in proposed § 1.6011–11(d)(2). *See* section B.6. of this Explanation of Provisions. Additionally, proposed § 1.6011–11(d)(3) provides that a transaction described in proposed § 1.6011–11(c) is not classified as a ''transaction of interest'' if the transaction is identified as a ''listed transaction'' in proposed § 1.6011–10(a). Under proposed § 1.6011–11(d)(3), a transaction that would (but for that subsection) be identified as both a ''listed transaction'' under proposed § 1.6011–10 and a ''transaction of interest'' under proposed § 1.6011–11, is identified as a ''listed transaction'' only, and participants in the transaction must disclose it as such. Material advisors that are uncertain about whether the transaction they are required to disclose should be reported as a Micro-captive Listed Transaction or as a Micro-captive Transaction of Interest should disclose the transaction as a Micro-captive Listed Transaction, and will not be required to disclose the transaction a second time if it is determined later that the transaction should have been disclosed as a Micro-captive Transaction of Interest.

Proposed § 1.6011–11(e)(1) provides the rules for determining who is a participant in a transaction of interest described in proposed § 1.6011–11(a). Proposed § 1.6011–11(e)(2) provides a safe harbor from the disclosure requirements for certain persons. *See* section B.5. of this Explanation of Provisions.

Proposed § 1.6011–11(f) describes information that participants must provide to satisfy the disclosure requirements of § 1.6011–4(d) by reference to the information described in proposed § 1.6011–10(f). *See* section B.4. of this Explanation of Provisions.

Proposed § 1.6011–11(g) provides the applicability date for the proposed regulations.

B. Changes to Transaction Identified in Notice 2016–66

Examinations of taxpayers and promoters and information received through disclosures filed in response to Notice 2016–66 have clarified the Treasury Department's and the IRS's understanding of micro-captive transactions, including the scope of participation. Based on such information, the Treasury Department and the IRS have determined that certain changes to the micro-captive transaction identified in Notice 2016–66 are appropriate for the proposed regulations. The transactions described in proposed § 1.6011–10 and proposed § 1.6011–11 share common features with the micro-captive transactions described in Notice 2016–66, but with modifications to the scope of the 20-percent relationship factor and the factors used to distinguish between listed transactions, transactions of interest, and transactions that are not reportable transactions under the proposed regulations.

1. Changes to the Definition of Captive

The Treasury Department and the IRS are aware that some promoters have structured transactions in which Insureds, Owners, or persons Related to an Insured or an Owner do not have a direct or indirect interest in Captive's voting power or value of its outstanding stock or equity interests, but have a relationship with Captive that provides substantially similar benefits and risks. For example, Captive may issue various types of instruments representing rights to all or a portion of the assets held by Captive but not rights to the voting power or equity interests in Captive. All equity interests and voting stock are held by individuals or entities related to the promoter, not the taxpayers. The promoters thereby seek to avoid the 20 percent related interest in the voting

stock or equity interests in Captive necessary for a transaction to be described in Notice 2016–66. The proposed regulations expand the scope of the definition of Captive to clarify that derivatives and interests in the assets of Captive are taken into account. *See* proposed §§ 1.6011–10(b)(1)(A)–(C) and 1.6011–11(b)(1).

2. Changes to the Financing Factor

Transactions in which the financing factor is met based on a computation period of Captive's most recent five taxable years (or all years of Captive's existence if Captive has been in existence for less than five taxable years), referred to as the Financing Computation Period in the proposed regulations, are identified as transactions of interest in Notice 2016–66 but are identified as listed transactions in the proposed regulations. *See* proposed § 1.6011–10(c)(1). Presence of the financing factor in related party micro-captive insurance transactions indicates tax avoidance and abuse of Captive's status as a section 831(b)-electing insurance company.

3. Changes to the Loss Ratio Factor and Computation Period

Notice 2016–66 identifies transactions in which the loss ratio factor is less than 70 percent based on a Notice Computation Period of Captive's most recent five taxable years (or all years of Captive's existence if it has been in existence for less than five taxable years) as transactions of interest. The proposed regulations, however, identify as listed transactions those transactions in which the loss ratio factor is less than 65 percent for a computation period extended to Captive's most recent ten taxable years (referred to as the Loss Ratio Computation Period). *See* proposed § 1.6011–10(c)(2). Further, the proposed regulations identify transactions in which the loss ratio factor is less than 65 percent based on a Transaction of Interest Computation Period consisting of Captive's most recent nine taxable years (or all years of Captive's existence if Captive has been in existence for less than nine taxable years) as transactions of interest. *See* proposed § 1.6011–11(c).

Regarding the reduction of the loss ratio threshold from 70 percent to 65 percent, the Treasury Department and the IRS are not aware of any non-abusive transactions for which disclosure was required under Notice 2016–66 as a result of the 70-percent loss ratio factor set forth therein. Nevertheless, for purposes of the proposed regulations and to ensure that disclosure is not required for non-abusive transactions, the Treasury Department and the IRS are lowering the applicable loss ratio factor to 65 percent. *See* proposed §§ 1.6011–10(c)(2) and 1.6011–11(c). The loss ratio factor helps to identify transactions involving circumstances inconsistent with insurance in the commonly accepted sense, including excessive pricing of premiums and artificially low or nonexistent claims activity. The primary purpose of premium pricing is to ensure funds are available should a claim arise. The pricing of premiums should naturally reflect the economic reality of insurance operations. Pricing premiums far in excess of what is reasonably needed to fund insurance operations results in a lower loss ratio and is a strong indicator of abuse. Any Captives that would be required to disclose as a result of the loss ratio factor may consider paying policyholder dividends to increase the loss ratio and eliminate the need to disclose.

The Treasury Department and the IRS are considering whether a combined ratio may be a better indicator for distinguishing abusive transactions from other captive transactions. A combined ratio is ''an indication of the profitability of an insurance company, calculated by adding the loss and expense ratios.'' *NAIC Glossary of Insurance Terms, https://content.naic.org/consumer_glossary#C* (last visited April 3, 2023). The 2021 NAIC P&C Report provides that the combined ratios for property and casualty insurance companies ranged from 96 percent to 103.9 percent over the ten-year period from 2012 to 2021, for a ten-year average of approximately 99.5 percent. *See U.S. Property & Casualty and Title Insurance Industries—2021 Full Year Results* (2022), *https://content.naic.org/sites/default/files/inline-files/2021%20Annual%20Property%20%26%20Casualty%20and%20Title%20Insurance%20Industry%20Report.pdf* (last visited April 3, 2023). The combined ratio would compare losses incurred, plus loss adjustment expenses incurred and other underwriting expenses incurred by Captive during the relevant computation period to Captive's earned premiums, less policyholder dividends, for the relevant computation period. For this purpose, Captive's other underwriting expenses incurred would equal Captive's expenses incurred in carrying on an insurance business, other than loss adjustment expenses and investment-related expenses. Transactions in which Captive's combined ratio is less than a certain percentage for a Loss Ratio Computation Period of the most recent ten taxable years of Captive would be identified as listed transactions. Transactions in which Captive's combined ratio is less than a certain percentage for a Transaction of Interest Computation Period of the most recent nine taxable years (or all years of Captive's existence if it has been in existence for less than nine taxable years) would be identified as transactions of interest. The Treasury Department and the IRS invite comments on whether a combined ratio would better distinguish abusive transactions than the proposed loss ratio factor, and if so, what combined ratio threshold would be most effective in distinguishing abusive transactions.

Regarding the computation periods for the loss ratio factor, the Treasury Department and the IRS understand that it is possible that a Captive with a loss history of fewer than ten taxable years could have a loss ratio that falls below 65 percent solely because Captive provides coverage for low frequency, high severity losses and Insureds purchasing policies from such Captive do not incur such losses in every year. In recognition of this fact, the proposed regulations categorize transactions as either transactions of interest or listed transactions based on the length of the computation period on which the loss ratio is based. The Notice Computation Period used by Notice 2016–66 to identify transactions of interest based on a loss ratio factor was five taxable years, and it has been more than five years since Notice 2016–66 was published. The Treasury Department and the IRS have determined that extending the computation period by five years to a Loss Ratio Computation Period of ten taxable years (doubling the Notice Computation Period) allows Captives significant time to develop a reasonable loss history that supports the use of Captive for legitimate insurance purposes, and a loss ratio that remains below 65 percent for a Loss Ratio Computation Period of ten taxable years indicates a tax avoidance transaction. Accordingly, the proposed regulations identify transactions in which the loss ratio is less than 65 percent based on an extended Loss Ratio Computation Period of Captive's most recent ten taxable years as listed transactions. *See* proposed § 1.6011–10(b)(2).

However, the Treasury Department and the IRS also have determined that related party transactions in which the loss ratio is less than 65 percent over a shorter period of time have a potential for tax avoidance or evasion. The proposed regulations therefore identify transactions in which Captive has a loss

ratio of less than 65 percent based on a Transaction of Interest Computation Period of Captive's most recent nine taxable years (or all years of Captive's existence if it has been in existence for less than nine taxable years) as transactions of interest, provided such transactions are not otherwise characterized as listed transactions (that is, due to the presence of the financing factor described in proposed § 1.6011–10(c)(1) or due to having a loss ratio factor of less than 65 percent based on a Loss Ratio Computation Period of Captive's most recent ten taxable years). *See* proposed § 1.6011–11(c) and (d)(3). Identification of these transactions as transactions of interest will permit the Treasury Department and the IRS to gather more information to determine if these transactions are being used for tax avoidance or evasion.

4. Information Sought From Participants

The proposed regulations significantly reduce the information required to be reported by Captives under § 1.6011–4(d) as compared to Notice 2016–66. *See* proposed §§ 1.6011–10(f) and 1.6011–11(f). Unlike Notice 2016–66, the proposed regulations do not require Captive participants to identify which factors of the proposed regulations apply, state under what authority Captive is chartered, describe how amounts treated as premiums for coverage provided by Captive were determined, provide the amounts of reserves reported by Captive on its annual statement, or describe the assets held by Captive. The proposed regulations do, however, require Captive to identify the types of policies issued or reinsured, the amounts treated as premiums written, the name and contact information of actuaries and underwriters involved, and the total amount of claims paid by Captive. Additionally, proposed §§ 1.6011–10(b)(1) and 1.6011–11(b)(1) include a 20-percent relationship test in the definition of Captive, and the proposed regulations require Captive participants to identify the name and percentage of interest held directly or indirectly by each person whose interest in Captive meets the 20 percent threshold or is taken into account in meeting the 20 percent threshold under proposed § 1.6011–10(b)(1)(iii). Also, the proposed regulations require each Insured (as defined in proposed §§ 1.6011–10(b)(4) and 1.6011–11(b)(4)) subject to the disclosure requirements set forth in § 1.6011–4(d) to provide the amounts treated by Insured as insurance premiums for coverage provided to Insured, directly or indirectly, by Captive.

5. Disclosure Requirement Safe Harbor for Owners

The Treasury Department and the IRS believe that it is now feasible to generally limit the persons from whom reporting would be required under the proposed regulations to Captive, Insured, and material advisors to the transaction. Accordingly, the proposed regulations provide that any person who, solely by reason of their direct or indirect ownership interest in Insured, is subject to the disclosure requirements set forth in § 1.6011–4 as a participant in a Micro-captive Listed Transaction or a Micro-captive Transaction of Interest, is not required under § 1.6011–4 to file a disclosure statement with respect to that transaction provided that person receives written or electronic acknowledgment that Insured has or will comply with its separate disclosure obligation under § 1.6011–4(a) with respect to the transaction. *See* proposed §§ 1.6011–10(e)(2) and 1.6011–11(e)(2). The acknowledgment can be a copy of the Form 8886, *Reportable Transaction Disclosure Statement* (or successor form), filed (or to be filed) by Insured and must be received by Owner prior to the time set forth in § 1.6011–4(e) in which Owner would otherwise be required to provide disclosure. *See* proposed §§ 1.6011–10(e)(2) and 1.6011–11(e)(2). However, the receipt of an acknowledgment that Insured has or will comply with its disclosure obligation does not relieve the Owners of Insured of their disclosure obligations if Insured fails to disclose the transaction in a timely manner.

6. Exception for Consumer Coverage Arrangements

The proposed regulations provide a limited exception from classification as a Micro-captive Listed Transaction or Micro-captive Transaction of Interest for certain Consumer Coverage reinsurance arrangements. *See* proposed §§ 1.6011–10(d)(2) and 1.6011–11(d)(2). In Consumer Coverage arrangements, a ''Seller'' (that is, a service provider, automobile dealer, lender, or retailer) sells products or services to ''Unrelated Customers'' (that is, customers who do not own an interest in and are not wholly or partially owned by Seller, an owner of Seller, or individuals or entities related (within the meaning of one or more of sections 267(b), 707(b), 2701(b)(2)(C), or 2704(c)(2)) to Seller or owners of Seller). An Unrelated Customer may also purchase an insurance contract in connection with those products or services (Consumer Coverage contract). The Consumer Coverage contract generally provides coverage for repair or replacement costs if the product breaks down or is lost, stolen, or damaged; coverage for the customer's payment obligations if the customer dies or becomes disabled or unemployed; coverage for the difference between all or a portion of the value of the product and the amount owed on the product's financing, including a lease, if the product suffers a covered peril; or a combination of one or more of the foregoing types of coverage.

An entity related to or affiliated with Seller may issue or reinsure the Consumer Coverage contracts. In some arrangements, the Consumer Coverage contracts name an unrelated third party, which may be referred to as a ''Fronting Company,'' as the provider of the coverage, and an entity related to or affiliated with Seller reinsures the Consumer Coverage contracts. In other arrangements, the Consumer Coverage contracts may name an entity related to or affiliated with Seller as the provider of the coverage. In these arrangements, an unrelated third party may reinsure the contracts and may also then retrocede risk under the contracts to the entity related to or affiliated with Seller. The parties may treat the entity related to or affiliated with Seller as an insurance company that elects under section 831(b) (and section 953(d) if the corporation is foreign) to exclude premium payments from taxable income.

As a general matter, participation in this type of reinsurance arrangement is neither a Micro-captive Listed Transaction nor a Micro-captive Transaction of Interest because the insured is not sufficiently related to the insurer or any reinsurer. Generally, the Consumer Coverage contracts insure Unrelated Customers of Seller, and Unrelated Customers, their owners, and persons related to Unrelated Customers or their owners do not directly or indirectly own at least 20 percent of the voting power or value of the outstanding stock of any entity issuing or reinsuring the Consumer Coverage contract. However, the 20-percent relationship factor in proposed §§ 1.6011–10(b)(1) and 1.6011–11(b)(1) may be met in some of these reinsurance arrangements. For instance, in ''dealer obligor'' arrangements in which the Seller would be legally required to pay a claim under certain conditions, such as a total loss of the covered product within a certain time frame, the Seller could potentially be considered an Insured under a Contract issued or reinsured by a Captive, and thus be required to disclose.

The Treasury Department and the IRS have determined that a limited

exception for taxpayers in Consumer Coverage arrangements is appropriate, provided commissions paid for Consumer Coverage contracts issued or reinsured by the Seller's Captive are comparable to the commissions paid for Consumer Coverage contracts covering Seller's products or services that are not issued or reinsured by the Seller's Captive. *See* proposed §§ 1.6011–10(d)(2) and 1.6011–11(d)(2).

C. Effect of Transaction Becoming a Listed Transaction or a Transaction of Interest Under These Regulations

Participants required to disclose these transactions under § 1.6011–4 who fail to do so are subject to penalties under section 6707A. Participants required to disclose the listed transactions under § 1.6011–4 who fail to do so are also subject to an extended period of limitations under section 6501(c)(10). Material advisors required to disclose these transactions under section 6111 who fail to do so are subject to the penalty under section 6707. Material advisors required to maintain lists of investors under section 6112 who fail to do so (or who fail to provide such lists when requested by the IRS) are subject to the penalty under section 6708(a). In addition, the IRS may impose other penalties on persons involved in these transactions or substantially similar transactions, including accuracy-related penalties under section 6662 or section 6662A, the section 6694 penalty for understatements of a taxpayer's liability by a tax return preparer, the section 6700 penalty for promoting abusive tax shelters, and the section 6701 penalty for aiding and abetting understatement of a tax liability.

Taxpayers who have filed a tax return (including an amended return (or Administrative Adjustment Request (AAR) for certain partnerships)) reflecting their participation in these transactions prior to the date the Treasury decision adopting these regulations as final regulations is published in the **Federal Register** and who have not otherwise finalized a settlement agreement with the Internal Revenue Service with respect to the transaction must disclose the transactions as provided in § 1.6011–4(d) and (e) provided that the period of limitations for assessment of tax, including any applicable extensions, for any taxable year in which the taxpayer participated in the transaction has not ended on or before the date the Treasury decision adopting these regulations as final regulations is published in the **Federal Register**.

In addition, material advisors have disclosure requirements with regard to transactions occurring in prior years. However, notwithstanding § 301.6111–3(b)(4)(i) and (iii), material advisors are required to disclose only if they have made a tax statement on or after six years before the date of the Treasury decision adopting these regulations as final regulations is published in the **Federal Register**.

A participant in a transaction that is a Micro-captive Listed Transaction must file a disclosure statement with OTSA when required to do so under § 1.6011–4(e), regardless of whether the participant has previously disclosed the transaction to OTSA pursuant to Notice 2016–66. A participant in a transaction that is a Micro-captive Transaction of Interest that has previously filed a disclosure statement with OTSA pursuant to Notice 2016–66 will be treated as having made the disclosure pursuant to the final regulations for taxable years for which the taxpayer filed returns before the final regulations are published in the **Federal Register**. However, if a taxpayer described in the preceding sentence participates in the Micro-captive Transaction of Interest in a taxable year for which the taxpayer files a return on or after the date the final regulations are published in the **Federal Register**, the taxpayer must file a disclosure statement with OTSA at the same time the taxpayer files their return for the first such taxable year.

A material advisor with respect to a transaction that is a Micro-captive Listed Transaction or Micro-captive Transaction of Interest must file a disclosure statement with OTSA when required to do so under § 301.6111–3(e), regardless of whether the material advisor has previously disclosed the transaction to OTSA pursuant to Notice 2016–66.

The Treasury Department and the IRS recognize that some taxpayers may have filed tax returns taking the position that they were entitled to the purported tax benefits of the types of transactions described in these proposed regulations. Because the IRS will take the position that taxpayers are not entitled to the purported tax benefits of the listed transactions described in the proposed regulations, and may take such a position with respect to the transactions of interest described in the proposed regulations, taxpayers should consider filing amended returns or AARs for certain partnerships and ensure that their transactions are disclosed properly. Taxpayers filing an amended individual return should write ''Microcaptive'' at the top of the first page of the amended return and mail the amended return to: Internal Revenue Service, 2970 Market Street, Philadelphia, PA 19104.

Taxpayers filing amended business returns on paper should write ''Microcaptive'' at the top of the first page of the amended return and mail to the address listed in the instructions for the amended return. Taxpayers filing amended business returns electronically should include ''Microcaptive'' when explaining the reason for the changes.

Proposed Applicability Dates

Proposed § 1.6011–10(a) would identify certain micro-captive transactions described in proposed § 1.6011–10(c) as listed transactions effective as of the date of publication in the **Federal Register** of a Treasury decision adopting these regulations as final regulations. Similarly, proposed § 1.6011–11(a) would identify certain micro-captive transactions described in proposed § 1.6011–11(c) as transactions of interest as of the date of publication in the **Federal Register** of a Treasury decision adopting these regulations as final regulations.

Effect on Other Documents

This document obsoletes Notice 2016–66 (2016–47 I.R.B. 745), as modified by Notice 2017–08 (2017–3 I.R.B. 423), as of April 11, 2023.

Special Analyses

I. Regulatory Planning and Review

The 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 (OMB) regarding the review of tax regulations.

II. Paperwork Reduction Act

The collection of information contained in these proposed regulations is reflected in the collection of information for Forms 8886 and 8918 that have been reviewed and approved by OMB in accordance with the Paperwork Reduction Act (44 U.S.C. 3507(c)) under control numbers 1545–1800 and 1545–0865. Any disclosures with respect to the safe harbor for owners as provided in §§ 1.6011–10(e)(2) and 1.6011–11(e)(2) are in the nature of an acknowledgment per 5 CFR 1320.3(h)(1), and therefore do not constitute a collection of information under the Paperwork Reduction Act.

To the extent there is a change in burden as a result of these regulations, the change in burden will be reflected in the updated burden estimates for the Forms 8886 and 8918. The requirement to maintain records to substantiate

information on Forms 8886 and 8918 is already contained in the burden associated with the control numbers for the forms and is unchanged.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

III. Regulatory Flexibility Act

The Secretary of the Treasury hereby certifies that the 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).

As previously explained, the basis for these proposed regulations is Notice 2016–66, 2016–47 I.R.B. 745 (as modified by Notice 2017–08, 2017–3 I.R.B. 423). The following chart sets forth the gross receipts of respondents to Notice 2016–66, based on data for tax year 2020:

NOTICE 2016–66 RESPONDENTS BY SIZE

Receipts	Firms (percent)	Filings (percent)
Under 5M	78.65	75.26
5M to 10M	9.36	10.20
10M to 15M	4.39	5.10
15M to 20M	2.34	2.55
20M to 25M	1.17	1.53
Over 25M	4.09	5.36
Total	100	100

This chart shows that the majority of respondents reported gross receipts under $5 million. Even assuming that these respondents constitute a substantial number of small entities, the proposed regulations will not have a significant economic impact on these entities because the proposed regulations implement sections 6111 and 6112 and § 1.6011–4 by specifying the manner in which and time at which an identified Micro-captive Listed Transaction or Micro-captive Transaction of Interest must be reported. Accordingly, because the regulations are limited in scope to time and manner of information reporting and definitional information, the economic impact of the proposal is expected to be minimal.

Further, the Treasury Department and the IRS expect that the reporting burden is low; the information sought is necessary for regular annual return preparation and ordinary recordkeeping. The estimated burden for any taxpayer required to file Form 8886 is approximately 10 hours, 16 minutes for recordkeeping, 4 hours, 50 minutes for learning about the law or the form, and 6 hours, 25 minutes for preparing, copying, assembling, and sending the form to the IRS. The IRS's Research, Applied Analytics, and Statistics division estimates that the appropriate wage rate for this set of taxpayers is $77.50 (2020 dollars) per hour. Thus, it is estimated that a respondent will incur costs of approximately $1,667.27 per filing. Disclosures received to date by the Treasury Department and the IRS in response to the reporting requirements of Notice 2016–66 indicate that this small amount will not pose any significant economic impact for those taxpayers now required to disclose under the proposed regulations.

For the reasons stated, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required. The Treasury Department and the IRS invite comments on the impact of the proposed regulations on small entities. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of $100 million (updated annually for inflation). This proposed rule does not include any Federal mandate that may result in expenditures by State, local, or Tribal governments or by the private sector in excess of that threshold.

V. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive order.

Comments and Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in the preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. The Treasury Department and the IRS specifically request comments on the following:

1. What are the specific and objective metrics, factors, or standards, if any, that, if reported, would allow for the IRS to better identify and distinguish abusive micro-captive transactions from other micro-captive transactions?

2. With respect to proposed §§ 1.6011–10(c)(2) and 1.6011–11(c), whether the loss ratio described therein, which compares ''the amount of liabilities incurred by Captive for insured losses and claim administration expenses during the [applicable] Computation Period'' to the ''premiums earned by Captive during the [applicable] Computation Period less policyholder dividends paid by Captive during the [applicable] Computation Period'', should be replaced by a combined ratio, which compares ''losses incurred, plus loss adjustment expenses incurred and other underwriting expenses incurred by Captive during the [applicable] Computation Period'' to ''Captive's earned premiums, less policyholder dividends, for the

[applicable] Computation Period'', and if so, what percentage would be an effective threshold for purposes of identifying abusive transactions. For this purpose, Captive's ''other underwriting expenses incurred'' would equal Captive's expenses incurred in carrying on an insurance business, other than loss adjustment expenses and investment-related expenses.

3. With respect to the percentage of premiums retained as commissions for contracts as described at proposed §§ 1.6011–10(d)(2) and 1.6011–11(d)(2), what, if any, are the specific metrics, factors, or standards that, if reported, would allow for the IRS to better identify and distinguish abusive micro-captive transactions of this type from other such micro-captive transactions?

Any comments submitted will be made available at *https://www.regulations.gov* or upon request.

A public hearing is scheduled to be held by teleconference on July 19, 2023, beginning at 10:00 a.m. ET unless no outlines are received by June 12, 2023.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to comment by telephone at the hearing must submit written or electronic comments and an outline of the topics to be discussed as well as the time to be devoted to each topic by June 12, 2023 as prescribed in the preamble under the **ADDRESSES** section.

A period of ten minutes will be allocated to each person for making comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available at *https://www.regulations.gov,* search IRS and REG–109309–22. Copies of the agenda will also be available by emailing a request to *publichearings@irs.gov.* Please put ''REG–109309–22 Agenda Request'' in the subject line of the email.

Announcement 2020–4, 2020–17 I.R.B. 667 (April 20, 2020), provides that until further notice, public hearings conducted by the IRS will be held telephonically. Any telephonic hearing will be made accessible to people with disabilities.

Statement of Availability of IRS Documents

The notices and revenue ruling cited in this document are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *https://www.irs.gov.*

Drafting Information

The principal author of these proposed regulations is Elizabeth M. Hill, Office of Associate Chief Counsel (Financial Institutions & Products). 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 * * *

* * * * *

Section 1.6011–10 also issued under 26 U.S.C. 6001 and 26 U.S.C. 6011.

Section 1.6011–11 also issued under 26 U.S.C. 6001 and 26 U.S.C. 6011.

* * * * *

■ **Par. 2.** Section 1.6011–10 is added to read as follows:

§ 1.6011–10 Micro-captive listed transaction.

(a) *Identification as listed transaction.* Transactions that are the same as, or substantially similar to, transactions described in paragraph (c) of this section are identified as listed transactions for purposes of § 1.6011–4(b)(2), except as provided in paragraph (d) of this section.

(b) *Definitions.* The following definitions apply for purposes of this section:

(1) *Captive* means any entity that:

(i) Elects under section 831(b) of the Internal Revenue Code (Code) to exclude premiums from taxable income;

(ii) Issues a Contract to an Insured, reinsures a Contract of an Insured issued by an Intermediary, or both; and

(iii) Has at least 20 percent of its assets or the voting power or value of its outstanding stock or equity interests directly or indirectly owned, individually or collectively, by an Insured, an Owner, or persons Related to an Insured or an Owner. For purposes of this paragraph (b)(1)(iii), the following rules apply to the extent application of a rule (or rules) would increase such direct or indirect ownership:

(A) A person that holds a derivative is treated as indirectly owning the assets referenced by the derivative; and

(B) The interest of each beneficiary of a trust or estate in the assets of such trust or estate must be determined by assuming the maximum exercise of discretion by the fiduciary in favor of such beneficiary and the maximum use of the trust's or estate's interest in the company to satisfy the interests of such beneficiary.

(2) *Computation periods*—(i) *Financing Computation Period.* The Financing Computation Period is the most recent five taxable years of Captive (or all taxable years of Captive, if Captive has been in existence for less than five taxable years).

(ii) *Loss Ratio Computation Period.* The Loss Ratio Computation Period is the most recent ten taxable years of Captive. A Captive that does not have at least ten taxable years cannot have a Loss Ratio Computation Period, and therefore is not described in paragraph (c)(2) of this section.

(iii) *Rules for computation periods.* This paragraph (b)(2)(iii) applies for purposes of determining the Financing Computation Period and the Loss Ratio Computation Period. Each short taxable year is a separate taxable year. If Captive is a successor to one or more other Captives, taxable years of each such other Captive are treated as taxable years of Captive. A successor is any of the following:

(A) A successor corporation as defined in § 1.382–2(a)(5);

(B) An entity that, directly or indirectly, acquires (or is deemed to acquire) the assets of another entity and succeeds to and takes into account the other entity's earnings and profits or deficit in earnings and profits; or

(C) An entity that receives (or is deemed to receive) any assets from another entity if such entity's basis is determined, directly or indirectly, in whole or in part, by reference to the other entity's basis.

(3) *Contract* means any contract that is treated by a party to the contract as an insurance contract or reinsurance contract for Federal income tax purposes.

(4) *Insured* means any person that conducts a trade or business, enters into a Contract with a Captive or enters into a Contract with an Intermediary that is directly or indirectly reinsured by a Captive, and treats amounts paid under the Contract as insurance premiums for Federal income tax purposes.

(5) *Intermediary* means any entity that issues a Contract to an Insured, or reinsures a Contract that is issued to an Insured, and such Contract is reinsured,

directly or indirectly, by a Captive. A transaction may have more than one Intermediary.

(6) *Owner* means any person who, directly or indirectly, holds an ownership interest in an Insured or its assets. For purposes of this paragraph (b)(6), the following rules apply to the extent application of a rule (or rules) would increase such direct or indirect ownership:

(i) The interest of a person that holds a derivative must be determined as provided in paragraph (b)(1)(iii)(A) of this section; and

(ii) The interest of each beneficiary of a trust or estate in the assets of such trust or estate must be determined as provided in paragraph (b)(1)(iii)(B) of this section.

(7) *Recipient* means any Owner, Insured, or person Related to an Owner or an Insured engaged in a transaction described in paragraph (c)(1) of this section.

(8) *Related* means having a relationship described in one or more of sections 267(b), 707(b), 2701(b)(2)(C), and 2704(c)(2) of the Code.

(9) *Seller* means a service provider, automobile dealer, lender, or retailer that sells products or services to Unrelated Customers who purchase insurance contracts in connection with those products or services.

(10) *Seller's Captive* means a Captive Related to Seller, an owner of Seller, or individuals or entities Related to Seller or owners of Seller.

(11) *Unrelated Customers* means persons who do not own an interest in, and are not wholly or partially owned by, Seller, an owner of Seller, or individuals or entities Related to Seller or owners of Seller.

(c) *Transaction description.* A transaction is described in this paragraph (c) if the transaction is described in paragraph (c)(1) of this section, paragraph (c)(2) of this section, or both.

(1) The transaction involves a Captive that, at any time during the Financing Computation Period, directly or indirectly made available as financing or otherwise conveyed or agreed to make available or convey to a Recipient, in a transaction that did not result in taxable income or gain to the Recipient, any portion of the payments under the Contract, such as through a guarantee, a loan, or other transfer of Captive's capital, or made such financings or conveyances prior to the Financing Computation Period that remain outstanding or in effect at any point in the taxable year for which disclosure is required. Any amounts that a Captive made available as financing or otherwise conveyed or agreed to make available or convey to a Recipient are presumed to be portions of the payments under the Contract to the extent such amounts when made available or conveyed are in excess of Captive's cumulative after-tax net investment earnings minus any outstanding financings or conveyances.

(2) The transaction involves a Captive for which the amount of liabilities incurred for insured losses and claim administration expenses during the Loss Ratio Computation Period is less than 65 percent of the amount equal to premiums earned by Captive during the Loss Ratio Computation Period less policyholder dividends paid by Captive during the Loss Ratio Computation Period.

(d) *Exceptions.* A transaction described in paragraph (c) of this section is not classified as a listed transaction for purposes of this section and § 1.6011–4(b)(2) if the transaction:

(1) Provides insurance for employee compensation or benefits and is one for which the Employee Benefits Security Administration of the U.S. Department of Labor has issued a Prohibited Transaction Exemption under the procedures provided at 76 FR 66637 (Oct. 27, 2011) (or subsequent procedures); or

(2) Is an arrangement in which a Captive meets all of the following requirements:

(i) Captive is a Seller's Captive,

(ii) The Seller's Captive issues or reinsures some or all of the Contracts sold to Unrelated Customers in connection with the products or services being sold by the Seller,

(iii) 100 percent of the business of the Seller's Captive is insuring or reinsuring Contracts in connection with products or services being sold by the Seller or persons Related to the Seller, and

(iv) With respect to the Contracts issued or reinsured by the Seller's Captive, the fee, commission, or other remuneration earned by any person or persons, in the aggregate, for the sale of the Contracts, described as a percentage of the premiums paid by the Seller's customers, is at least equal to the greater of:

(A) 50 percent; or

(B) The unrelated commission percentage (which is the highest percentage fee, commission, or other remuneration known to the Seller that is earned by any person or persons, in the aggregate, for the sale of any extended warranty, insurance, or other similar Contract sold to a customer covering products or services sold by the Seller.

(e) *Special participation rules*—(1) *In general.* Whether a taxpayer has participated in the listed transaction identified in paragraph (a) of this section will be determined under § 1.6011–4(c)(3)(i)(A). Participants include, but are not limited to, any Owner, Insured, Captive, or Intermediary with respect to the transaction whose tax return reflects tax consequences or a tax strategy described in paragraph (a) of this section, except as otherwise provided in paragraph (e)(2) of this section.

(2) *Disclosure safe harbor for Owners.* An Owner who, solely by reason of the Owner's direct or indirect ownership interest in an Insured, has participated in the listed transaction described in this section will not be required to disclose participation in the transaction under section 6011(a), notwithstanding § 1.6011–4(c)(3), if the Owner receives an acknowledgement, in writing or electronically, from the Insured that the Insured has or will comply with the Insured's separate disclosure obligation under § 1.6011–4 with respect to the transaction and the Insured discloses the transaction in a timely manner. The acknowledgment can be a copy of the Form 8886, *Reportable Transaction Disclosure Statement* (or successor form), filed (or to be filed) by the Insured and must be received by the Owner prior to the time set forth in § 1.6011–4(e) in which the Owner would otherwise be required to provide disclosure. Owners who meet the requirements of this safe harbor will not be treated as having participated in an undisclosed listed transaction for purposes of § 1.6664–2(c)(3)(ii) or as having failed to include information on any return or statement with respect to a listed transaction for purposes of section 6501(c)(10).

(f) *Disclosure requirements*—(1) *Information required of all participants.* Participants must provide the information required under § 1.6011–4(d) and the Instructions to Form 8886 (or successor form). For all participants, describing the transaction in sufficient detail includes, but is not limited to, describing on Form 8886 (or successor form) when, how, and from whom the participant became aware of the transaction, and how the participant participated in the transaction (for example, as an Insured, a Captive, or other participant). Paragraphs (f)(2) and (3) of this section describe information required of a Captive and an Insured, respectively.

(2) *Information required of a Captive.* For a Captive, describing the transaction in sufficient detail includes, but is not limited to, describing the following on Form 8886 (or successor form):

(i) All the type(s) of policies issued or reinsured by Captive during the year of participation or years of participation (if disclosure pertains to multiple years);

(ii) The amounts treated by Captive as premiums written for coverage provided by Captive during the year of participation or each year of participation (if disclosure pertains to multiple years);

(iii) The name and contact information of each and every actuary or underwriter who assisted in the determination of the amounts treated as premiums for coverage provided by Captive during the year or each year of participation (if disclosure pertains to multiple years);

(iv) The total amount of claims paid by Captive during the year of participation or each year of participation (if disclosure pertains to multiple years); and

(v) The name and percentage of interest directly or indirectly held by each person whose interest in Captive meets the 20 percent threshold or is taken into account in meeting the 20 percent threshold under § 1.6011–10(b)(1)(iii).

(3) *Information required of Insured.* For Insured, describing the transaction in sufficient detail includes, but is not limited to, describing on Form 8886 (or successor form) the amounts treated by Insured as premiums for coverage provided to Insured, directly or indirectly, by Captive or by each Captive (if disclosure pertains to multiple Captives) during the year or each year of participation (if disclosure pertains to multiple years), as well as the identity of all persons identified as Owners to whom the Insured provided an acknowledgment described in paragraph (e)(2) of this section.

(g) *Applicability date*—(1) *In general.* This section identifies transactions that are the same as, or substantially similar to, the transactions described in paragraph (a) of this section as listed transactions for purposes of § 1.6011–4(b)(2) effective the date the regulations are published as final regulations in the **Federal Register**.

(2) *Obligations of participants with respect to prior periods.* Pursuant to § 1.6011–4(d) and (e), taxpayers who have filed a tax return (including an amended return) reflecting their participation in transactions described in paragraph (a) of this section prior to the date these regulations are published as final regulations in the **Federal Register**, who have not otherwise finalized a settlement agreement with the Internal Revenue Service with respect to the transaction, must disclose the transactions as required by § 1.6011–4(d) and (e) provided that the period of limitations for assessment of tax (as determined under section 6501 of the Code, including section 6501(c)) for any taxable year in which the taxpayer participated has not ended on or before the date the regulations are published as final regulations in the **Federal Register**.

(3) *Obligations of material advisors with respect to prior periods.* Material advisors defined in § 301.6111–3(b) of this chapter who have previously made a tax statement with respect to a transaction described in paragraph (a) of this section have disclosure and list maintenance obligations as described in §§ 301.6111–3 and 301.6112–1 of this chapter, respectively. Notwithstanding § 301.6111–3(b)(4)(i) and (iii) of this chapter, material advisors are required to disclose only if they have made a tax statement on or after the date that is six years before the date the regulations are published as final regulations in the **Federal Register**. Material advisors that are uncertain whether the transaction they are required to disclose should be reported under this section or § 1.6011–11 should disclose under this section, and will not be required to disclose a second time if it is later determined that the transaction should have been disclosed under § 1.6011–11.

■ **Par. 3.** Section 1.6011–11 is added to read as follows:

§ 1.6011–11 Micro-captive transaction of interest.

(a) *Identification as transaction of interest.* Transactions that are the same as, or substantially similar to, transactions described in paragraph (c) of this section are identified as transactions of interest for purposes of § 1.6011–4(b)(6), except as provided in paragraph (d) of this section.

(b) *Definitions.* The following definitions apply for purposes of this section:

(1) *Captive* has the same meaning as provided in § 1.6011–10(b)(1).

(2) *Transaction of Interest Computation Period* means the most recent nine taxable years of a Captive (or all taxable years of Captive, if Captive has been in existence for less than nine taxable years). For purposes of this paragraph (b)(2), each short taxable year is a separate taxable year, and if Captive is a successor to one or more other Captives, taxable years of each such other Captive are treated as taxable years of Captive. A successor has the same meaning as provided in § 1.6011–10(b)(2)(iii) for purposes of this paragraph (b)(2).

(3) *Contract* has the same meaning as provided in § 1.6011–10(b)(3).

(4) *Insured* has the same meaning as provided in § 1.6011–10(b)(4).

(5) *Intermediary* has the same meaning as provided in § 1.6011–10(b)(5).

(6) *Owner* has the same meaning as provided in § 1.6011–10(b)(6).

(7) *Related* has the same meaning as provided in § 1.6011–10(b)(8).

(8) *Seller* has the same meaning as provided in § 1.6011–10(b)(9).

(9) *Seller's Captive* has the same meaning as provided in § 1.6011–10(b)(10).

(10) *Unrelated Customers* has the same meaning as provided in § 1.6011–10(b)(11).

(c) *Transaction description.* A transaction is described in this paragraph (c) if the transaction involves a Captive for which the amount of liabilities incurred for insured losses and claim administration expenses during the Transaction of Interest Computation Period is less than 65 percent of the amount equal to premiums earned by Captive during the Transaction of Interest Computation Period less policyholder dividends paid by Captive during the Transaction of Interest Computation Period.

(d) *Exceptions.* A transaction described in paragraph (c) of this section is not classified as a transaction of interest for purposes of this section and § 1.6011–4(b)(6) if the transaction:

(1) Is described in § 1.6011–10(d)(1);

(2) Is described in § 1.6011–10(d)(2); or

(3) Is identified as a listed transaction in § 1.6011–10(a), in which case the transaction must be reported as a listed transaction under § 1.6011–10.

(e) *Special participation rules*—(1) *In general.* Whether a taxpayer has participated in the transaction of interest identified in paragraph (a) of this section will be determined under § 1.6011–4(c)(3)(i)(E). Participants include, but are not limited to, any Owner, Insured, Captive, or Intermediary with respect to the transaction whose tax return reflects tax consequences or a tax strategy described in paragraph (a) of this section, except as otherwise provided in paragraph (e)(2) of this section.

(2) *Disclosure safe harbor for Owners.* An Owner who, solely by reason of the Owner's direct or indirect ownership interest in an Insured, has participated in the transaction of interest described in this section will not be required to disclose participation in the transaction under section 6011(a), notwithstanding § 1.6011–4(c)(3), if the Owner receives acknowledgment, in writing or electronically, from the Insured that the Insured has or will comply with

Insured's separate disclosure obligation under § 1.6011–4 with respect to the transaction and the Insured discloses the transaction in a timely manner. The acknowledgment can be a copy of the Form 8886, *Reportable Transaction Disclosure Statement* (or successor form), filed (or to be filed) by the Insured and must be received by the Owner prior to the time set forth in § 1.6011–4(e) in which the Owner would otherwise be required to provide disclosure.

(f) *Disclosure requirements.* Participants must provide the information required under § 1.6011–4(d) and the Instructions to Form 8886 (or successor form). For all participants, describing the transaction in sufficient detail includes, but is not limited to, describing on Form 8886 (or successor form) when, how, and from whom the participant became aware of the transaction, and how the participant participated in the transaction (for example, as an Insured, a Captive, or other participant). A Captive and an Insured must also provide the information required in § 1.6011–10(f)(2) and (3), respectively.

(g) *Applicability date*—(1) *In general.* This section identifies transactions that are the same as, or substantially similar to, the transaction described in paragraph (a) of this section as transactions of interest for purposes of § 1.6011–4(b)(6) effective the date the regulations are published as final regulations in the **Federal Register**.

(2) *Obligations of participants with respect to prior periods.* Pursuant to § 1.6011–4(d) and (e), taxpayers who have filed a tax return (including an amended return) reflecting their participation in transactions described in paragraph (a) of this section prior to the date the regulations are published as final regulations in the **Federal Register**, who have not otherwise finalized a settlement agreement with the Internal Revenue Service with respect to the transaction, must disclose the transactions as required by § 1.6011–4(d) and (e) provided that the period of limitations for assessment of tax (as determined under section 6501, including section 6501(c)) for any taxable year in which the taxpayer participated has not ended on or before the date the regulations are published as final regulations in the **Federal Register**. However, taxpayers who have filed a disclosure statement regarding their participation in the transaction with the Office of Tax Shelter Analysis pursuant to Notice 2016–66, 2016–47 I.R.B. 745, will be treated as having made the disclosure pursuant to the final regulations for the taxable years for which the taxpayer filed returns before the final regulations are published in the **Federal Register**. If a taxpayer described in the preceding sentence participates in the Micro-captive Transaction of Interest in a taxable year for which the taxpayer files a return on or after the date the final regulations are published in the **Federal Register**, the taxpayer must file a disclosure statement with the Office of Tax Shelter Analysis at the same time the taxpayer files their return for the first such taxable year.

(3) *Obligations of material advisors with respect to prior periods.* Material advisors defined in § 301.6111–3(b) of this chapter who have previously made a tax statement with respect to a transaction described in paragraph (a) of this section have disclosure and list maintenance obligations as described in §§ 301.6111–3 and 301.6112–1 of this chapter, respectively. Notwithstanding § 301.6111–3(b)(4)(i) and (iii) of this chapter, material advisors are required to disclose only if they have made a tax statement on or after the date six years before the date the regulations are published as final regulations in the **Federal Register**. Material advisors that are uncertain whether the transaction they are required to disclose should be reported under this section or § 1.6011–10 should disclose under § 1.6011–10, and will not be required to disclose a second time if it is later determined that the transaction should have been disclosed under this section.

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2023–07315 Filed 4–10–23; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–121709–19]

RIN 1545–BP63

Rules for Supervisory Approval of Penalties

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations regarding supervisory approval of certain penalties assessed by the IRS. The proposed regulations are necessary to address uncertainty regarding various aspects of supervisory approval of penalties that have arisen due to recent judicial decisions. The proposed regulations affect the IRS and persons assessed certain penalties by the IRS.

DATES: Electronic or written comments and requests for a public hearing must be received by July 10, 2023. Requests for a public hearing must be submitted as prescribed in the ''Comments and Requests for a Public Hearing'' section.

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–121709–19) 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 any comments submitted electronically and comments submitted on paper, to the public docket. Send paper submissions to: CC:PA:LPD:PR (REG–121709–19), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, David Bergman, (202) 317–6845; concerning submissions of comments and requests for a public hearing, Vivian Hayes (202) 317–5306 (not toll-free numbers) or by email at *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Regulations on Procedure and Administration (26 CFR part 301) under section 6751(b) of the Internal Revenue Code (Code). No regulations have previously been issued under section 6751.

1. Legislative Overview

Section 6751 was added to the Code by section 3306 of the Internal Revenue Service Restructuring and Reform Act of 1998 (1998 Act), Public Law 105–206, 112 Stat. 685, 744 (1998). Section 6751(a) sets forth the content of penalty notices. Section 6751(b) provides procedural requirements for the Secretary of the Treasury or her delegate (Secretary) to assess certain penalties, including additions to tax or additional amounts under the Code. *See* section 6751(c).

Section 6751(b)(1), as added by the 1998 Act, provides that ''[n]o penalty under this title shall be assessed unless the initial determination of such

assessment is personally approved (in writing) by the immediate supervisor of the individual making such determination or such higher level official as the Secretary may designate.'' As an exception to this rule, section 6751(b)(2), as added by the 1998 Act, provides that section 6751(b)(1) ''shall not apply to—(A) any addition to tax under section 6651, 6654, or 6655 [of the Code]; or (B) any other penalty automatically calculated through electronic means.''

The report of the United States Senate Committee on Finance regarding the 1998 Act (1998 Senate Finance Committee Report) provides that Congress enacted section 6751(b)(1) because of its concern that, ''[i]n some cases, penalties may be imposed without supervisory approval.'' S. Rep. No. 105–174, at 65 (1998), 1998–3 C.B. 537, 601. The report further states that ''[t]he Committee believes that penalties should only be imposed where appropriate and not as a bargaining chip.'' *Id.* The report provides that, to achieve this goal, section 6751(b)(1) ''requires the specific approval of IRS management to assess all non-computer generated penalties unless excepted.''

Section 212 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020, which was enacted as Division EE of the Consolidated Appropriations Act, 2021, Public Law 116–260, 134 Stat. 1182, 3067 (2020), expanded the list of penalties in section 6751(b)(2)(A) excepted from the supervisory approval requirement of section 6751(b)(1) by revising the end of section 6751(b)(2)(A) to read ''6654, 6655, or 6662 (but only with respect to an addition to tax by reason of subsection (b)(9) thereof);'' (relating to the addition to tax under section 6662(b)(9) of the Code with regard to the special charitable contribution deduction under section 170(p) of the Code for taxable years of individuals beginning in 2021). Section 605 of Division T of the Consolidated Appropriations Act, 2023, Public Law 117–328, 136 Stat. 4459, 5395 (2022), further amended section 6751(b)(2)(A) by striking ''subsection (b)(9)'' and inserting ''paragraph (9) or (10) of subsection (b).'' Section 6662(b)(10) imposes an accuracy-related penalty on underpayments attributable to any disallowance of a deduction by reason of section 170(h)(7).

2. Judicial Treatment

In 2016, a United States Tax Court (Tax Court) majority read section 6751(b)(1)'s silence about when supervisory approval is required to mean that no specific timing requirement exists and, thus, the approval need only be obtained at some time, but no particular time, prior to assessment. *Graev* v. *Commissioner,* 147 T.C. 460, 477–81 (2016), *superseded by* 149 T.C. 485 (2017).

The United States Court of Appeals for the Second Circuit (Second Circuit) rejected the *Graev* court's interpretation of section 6751(b)(1), finding ambiguity in the statute's phrase ''initial determination of such assessment.'' *Chai* v. *Commissioner,* 851 F.3d 190, 218–19 (2d Cir. 2017). The Second Circuit held that, with respect to penalties subject to deficiency procedures, section 6751(b)(1) requires written approval of the initial penalty determination no later than the date the IRS issues the notice of deficiency (or files an answer or amended answer asserting such penalty). *Id.* at 221. The Second Circuit reasoned that for supervisory approval to be given force, it must be obtained when the supervisor has the discretion to give or withhold it, and, for penalties determined in a notice of deficiency, this discretion no longer exists upon the issuance of the notice. *Id.* at 220. In *Graev III,* 149 T.C. 485 (2017), the Tax Court reversed its earlier interpretation of section 6751(b) and followed *Chai.* Since then, the Tax Court has imposed increasingly earlier deadlines by which supervisory approval of the initial penalty determination must be obtained to be considered timely under the statute, formulating tests that are difficult for IRS employees to apply.

In *Clay* v. *Commissioner,* 152 T.C. 223, 249–50 (2019), the Tax Court held that supervisory approval of penalties was too late where it was obtained before the IRS issued a notice of deficiency but after the revenue agent sent the petitioner a ''30-day letter'' proposing penalties and giving the petitioner an opportunity to request an administrative appeal. In *Belair Woods, LLC* v. *Commissioner,* 154 T.C. 1, 13 (2020), the Tax Court held that supervisory approval must be obtained before the IRS sends a notice that ''formally communicates to the taxpayer, the [IRS] Examination Division's unequivocal decision to assert a penalty.'' In subsequent cases, the Tax Court has held that supervisory approval must be obtained before the first communication to the taxpayer that demonstrates that an initial determination has been made. *See, e.g., Beland* v. *Commissioner,* 156 T.C. 80 (2021); *Kroner* v. *Commissioner,* T.C. Memo. 2020–73, *rev'd* 48 F. 4th 1272 (11th Cir. 2022); *Carter* v. *Commissioner,* T.C. Memo. 2020–21, *rev'd* 2022 WL 4232170 (11th Cir. Sept. 14, 2022). The Tax Court has applied this timing rule to penalties subject to pre-assessment review in the Tax Court, as well as to assessable penalties.

Recently the United States Court of Appeals for the Ninth Circuit (Ninth Circuit), the United States Court of Appeals for the Tenth Circuit (Tenth Circuit), and the United States Court of Appeals for the Eleventh Circuit (Eleventh Circuit) reversed the Tax Court's ''formal communication'' timing rule, noting that it has no basis in the text of the statute. *Laidlaw's Harley Davidson Sales, Inc.* v. *Commissioner,* 29 F.4th 1066 (9th Cir. 2022), *reh'g en banc denied,* No. 20–73420 (9th Cir. July 14, 2022); *Minemyer* v. *Commissioner,* Nos. 21–9006 & 21–9007, 2023 WL 314832 (10th Cir. Jan. 19, 2023); *Kroner* v. *Commissioner,* 48 F. 4th 1272 (11th Cir. 2022). In *Laidlaw's,* the Ninth Circuit held that the statute requires approval before the assessment of a penalty or, if earlier, before the relevant supervisor loses discretion whether to approve the penalty assessment, and noted that ''[t]he statute does not make any reference to the communication of a proposed penalty to the taxpayer, much less a 'formal' communication.'' *Laidlaw's,* 29 F. 4th at 1072. In *Minemyer,* the Tenth Circuit, in an unpublished opinion, held that the statute requires approval before the IRS issues a notice of deficiency asserting a penalty. *Minemyer,* 2023 WL 314832 at *4–5. In *Kroner,* the Eleventh Circuit held that the statute only requires approval before assessment, finding that a deadline of assessment is ''consistent with the meaning of the phrase 'initial determination of such assessment,' . . . . reflects the absence of any express timing requirement in the statute . . . [and] is a workable reading in light of the statute's purpose.'' *Kroner,* 48 F.4th at 1276. The Tax Court has continued to use its ''formal communication'' timing rule subsequent to *Laidlaw's* and *Kroner. See, e.g., Simpson* v. *Commissioner,* T.C. Memo 2023–4; *Castro* v. *Commissioner,* T.C. Memo. 2022–120.

Recent cases have also addressed other issues under section 6751(b)(1), including (but not limited to) clarification as to who is an immediate supervisor, *see, e.g., Sand Investment Co.* v. *Commissioner,* 157 T.C. 136 (2021); what constitutes personal, written approval, *see, e.g., PBBM-Rose Hill, Ltd.* v. *Commissioner,* 900 F.3d 193 (5th Cir. 2018); whether particular Code sections impose a ''penalty'' subject to section 6751(b)(1), *see, e.g., Grajales* v. *Commissioner,* 156 T.C. 55 (2021), *aff'd* 2022 WL 3640274 (2d Cir. 2022); and what constitutes a penalty ''automatically calculated through

electronic means.'' *See, e.g., Walquist* v. *Commissioner,* 152 T.C. 61 (2019).

Explanation of Provisions

The Treasury Department and the IRS have concluded that it is in the interest of sound tax administration to have clear and uniform regulatory standards regarding the penalty approval requirements under section 6751(b). In the absence of such regulatory standards, caselaw has developed rules for the application of section 6751(b). Such judicial holdings are subject to unanticipated but frequent change, making it difficult for IRS employees to apply them in a consistent manner. The difficulty in applying or anticipating how courts will construe these rules has resulted in otherwise appropriate penalties on taxpayers not being sustained and has undermined the efficacy of these penalties as a tool to enhance voluntary compliance by taxpayers. In addition, the evolving standards regarding interpretations of section 6751(b) have served to increase litigation, which consumes significant government resources. The recent Ninth Circuit and Eleventh Circuit rulings also create a different test to satisfy the requirements of section 6751(b) in cases appealable to those circuits as opposed to other cases that come before the Tax Court. *See Laidlaw's Harley Davidson Sales,* 29 F.4th at 1066; *Kroner* v. *Commissioner,* 48 F. 4th at 1276. The proposed regulations are intended to clarify the application of section 6751(b) in a manner that is consistent with the statute and its legislative history, has nationwide uniformity, is administrable for the IRS, and is easily understood by taxpayers.

1. Timing Issues

The proposed regulations would adopt three rules regarding the timing of supervisory approval of penalties under section 6751(b) that are based on objective and clear standards. One rule addresses penalties that are included in a pre-assessment notice that is subject to the Tax Court's review, such as a statutory notice of deficiency. One rule is for penalties that the IRS raises in an answer, amended answer, or amendment to the answer to a Tax Court petition. And one rule is for penalties assessed without prior opportunity for review by the Tax Court.

A. Penalties Subject to Pre-Assessment Review in the Tax Court

Proposed § 301.6751(b)–1(c) provides that, for penalties that are included in a pre-assessment notice issued to a taxpayer that provides the basis for jurisdiction in the Tax Court upon timely petition, supervisory approval may be obtained at any time before the notice is issued by the IRS. Section 6751(b) clearly provides that there be supervisory approval before the assessment of a penalty and contains no express requirement that the ''written approval be obtained at any particular time prior to assessment.'' *Chai,* 851 F.3d at 218. Courts have noted that there is ambiguity in the statutory phrase ''initial determination of such assessment [of the penalty]'' that a supervisor must approve. *See, e.g., Chai,* 851 F.3d at 218–19 (noting that since an ''assessment'' is the formal recording of a taxpayer's tax liability, one can determine a deficiency and whether to make an assessment, but one cannot ''determine'' an assessment); *Roth* v. *Commissioner,* 922 F.3d 1126, 1132 (10th Cir. 2019) (''[W]e agree with the Second Circuit that the plain language of § 6751(b) is ambiguous. . . .''). But courts have not agreed that an ambiguity about what constitutes an initial determination provides an opportunity to craft a deadline for approval of an initial determination from the statute's legislative history. *Compare Chai,* 851 F.3d at 219 with *Laidlaw's Harley Davidson Sales,* 29 F.4th at 1072. Instead, courts have agreed that a supervisor can approve a penalty only at a time that the supervisor has discretion to give or withhold approval. *See, e.g., Chai,* 851 F.3d at 220; *Laidlaw's Harley Davidson Sales,* 29 F.4th at 1074; *Cf., Kroner,* 48 F. 4th at 1276, n.1 (holding that approval is required before assessment but declining to address whether the supervisor must have discretion at the time of approval because it was undisputed in that case that the supervisor did).

Prior to the Second Circuit's ruling in *Chai,* the Tax Court interpreted section 6751(b) merely to require supervisory approval prior to assessment, which is the only definitive deadline provided in the statute and which, for penalties determined in a notice of deficiency, occurs after the opportunity for Tax Court review of a penalty. *See Graev* v. *Commissioner,* 147 T.C. 460 (2016), *superseded by* 149 T.C. 485 (2017). The Treasury Department and the IRS acknowledge that approval of a penalty after the IRS issues a notice subject to Tax Court review is counter to the statutory scheme for Tax Court review. Once a taxpayer petitions to the Tax Court a notice that includes a penalty, section 6215(a) of the Code directs that the Tax Court decides whether the penalty will be assessed. In that case, a supervisor no longer has discretion that will control. Further, as a practical matter, the IRS has no general process for supervisory approval of a penalty after issuing a pre-assessment notice to a taxpayer subject to review by the Tax Court that includes the penalty, such as a notice of deficiency. If a taxpayer does not timely petition the Tax Court, the IRS will simply assess any penalty determined in the notice. Therefore, the Treasury Department and the IRS conclude that a penalty appearing in a pre-assessment notice issued to a taxpayer subject to Tax Court review should be subject to supervisory approval before the notice is issued. This interpretation is consistent with the Second Circuit's holding in *Chai* and provides for penalty review while the IRS still has discretion regarding penalties. *See also Laidlaw's Harley Davidson Sales,* 29 F.4th at 1074 (''Accordingly, we hold that § 6751(b)(1) requires written supervisory approval before the assessment of the penalty or, if earlier, before the relevant supervisor loses discretion whether to approve the penalty assessment.'').

The proposed regulations do not require written approval of an initial determination of a penalty that is subsequently included in a pre-assessment notice subject to review by the Tax Court by any deadline earlier than the issuance of the notice to the taxpayer. As already mentioned, no language in the statute imposes any such earlier deadline, and the statutory scheme for assessing such penalties does not deprive a supervisor of discretion to approve an initial determination before the issuance of a pre-assessment notice subject to review by the Tax Court.

The Treasury Department and the IRS have concluded that an earlier deadline for approval of an initial determination of a penalty would not best serve the legislative purpose of section 6751(b). The lack of any deadline in the statute other than the deadline that approval must come before assessment indicates that Congress did not intend an earlier deadline. No earlier deadline is mentioned in the legislative history. To create earlier deadlines, the caselaw relies on a single statement in the limited legislative history that ''[t]he Committee believes that penalties should only be imposed where appropriate and not as a bargaining chip.'' *See Belair Woods,* 154 T.C. at 7 (citing S. Rep. No. 105–174, at 65 (1998)). But the earlier deadlines created by the Tax Court do not ensure that penalties are only imposed where appropriate.

First, the supervisory approval deadlines the Tax Court has created are unclear in application. One formulation

sets the deadline for approval to occur before the IRS ''formally communicates to the taxpayer, the Examination Division's unequivocal decision to assert a penalty.'' *Belair Woods,* 154 T.C. at 13. Prior to assessment, it is unclear what constitutes this unequivocal decision other than a notice that gives the taxpayer the right to petition the Tax Court. For any notice before the right to petition the Tax Court, the taxpayer is free to present more evidence or arguments to the Examination Division as to why a penalty should not apply, which could lead the IRS supervisor charged with approving an initial determination to conclude that a penalty should not be asserted.

Second, if the ''Examination Division's unequivocal decision to assert a penalty,'' *id.,* means that the Examination Division was finished with its work and could or would not change its mind upon receiving further information, there is no harm in delaying approval in writing until sometime after that moment. There would be no possibility of a change to the penalty during the period after the Examination Division has completed its work. The Tax Court's imposition of an approval deadline immediately after the Examination Division has completed its work rather than sometime later would do nothing to prevent an attempt to bargain because the Examination Division could not consider a bargain if it has already completed its work

Third, none of the deadlines the Tax Court has imposed actually ensure that penalties could never be used as a bargaining chip because each formulation of what constitutes an ''initial determination'' has been tied to a written communication. Although it would violate longstanding IRS Policy Statements and would contradict the Internal Revenue Manual's (IRM) instructions, in theory a penalty could be used as a bargaining chip if conveyed orally, and the deadlines the Tax Court has created do not come into play without written communication. As a result, the Tax Court opinions imposing deadlines are not effective to prevent bargaining.

Fourth, the courts' struggles to determine a consistent deadline has undermined the legislative purpose that penalties be imposed ''where appropriate.'' S. Rep. No. 105–714 at 65. The Tax Court has found no evidence that an IRS employee actually attempted to use a penalty as a bargaining chip in any of the cases in which it invalidated a penalty for section 6751(b) noncompliance. Instead, the Tax Court has consistently removed penalties when IRS employees simply obtained written supervisory approval after deadlines the Tax Court created and applied retroactively without any indication that the penalty was improper. *See, e.g., Kroner,* T.C. Memo. 2020–73, *rev'd* 48 F. 4th 1272 (11th Cir. 2022); *Carter,* T.C. Memo. 2020–21, *rev'd* 2022 WL 4232170 (11th Cir. Sept. 14, 2022). In one case, the Tax Court explicitly noted that imposition of the penalty would be proper but for the IRS's failure to obtain written supervisory approval by the deadline created by the Tax Court. *See Becker* v. *Commissioner,* T.C. Memo. 2018–69 (stating that ''Mr. Becker's fraud is evident'' and that, but for section 6751(b) compliance, the court's analysis ''would normally lead to a holding that sustains the Commissioner's civil fraud penalty determinations . . .'').

In contrast, by allowing a supervisor to approve the initial determination of a penalty up until the time the IRS issues a pre-assessment notice subject to review by the Tax Court, the proposed rule ensures that penalties are ''only [ ] imposed where appropriate.'' S. Rep. No. 105–714 at 65. With this deadline, the supervisor has the opportunity to consider a taxpayer's defense against a penalty, if applicable, and decide whether to approve the penalty. If the facts of the case suggest that a penalty should have been considered but none is imposed, the supervisor's later review would allow the supervisor to question why none was recommended. Furthermore, this bright-line rule relieves supervisors from having to predict whether approval at a certain point will be too early or too late, thereby risking that an otherwise appropriate penalty may not be upheld by a court. Pre-assessment notices that provide a basis for Tax Court jurisdiction are well known to supervisors, and the proposed rule will be clear in application to both IRS employees and taxpayers.

Finally, the rule in proposed § 301.6751(b)–1(c) is consistent with longstanding IRS Policy Statements. Penalty Policy Statement 20–1 has, since 2004, included the following direction to IRS employees:

''The [IRS] will demonstrate the fairness of the tax system to all taxpayers by:

a. Providing every taxpayer against whom the [IRS] proposes to assess penalties with a reasonable opportunity to provide evidence that the penalty should not apply;

b. Giving full and fair consideration to evidence in favor of not imposing the penalty, even after the [IRS]'s initial consideration supports imposition of a penalty; and

c. Determining penalties when a full and fair consideration of the facts and the law support doing so.

Note: This means that penalties are not a ''bargaining point'' in resolving the taxpayer's other tax adjustments. Rather, the imposition of penalties in appropriate cases serves as an incentive for taxpayers to avoid careless or overly aggressive tax reporting positions.''

IRM 1.2.1.12.1 (9). As reflected in this Policy Statement and the language of section 6751(b) itself, it may not be until the IRS has had the opportunity to develop the facts in support of or against the penalty that a supervisor is in the best position to approve an initial determination to assert a penalty as appropriate. Therefore, the Treasury Department and the IRS have concluded that the deadline for providing approval for penalties appearing in a pre-assessment notice that entitles a taxpayer to petition the Tax Court should be no earlier than issuance of such notice.

B. Penalties Raised in the Tax Court After a Petition

Proposed § 301.6751(b)–1(d) provides that, for penalties raised in the Tax Court after a petition, supervisory approval may be obtained at any time prior to the Commissioner requesting that the court determine the penalty. The proposed rule gives full effect to the language in both sections 6214 and 6751(b)(1) because once a penalty is raised, the Tax Court decision will control whether it is assessed. Section 6214(a) permits the Commissioner to raise penalties in an answer or amended answer that were not included in a notice that provides the basis for Tax Court jurisdiction upon timely petition. The proposed rule allows the exercise of this statutory grant of independent judgment by the IRS Office of Chief Counsel (Counsel) attorney, while maintaining the intent of Congress that penalties be imposed only where appropriate, and with meaningful supervisory review. Any concern about a Counsel attorney using penalties raised in an answer or amended answer as a bargaining chip is mitigated by the requirement in proposed § 301.6751(b)–1(d) for supervisory approval within Counsel before the answer or amended answer is filed. Moreover, by raising a penalty on answer, amended answer, or amendment to the answer to, the Commissioner will likely bear the burden of proof at trial regarding the application of the penalty, thus reducing further the possibility that Counsel will attempt to use a penalty as

a bargaining chip in a docketed case. *See* Tax Court Rule 142. Furthermore, Tax Court Rule 33(b) provides that signature of counsel on a pleading constitutes a certificate by the signer that the pleading is not interposed for any improper purpose, thus diminishing the potential for abuse. No case has found that a penalty raised on answer, amended answer, or amendment to the answer was untimely under section 6751(b).

C. Penalties Not Subject to Pre-Assessment Review in the Tax Court

Proposed § 301.6751(b)–1(b) provides that supervisory approval for penalties that are not subject to pre-assessment review in the Tax Court may be obtained at any time prior to assessment. This includes penalties that could have been included in a pre-assessment notice that provides the basis for Tax Court jurisdiction upon timely petition, but which were not included in such a notice because the taxpayer agreed to their immediate assessment.

Unlike penalties subject to deficiency procedures before assessment, there is no Tax Court or potential Tax Court decision that would make approval of an immediately assessable penalty by an IRS supervisor meaningless. Instead, consistent with the language of section 6751(b), supervisory approval can be made at any time before assessment without causing any tension in the statutory scheme for assessing penalties.

The proposed rule is also consistent with congressional intent that penalties not be used as a bargaining chip. Most penalties not subject to pre-assessment review in the Tax Court cannot be used as a bargaining chip because they are not in addition to a tax liability. Rather, the penalty is the sole liability at issue.

2. Exceptions to the Rule Requiring Supervisory Approval of Penalties

Proposed § 301.6751(b)–1(a)(2) provides a list of penalties excepted from the requirements of section 6751(b). Proposed § 301.6751(b)–1(a)(2) excepts those penalties listed in section 6751(b)(2)(A), along with penalties imposed under section 6673 of the Code. Penalties under section 6673 are imposed at the discretion of the court and are designed to deter bad behavior in litigation and conserve judicial resources. Section 6673 penalties are not determined by the Commissioner, and the applicable Federal court may impose them regardless of whether the Commissioner moves for their imposition. The proposed rule excepts penalties under section 6673 from the requirements of section 6751(b)(1) because section 6751(b)(1) was not intended as a mechanism to restrain Federal courts. This rule is consistent with the Tax Court's holding in *Williams* v. *Commissioner,* 151 T.C. 1 (2018).

3. Definitions

A. Immediate Supervisor and Designated Higher Level Officials

Section 6751(b)(1) requires approval by ''the immediate supervisor'' of the individual who makes the initial penalty determination, or such higher level official as the Secretary may designate. The statute does not define the term immediate supervisor. The 1998 Senate Finance Committee Report only provides that section 6751(b) requires the approval of ''IRS management.'' In *Sand Investment,* the Tax Court held that for purposes of section 6751(b) the ''immediate supervisor'' is the individual who directly supervises the examining agent's work in an examination. In the Tax Court's view, the legislative history of section 6751(b) supports the conclusion that the person with the greatest familiarity with the facts and legal issues presented by the case is the immediate supervisor. 157 T.C. at 142.

Proposed § 301.6751(b)–1(a)(3)(iii) defines the term ''immediate supervisor'' as any individual with responsibility to approve another individual's proposal of penalties without the proposal being subject to an intermediary's approval. The proposed rule does not limit the term immediate supervisor to a single individual. To limit the term to a single individual within the IRS would restrict section 6751(b)(1) in a way that does not reflect how the IRS operates and would invite unwarranted disputes about which specific individual was most appropriate in situations where multiple individuals could fairly be considered an ''immediate supervisor.'' Instead, the term is better understood to refer to any person who, as part of their job, directly approves a penalty proposed by another. This includes acting supervisors operating under a proper delegation of authority. This approach is consistent with the intent of Congress to prevent IRS examining agents from operating alone. The proposed rule further ensures that the person giving the approval has appropriate supervisory responsibility with respect to the penalty.

Proposed § 301.6751(b)–1(a)(4) designates as a higher level official authorized to approve an initial penalty determination for purposes of section 6751(b)(1) any person who has been directed via the IRM or other assigned job duties to approve another individual's proposal of penalties before they are included in a notice prerequisite to Tax Court jurisdiction, an answer to a Tax Court petition, or are assessed without need for such inclusion. Proposed § 301.6751(b)–1(a)(3)(iv) defines a higher level official as any person designated as such under proposed § 301.6751(b)–1(a)(4).

With respect to ''higher level officials'' who may provide penalty approval in lieu of the immediate supervisor, the statute does not specify whether the official needs to be at a ''higher level'' than the individual making the initial penalty determination, or at a higher level than that individual's supervisor. Read in light of the statute's legislative purpose and the structure and operations of the IRS, it is appropriate to understand that term as referring to an official at a higher level than the individual making the initial penalty determination. To do otherwise would be to exclude a large group of individuals the IRS has assigned to review proposed penalties. This approach is consistent with the legislative history and allows IRS employees to operate within the scope of their assigned duties.

To be able to identify which supervisor should approve an initial penalty determination, it must be clear which individual made the ''initial determination of [a penalty] assessment.'' Proposed § 301.6751(b)–1(a)(3)(ii) provides that the individual who first proposes a penalty is the individual who section 6751(b)(1) references as the individual making the initial determination of a penalty assessment. Proposed § 301.6751(b)–1(a)(3)(ii) also provides that a proposal includes those made either to a taxpayer or to the individual's supervisor or a designated higher level official. This approach will allow for easy identification of the appropriate supervisor or higher level official. Proposed § 301.6751(b)–1(a)(3)(ii) also makes clear that the assessment of a penalty must be attributable to an individual's proposal for that individual to be considered as the individual who made the ''initial determination of such assessment.'' If a proposal of a penalty is not tied to an ultimate assessment, then it should not be treated as the ''initial determination of such assessment.'' This approach allows the IRS the flexibility to pursue penalties when new information is received that alters earlier thinking on whether a penalty is appropriate. It also allows for more than one set of an individual employee and supervisor to exercise

independent judgment about whether a penalty should be assessed. This situation is illustrated by an example in proposed § 301.6751(b)–1(e)(4).

B. Personally Approved (in Writing)

Section 6751(b)(1) requires that the immediate supervisor ''personally approve (in writing)'' the initial determination to assert a penalty. Proposed § 301.6751(b)–1(a)(3)(v) provides that ''personally approved (in writing)'' means any writing, including in electronic form, that is made by the writer to signify the writer's assent and that reflects that it was intended as approval. The proposed rule reflects a straightforward, plain language interpretation of the term, and is consistent with the legislative history's requirement that ''specific approval'' be given. The plain language of the statute requires only personal approval in writing, not any particular form of signature or even any signature at all. The plain language of the statute also contains no requirement that the writing contain the supervisor's substantive analysis, nor does the statute require the supervisor to follow any specific procedure in determining whether to approve the penalty. Thus, for example, a supervisor's signature on a cover memorandum or a letter transmitting a report containing penalties is sufficient approval of the penalties contained in the report. The proposed rule is consistent with existing caselaw on this issue. *See PBBM-Rose Hill,* 900 F.3d at 213; *Deyo* v. *Commissioner,* 296 Fed. Appx. 157 (2d Cir. 2008); *Thompson* v. *Commissioner,* T.C. Memo. 2022–80; *Raifman* v. *Commissioner,* T.C. Memo. 2018–101.

C. Automatically Calculated Through Electronic Means

Section 6751(b)(2) exempts from the penalty approval requirements penalties under sections 6651, 6654, 6655, 6662(b)(9), and 6662(b)(10) and ''any other penalty automatically calculated through electronic means.'' The term is not defined in the statute and the legislative history only provides that approval is required of ''all non-computer generated penalties.''

Proposed § 301.6751(b)–1(a)(3)(vi) provides that a penalty is ''automatically calculated through electronic means'' if it is proposed by an IRS computer program without human involvement. Proposed § 301.6751(b)–1(a)(3)(vi) provides that a penalty is no longer considered ''automatically calculated through electronic means'' if a taxpayer responds to a computer-generated notice proposing a penalty and challenges the penalty or the amount of tax to which the penalty is attributable, and an IRS employee works the case.

Current IRS computer software, including but not limited to the Automated Correspondence Exam (ACE) program using Report Generation Software (RGS) and the Automated Underreporter (AUR) program, is capable of automatically proposing certain penalties to taxpayers without the involvement of an IRS examiner. Penalties that can be proposed in this way are then assessed without review by an IRS examiner. Requiring supervisory approval for these penalties would disrupt the automated process of determining a penalty and would not square with the statutory text requiring approval by the immediate supervisor of the ''individual'' making an initial penalty determination.

When an IRS computer program sends a taxpayer a notice proposing a penalty and the taxpayer responds to that notice, an IRS examiner often considers the taxpayer's response. If the taxpayer's response questions the validity of the penalty or the adjustments to which the penalty relates, and an examiner considers the response, any subsequent assessment of the penalty would not be based solely on the automatic calculation of the penalty by the computer program. Instead, it would be at least partially based on a choice made by an IRS employee as to whether the penalty is appropriate. Therefore, the exception for penalties automatically calculated through electronic means does not apply, and supervisory approval is required in that situation. This rule is consistent with the Tax Court's holding in *Walquist,* 152 T.C. at 73.

Proposed Applicability Dates

The proposed rules are proposed to apply to penalties assessed on or after the date of publication of the Treasury decision adopting the proposed rules as final regulations in the **Federal Register**.

Special Analyses

I. Regulatory Planning and Review

It has been determined that this notice of proposed rulemaking is 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.

II. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. This certification is based on this regulation imposing no obligations on small entities and the effectiveness of the regulation in having supervisors ensure that penalties for violations of other provisions of tax law are appropriate and not used as a bargaining chip. Because only appropriate penalties will apply with the proper application of this regulation, the proposed regulations do not impose a significant economic impact on a substantial number of small entities.

Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business.

III. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. This rule does not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

IV. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. These proposed regulations do not have federalism implications and do not impose substantial direct compliance costs on state and local governments or preempt State law within the meaning of the Executive order.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to 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. All comments will be available at *www.regulations.gov* or upon request.

A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a public hearing also are encouraged to be made electronically. If a public hearing is scheduled, notice of the date and time for the public hearing will be published in the **Federal Register**. Announcement 2020–4, 2020–17 I.R.B 1, provides that, until further notice, public hearings conducted by the IRS will be held telephonically. Any telephonic hearing will be made accessible to people with disabilities.

Drafting Information

The principal author of these regulations is David Bergman of the Office of the Associate Chief Counsel (Procedure and Administration). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 301

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

Proposed Amendment to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 301 as follows:

PART 301—PROCEDURE AND ADMINISTRATION

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

Authority: 26 U.S.C. 7805.

■ **Par. 2.** Section 301.6751(b)–1 is added to read as follows:

§ 301.6751(b)–1 Supervisory and higher level official approval for penalties.

(a) *Approval requirement*—(1) *In general.* Except as provided in paragraph (a)(2) of this section, section 6751(b) of the Internal Revenue Code (Code) generally bars the assessment of a penalty unless the initial determination of the assessment of the penalty is personally approved (in writing) by the immediate supervisor of the individual making the initial determination or such higher level official as the Secretary of the Treasury or her delegate (Secretary) may designate. Paragraph (a)(2) of this section lists penalties not subject to section 6751(b)(1) and this paragraph (a)(1). Paragraph (a)(3) of this section provides definitions of terms used in section 6751(b) and this section. Paragraph (a)(4) of this section designates the higher level officials described in this paragraph (a)(1). Paragraphs (b), (c), and (d) of this section apply section 6751(b)(1) and this paragraph (a)(1) to penalties not subject to pre-assessment review in the Tax Court, penalties that are subject to pre-assessment review in the Tax Court, and penalties raised in the Tax Court after a petition, respectively. Paragraph (e) of this section provides examples illustrating the application of section 6751(b) and this section. Paragraph (f) of this section provides dates of applicability of this section.

(2) *Exceptions.* Under section 6751(b)(2), section 6751(b)(1) and this section do not apply to:

(i) Any penalty under section 6651, 6654, 6655, 6673, 6662(b)(9), or 6662(b)(10) of the Code; or

(ii) Any other penalty automatically calculated through electronic means.

(3) *Definitions.* For purposes of section 6751(b) and this section, the following definitions apply—

(i) *Penalty.* The term *penalty* means any penalty, addition to tax, or additional amount under the Code.

(ii) *Individual who first proposed the penalty.* Except as otherwise provided in this paragraph (a)(3)(ii), the *individual who first proposed the penalty* is the individual who section 6751(b)(1) and paragraph (a)(1) of this section reference as the individual making the initial determination of a penalty assessment. A proposal of a penalty can be made to either a taxpayer (or the taxpayer's representative) or to the individual's supervisor or designated higher level official. A proposal of a penalty, as defined in paragraph (a)(3)(i) of this section, to a taxpayer does not include mere requests for information relating to a possible penalty or inquiries of whether a taxpayer wants to participate in a general settlement initiative for which the taxpayer may be eligible, but does include offering the taxpayer an opportunity to agree to a particular penalty in a particular amount other than a penalty under a settlement initiative offered to a class of taxpayers. An individual who first proposed the penalty is not the individual whom section 6751(b)(1) and paragraph (a)(1) of this section reference as the individual making the initial determination of a penalty assessment if the assessment of the penalty is attributable to an independent proposal made by a different individual.

(iii) *Immediate supervisor.* The term *immediate supervisor* means any individual with responsibility to approve another individual's proposal of penalties, as defined in paragraph (a)(3)(i) of this section, without the proposal being subject to an intermediary's approval.

(iv) *Higher level official.* The term *higher level official* means any person designated under paragraph (a)(4) of this section as a higher level official authorized to approve a penalty for purposes of section 6751(b)(1).

(v) *Personally approved (in writing).* The term *personally approved (in writing)* means any writing, including in electronic form, made by the writer to signify the writer's assent. No signature or particular words are required so long as the circumstances of the writing reflect that it was intended as approval.

(vi) *Automatically calculated through electronic means.* A penalty, as defined in paragraph (a)(3)(i) of this section, is *automatically calculated through electronic means* if an IRS computer program automatically generates a notice to the taxpayer that proposes the penalty. If a taxpayer responds in writing or otherwise to the automatically-generated notice and challenges the proposed penalty, or the amount of tax to which the proposed penalty is attributable, and an IRS employee considers the response prior to assessment (or the issuance of a notice of deficiency that includes the penalty), then the penalty is no longer considered ''automatically calculated through electronic means.''

(4) *Higher level official.* Any person who has been directed by the Internal Revenue Manual or other assigned job duties to approve another individual's proposal of penalties before they are included in a pre-assessment notice prerequisite to United States Tax Court (Tax Court) jurisdiction, an answer, amended answer, or amendment to the answer to a Tax Court petition, or are assessed without need for such inclusion, is designated as a higher level official authorized to approve the penalty for purposes of section 6751(b)(1).

(b) *Penalties not subject to pre-assessment review in the Tax Court.* The requirements of section 6751(b)(1) and paragraph (a)(1) of this section are satisfied for a penalty that is not subject to pre-assessment review in the Tax Court if the immediate supervisor of the individual who first proposed the penalty personally approves the penalty in writing before the penalty is assessed. Alternatively, a person designated as a higher level official as described in paragraph (a)(4) of this section may

provide the approval otherwise required by the immediate supervisor.

(c) *Penalties subject to pre-assessment review in the Tax Court.* The requirements of section 6751(b)(1) and paragraph (a)(1) of this section are satisfied for a penalty that is included in a pre-assessment notice that provides a basis for Tax Court jurisdiction upon timely petition if the immediate supervisor of the individual who first proposed the penalty personally approves the penalty in writing on or before the date the notice is mailed. Alternatively, a person designated as a higher level official as described in paragraph (a)(4) of this section may provide the approval otherwise required by the immediate supervisor. Examples of a pre-assessment notice described in this paragraph (c) include a statutory notice of deficiency under section 6212 of the Code, a notice of final partnership administrative adjustment under former section 6223 of the Code, and a notice of final partnership adjustment under section 6231 of the Code.

(d) *Penalties raised in the Tax Court after a petition.* The requirements of section 6751(b)(1) and paragraph (a)(1) of this section are satisfied for a penalty that the Commissioner raises in the Tax Court after a petition (*see* section 6214(a) of the Code) if the immediate supervisor of the individual who first proposed the penalty personally approves the penalty in writing no later than the date on which the Commissioner requests that the court determine the penalty. Alternatively, a person designated as a higher level official as described in paragraph (a)(4) of this section may provide the approval otherwise required by the immediate supervisor.

(e) *Examples.* The following examples illustrate the rules of this section.

(1) *Example 1.* In the course of an audit regarding a penalty not subject to pre-assessment review in the Tax Court, Revenue Agent A concludes that Taxpayer T should be subject to the penalty under section 6707A of the Code for failure to disclose a reportable transaction. A sends T a letter giving T the options to agree to the penalty; submit additional information to A about why the penalty should not apply; or request within 30 days that the matter be sent to the Independent Office of Appeals (Appeals) for consideration. After T requests that Appeals consider the case, A prepares the file for transmission, and B (who is A's immediate supervisor, as defined in paragraph (a)(3)(iii) of this section) signs a cover memorandum informing Appeals of the Office of Examination's proposed penalty and asking Appeals to consider it. The Appeals Officer upholds the penalty, and it is assessed. The requirements of section 6751(b)(1) are satisfied because B's signature on the cover memorandum is B's personal written assent to the penalty proposed by A and was given before the penalty was assessed.

(2) *Example 2.* In the course of an audit, Revenue Agent A concludes that Taxpayer T should be subject to an accuracy-related penalty for substantial understatement of income tax under section 6662(b)(2). A sends T a Letter 915, Examination Report Transmittal, along with an examination report that includes the penalty. The Letter 915 gives T the options to agree to the examination report; provide additional information to be considered; discuss the report with A or B (who is A's immediate supervisor, as defined in paragraph (a)(3)(iii) of this section); or request a conference with an Appeals Officer. T agrees to assessment of the penalty and signs the examination report to consent to the immediate assessment and collection of the amounts shown on the report. B provides written supervisory approval of the penalty after T signs the examination report, but before the penalty is assessed. Paragraph (b) of this section applies because T's agreement to assessment of the penalty excepts it from pre-assessment review in the Tax Court. Because B provided written supervisory approval before assessment of the penalty, the requirements of section 6751(b) are satisfied.

(3) *Example 3.* In the course of an audit of Taxpayer T by a team of revenue agents, Revenue Agent A concludes that T should be subject to an accuracy-related penalty for negligence under sections 6662(b)(1) and 6662(c). Supervisor B is the issue manager and is assigned the duty to approve the Notice of Proposed Adjustment for any penalty A would propose. A reports to B, but B is not responsible for the overall management of the audit of T. C is the case manager of the team auditing T and is responsible for the overall management of the audit of T. C may assign tasks to A and other team members, and has responsibility for approving any examination report presented to T.

(i) Only B approves the penalty in writing before the mailing to T of a notice of deficiency that includes the penalty. Under paragraph (a)(3)(iii) of this section, B qualifies as the immediate supervisor of A with respect to A's penalty proposal, and the requirements of section 6751(b)(1) are met.

(ii) Only C approves the penalty in writing before the mailing to T of a notice of deficiency that includes the penalty. Because C has responsibility to approve A's proposal of the penalty as part of approving the examination report, C qualifies as a higher level official designated under paragraph (a)(4) of this section to approve the penalty proposed by A, and the requirements of section 6751(b)(1) are met.

(4) *Example 4.* In the course of an audit, Revenue Agent A concludes that Taxpayer T should be subject to a penalty for negligence under section 6662(c). A recommends the penalty to her immediate supervisor B, who thinks more factual development is needed to support the penalty but must close the audit immediately due to the limitations period on assessment expiring soon. The IRS issues a statutory notice of deficiency without the penalty and T petitions the Tax Court. In reviewing the case file and conducting discovery, IRS Chief Counsel Attorney C concludes that the facts support imposing a negligence penalty under section 6662(c). Attorney C proposes to her immediate supervisor, D, that the penalty should apply and should be raised in an Answer pursuant to section 6214(a). D agrees and signs the Answer that includes the penalty before it is filed. The section 6662(c) penalty at issue is subject to pre-assessment review in the Tax Court and was raised in the Tax Court after a petition under paragraph (d) of this section. Therefore, written supervisory approval under paragraph (d) of this section was required prior to filing the written pleading that includes the penalty. Attorney C is the individual who first proposed the penalty for purposes of section 6751(b)(1) and paragraphs (d) and (a)(3)(ii) of this section, and she secured timely written supervisory approval from D, the immediate supervisor, as defined in paragraph (a)(3)(iii) of this section, so the requirements of section 6751(b)(1) are met. Revenue Agent A did not make the initial determination of the penalty assessment because any assessment would not be attributable to A's proposal but would be based on the independent proposal of Attorney C raised pursuant to section 6214(a).

(5) *Example 5.* The IRS's Automated Underreporter (AUR) computer program detects a discrepancy between the information received from a third party and the information contained on Taxpayer T's return. AUR automatically generates a CP2000, Notice of Underreported Income, that includes an adjustment based on the unreported

income and a proposed penalty under section 6662(d) that is mailed to T. The CP2000 gives T 30 days to respond to contest the proposed adjustments and the penalty. T submits a response to the CP2000, asking only for more time to respond. More time is granted but no further response is received from T, and a statutory notice of deficiency that includes the adjustments and the penalty is automatically generated and issued to T. The section 6662(d) penalty at issue is automatically calculated through electronic means under paragraphs (a)(2)(ii) and (a)(3)(vi) of this section. The penalty was proposed by the AUR computer program, which generated a notice to T that proposed the penalty. Although T submitted a response to the CP2000, the response did not challenge the proposed penalty, or the amount of tax to which the proposed penalty is attributable. Therefore, the penalty was automatically calculated through electronic means and written supervisory approval was not required.

(f) *Applicability date.* The rules of this section apply to penalties assessed on or after [the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**].

Douglas W. O'Donnell,

Deputy Commissioner for Services and Enforcement.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2018–0160; FRL–10867–01–R9]

Air Plan Revisions; California; Yolo-Solano Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to partially approve and partially disapprove, under the Clean Air Act (CAA or ''Act''), a revision to the California state implementation plan (SIP). This revision addresses reasonably available control technology (RACT) requirements for the 2008 8-hour ozone national ambient air quality standards (NAAQS or ''standards'') in the portion of the Sacramento Metropolitan nonattainment area that is subject to the jurisdiction of the Yolo-Solano Air Quality Management District (YSAQMD). We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments must be received on or before May 11, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2018–0160 at *https://www.regulations.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.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Eugene Chen, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 947–4304 or by email at *chen.eugene@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' refer to the EPA.

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I. The State's Submittal

A. What document did the State submit?

Table 1 lists the document addressed by this proposal with the dates that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED DOCUMENT

Local agency	Document	Adopted	Submitted
YSAQMD	Reasonably Available Control Technology (RACT) State Implementation Plan (SIP) Analysis for the 2008 Federal Ozone Standard (''2017 RACT SIP'').	09/13/2017	11/13/2017

The EPA determined that the negative declarations portion of the 2017 RACT SIP met the SIP submittal completeness criteria in 40 CFR part 51, Appendix V on April 11, 2018.[1] The EPA determined that the remaining elements of the 2017 RACT SIP met the completeness criteria on August 23, 2018.[2]

[1] Letter dated April 11, 2018, from Elizabeth J. Adams, Acting Director, Air Division, EPA Region IX, to Richard Corey, Executive Officer, CARB.

[2] Letter dated August 23, 2018, from Elizabeth J. Adams, Acting Director, Air Division, EPA Region IX, to Richard Corey, Executive Officer, CARB.

B. Are there other versions of this document?

There are no other versions of this document, but we previously took final action to approve the negative declarations from the 2017 RACT SIP.[3] The remaining elements of the 2017 RACT SIP are the subject of this action.

C. What is the purpose of the submitted document?

Emissions of volatile organic compounds (VOCs) and oxides of nitrogen (NO_X) contribute to the production of ground-level ozone, smog and particulate matter (PM), which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC and NO_X emissions. Sections 182(b)(2) and (f) require that SIPs for ozone nonattainment areas classified as Moderate or above implement RACT for any source covered by a Control Techniques Guidelines (CTG) document and for any major source of VOCs or NO_X. The YSAQMD is subject to this requirement as it regulates the Yolo County and Solano County portions of the Sacramento Metropolitan ozone nonattainment area that is classified as a Severe nonattainment area for the 2008 8-hour ozone NAAQS.[4] Therefore, the YSAQMD must, at a minimum, adopt RACT-level controls for all sources covered by a CTG document and for all major non-CTG sources of VOCs or NO_X within the portion of the ozone nonattainment area that it regulates. Any stationary source that emits or has the potential to emit at least 25 tons per year (tpy) of VOCs or NO_X is a major stationary source in a Severe ozone nonattainment area.[5]

Section III.D of the preamble to the EPA's final rule to implement the 2008 ozone NAAQS discusses RACT requirements.[6] It states, in part, that RACT SIPs must contain adopted RACT regulations, certifications (where appropriate) that existing provisions are RACT, and/or negative declarations that no sources in the nonattainment area are covered by a specific CTG.[7] It also provides that states must submit appropriate supporting information for their RACT submissions as described in the EPA's implementation rule for the 1997 ozone NAAQS.[8] The 2017 RACT SIP submittal and negative declarations provide the YSAQMD's analyses of its compliance with the CAA section 182 RACT requirements for the 2008 8-hour ozone NAAQS.

The EPA's technical support document (TSD) for this action has more information about the 2017 RACT SIP and the EPA's evaluations thereof.[9] For more information about the YSAQMD's negative declarations, please consult our April 5, 2018 final action approving these negative declarations.[10]

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the submitted document?

Generally, SIP rules must require RACT for all sources covered by a CTG document as well as each major source of VOCs or NO_X in ozone nonattainment areas classified as Moderate or above.[11] The YSAQMD regulates the Yolo County and Solano County portions of the Sacramento Metropolitan ozone nonattainment area, which is classified as Severe for the 2008 ozone standard (40 CFR 81.305). Therefore, YSAQMD rules must implement RACT.

States should also submit for SIP approval negative declarations for those CTGs for which they have no sources covered by the CTG, regardless of whether such negative declarations were made in a SIP submittal for an earlier ozone standard.[12] To do so, the submittal should provide reasonable assurances that no sources that fall under the CTG currently exist in the regulated area.

Accordingly, the District's analysis must demonstrate that each major source of VOCs or NO_X in the ozone nonattainment area is covered by a RACT-level rule. In addition, for each CTG, the District must either demonstrate that a RACT-level rule is in place or submit a negative declaration. Guidance and policy documents that we use to evaluate CAA section 182 RACT requirements include the following:

1. ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
2. ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,'' (the NO_X Supplement), 57 FR 55620, November 25, 1992.
3. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (revised January 11, 1990) (''Bluebook'').
4. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (''Little Bluebook'').
5. Memorandum dated May 18, 2006, from William T. Harnett, Director, Air Quality Policy Division, to Regional Air Division Directors, Subject: ''RACT Qs & As—Reasonably Available Control Technology (RACT): Questions and Answers.''
6. ''Final Rule to Implement the 8-hour Ozone National Ambient Air Quality Standard—Phase 2,'' 70 FR 71612 (November 29, 2005).
7. ''Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements,'' 80 FR 12264 (March 6, 2015).
8. ''State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM [startup, shutdown, malfunction] Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction'' (80 FR 33839) June 12, 2015 (''2015 SSM SIP Action'').
9. ''Inclusion of Provisions Governing Periods of Startup, Shutdown, and Malfunctions in State Implementation Plans,'' EPA, October 9, 2020.
10. ''Withdrawal of the October 9, 2020, Memorandum Addressing Startup, Shutdown, and Malfunctions in State Implementation Plans and Implementation of the Prior Policy,'' EPA, September 30, 2021.

B. Does the document meet the evaluation criteria?

The 2017 RACT SIP concludes that the YSAQMD has satisfied CAA section 182 RACT requirements for the 2008 8-hour ozone NAAQS, based on an analysis of SIP-approved requirements that apply to sources covered by a CTG, and major non-CTG stationary sources of VOC or NO_X emissions.

With respect to CTG sources, the 2017 RACT SIP identifies several CTGs with covered sources (*i.e.,* sources covered by the CTG and operating within the nonattainment area), and provides an evaluation of the rules that the District relies upon to meet RACT for these CTGs. We reviewed the District's evaluation and agree that its rules implement RACT for the applicable CTGs. Our TSD has additional information about our evaluation of these rules.

[3] 83 FR 31017 (April 5, 2018). This action also approved four additional negative declarations submitted by the YSAQMD on February 22, 2018.

[4] 77 FR 30088 (May 21, 2012).

[5] CAA sections 182(d) and (f) and 302(j).

[6] 80 FR 12264 (March 6, 2015).

[7] Id. at 12278.

[8] Id.; 70 FR 71612, 71652 (November 29, 2005).

[9] See Docket Item B–01

[10] 83 FR 31017.

[11] CAA section 182(b)(2), (f).

[12] 57 FR 13498, 13512 (April 16, 1992).

Table 3 of the 2017 RACT SIP lists the YSAQMD's negative declarations where there are no sources in the District subject to the applicable CTGs for the 2008 8-hour ozone NAAQS. We previously approved the District's negative declarations on April 5, 2018,[13] and while they are not the subject of this action, we have summarized these negative declarations with the remaining RACT elements for the 2008 ozone NAAQS in Table 2 below.

With respect to non-CTG major sources of NO_X or VOC, YSAQMD identified nine facilities exceeding the major source threshold for NO_X or VOC, which is 25 tpy in Severe ozone nonattainment areas. As described in more detail in our TSD, we conclude that YSAQMD properly identified all major non-CTG sources of NO_X or VOC requiring RACT. YSAQMD also identified several district rules, including several NO_X rules, that it relies upon to implement RACT at these major sources. As discussed in more detail in Section II.C below, we have noted deficiencies in two of the identified district rules, and conclude that these district rules do not fully satisfy the RACT requirement.

C. What are the deficiencies?

YSAQMD has identified Rule 2.38 (Standards for Municipal Solid Waste Landfills) as implementing RACT for several municipal solid waste landfills in the District that are non-CTG major sources of VOC. Although Rule 2.38 is in effect locally, it has not been submitted for approval into the SIP. Because Rule 2.38 is not federally enforceable through the SIP, it cannot be used to satisfy RACT requirements.[14] This deficiency represents the basis for our partial disapproval of the 2017 RACT SIP for the non-CTG major source VOC RACT element. The District may remedy this deficiency by submitting an approvable rule that implements RACT for municipal solid waste landfills that are non-CTG major sources. See Section 6.1 of the TSD for more information.

Rule 2.43 (Biomass Boilers), which is relied upon to implement RACT for the non-CTG major source NO_X element, is inconsistent with the EPA's SSM Policy because it exempts affected units from complying with rule standards during periods of startup and shutdown and does not provide any alternative emissions limitation during such periods. The EPA's SSM policy, as defined in the 2015 SSM SIP Action,[15] explains that an emission limitation or requirement that exempts periods of source operation, such as startup, cannot be considered ''continuous'' and is therefore inconsistent with the definition of ''emission limitation'' at CAA section 302(k). Under this definition, an emission limitation must limit ''the quantity, rate, or concentration of emissions of air pollution on a continuous basis'' (absent an alternative emission limitation that applies during such periods). Since Rule 2.43 includes an exemption to emission standards during periods of startup and shutdown, it does not apply on a continuous basis; thus, it does not implement RACT during all operating conditions, regardless of the level of stringency that the Rule 2.43 standards establish outside of exempt periods. This deficiency represents the basis for our partial disapproval of the 2017 RACT SIP for the non-CTG major source NO_X RACT element. The District may remedy this deficiency by establishing a continuous emission limit that applies at all times, including during startup and shutdown. See Section 6.2 of the TSD for more information.

D. Proposed Action and Public Comment

For the reasons discussed above and explained in more detail in our TSD, the EPA proposes to partially approve and partially disapprove the 2017 RACT SIP. As authorized in section 110(k)(3) of the Act, we are proposing to approve the 2017 RACT SIP for each of the CTGs addressed by a District rule. Also under section 110(k)(3), we propose to disapprove the 2017 RACT SIP as it pertains to the non-CTG major source NO_X and VOC RACT elements, based upon our conclusion that two of the District rules relied upon to implement RACT for these elements contain deficiencies that preclude them from implementing RACT. Table 2 lists each RACT element, the District rule or negative declaration relied upon to address RACT, and our proposed action for that RACT element.

The EPA is committed to working with YSAQMD to resolve the identified RACT deficiencies. However, should we finalize the proposed partial disapproval of the non-CTG major source NO_X and VOC RACT elements of the 2017 RACT SIP, CAA section 110(c) would require the EPA to promulgate a federal implementation plan (FIP) within 24 months unless we approve subsequent SIP revisions that correct the deficiencies identified in our final action. In this instance, we note that the EPA already has an existing obligation to promulgate a FIP for any RACT SIP elements that we have not taken final action to approve. This FIP obligation originates from our February 3, 2017 finding that YSAQMD failed to submit a RACT SIP for the 2008 8-hour ozone NAAQS by the required submittal deadline.[16] This finding of failure to submit established a FIP obligation deadline of February 3, 2019.

In addition, final action on the proposed partial disapproval would trigger the offset sanction in CAA section 179(b)(2) 18 months after the effective date of a final disapproval, and the highway funding sanction in CAA section 179(b)(1) six months after the offset sanction is imposed. A sanction will not be imposed if the EPA determines that a subsequent SIP submission corrects the deficiencies identified in our final action before the applicable deadline.[17]

We will accept comments from the public on this proposed partial approval and partial disapproval until May 11, 2023. If finalized, this action would incorporate the approved portions of the 2017 RACT SIP into the SIP.

TABLE 2—LIST OF RACT ELEMENTS—2008 OZONE NAAQS

CTG Document No.	RACT element	District rule implementing RACT	Negative declaration submitted	EPA proposed action
EPA–450/R–75–102	Design Criteria for Stage I Vapor Control—Gasoline Service Stations.	2.22 (Gasoline Dispensing Facilities)		Approval.
EPA–450/2–77–008	Surface Coating of Cans		Yes	None.[a]
EPA–450/2–77–008	Surface Coating of Coils		Yes	None.[a]

[13] 83 FR 31017.

[14] See CAA section 110(a)(2)(A) (requiring SIPs to include enforceable emission limitations and other control measures, means, or techniques as necessary to meet CAA requirements).

[15] 80 FR 33839 (June 12, 2015).

[16] 82 FR 9158.

[17] Our February 7, 2017 finding of failure to submit also triggered offset sanctions and highway funding sanctions. These sanctions clocks were extinguished by the YSAQMD's submittal of its 2017 RACT SIP and our April 11, 2018 and August 23, 2018 letters determining that the District's RACT SIP submittal was complete.

TABLE 2—LIST OF RACT ELEMENTS—2008 OZONE NAAQS—Continued

CTG Document No.	RACT element	District rule implementing RACT	Negative declaration submitted	EPA proposed action
EPA–450/2–77–008	Surface Coating of Paper		Yes	None.[a]
EPA–450/2–77–008	Surface Coating of Fabric		Yes	None.[a]
EPA–450/2–77–008	Surface Coating of Automobiles and Light-Duty Trucks.		Yes	None.[a]
EPA–450/2–77–022	Solvent Metal Cleaning	2.31 (Solvent Cleaning and Degreasing)		Approval.
EPA–450/2–77–025	Refinery Vacuum Producing Systems, Wastewater Separators, and Process Unit Turnarounds.		Yes	None.[a]
EPA–450/2–77–026	Tank Truck Gasoline Loading Terminals	2.21 (Organic Liquid Storage and Transfer)		Approval.
EPA–450/2–77–032	Surface Coating of Metal Furniture		Yes	None.[a]
EPA–450/2–77–033	Surface Coating of Insulation of Magnet Wire		Yes	None.[a]
EPA–450/2–77–034	Surface Coating of Large Appliances		Yes	None.[a]
EPA–450/2–77–035	Bulk Gasoline Plants	2.21 (Organic Liquid Storage and Transfer)		Approval.
EPA–450/2–77–036	Storage of Petroleum Liquids in Fixed-Roof Tanks.		Yes	None.[a]
EPA–450/2–77–037	Cutback Asphalt	2.28 (Cutback and Emulsified Asphalts)		Approval.
EPA–450/2–78–015	Surface Coating of Miscellaneous Metal Parts and Products.	2.25 (Metal Parts and Products Coating Operations).		Approval.
EPA–450/2–78–029	Manufacture of Synthesized Pharmaceutical Products.		Yes	None.[a]
EPA–450/2–78–030	Manufacture of Pneumatic Rubber Tires		Yes	None.[a]
EPA–450/2–78–032	Factory Surface Coating of Flat Wood Paneling		Yes	None.[a]
EPA–450/2–78–033	Graphic Arts-Rotogravure and Flexography		Yes	None.[a]
EPA–450/2–78–036	Leaks from Petroleum Refinery Equipment		Yes	None.[a]
EPA–450/2–78–047	Petroleum Liquid Storage in External Floating Roof Tanks.	2.21 (Organic Liquid Storage and Transfer)		Approval.
EPA–450/2–78–051	Leaks from Gasoline Tank Trucks and Vapor Collection Systems.	2.21 (Organic Liquid Storage and Transfer)		Approval.
EPA–450/3–82–009	Large Petroleum Dry Cleaners		Yes	None.[a]
EPA–450/3–83–006	Leaks from Synthetic Organic Chemical Polymer and Resin Manufacturing Equipment.		Yes	None.[a]
EPA–450/3–83–007	Leaks from Natural Gas/Gasoline Processing Plants.		Yes	None.[a]
EPA–450/3–83–008	Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins.		Yes	None.[a]
EPA–450/3–84–015	Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry.		Yes	None.[a]
EPA–450/4–91–031	Reactor Processes and Distillation Operations in Synthetic Organic Chemical Manufacturing Industry.		Yes	None.[a]
EPA–453/R–96–007	Wood Furniture Manufacturing Operations		Yes	None.[a]
EPA–453/R–94–032, 61 FR 44050; 8/27/96.	ACT Surface Coating at Shipbuilding and Ship Repair Facilities Shipbuilding and Ship Repair Operations (Surface Coating).		Yes	None.[a]
EPA–453/R–97–004, 59 FR 29216; 6/06/94.	Aerospace MACT and Aerospace (CTG & MACT)		Yes	None.[a]
EPA–453/R–06–001	Industrial Cleaning Solvents	2.31 (Solvent Cleaning and Degreasing)		Approval.
EPA–453/R–06–002	Offset Lithographic Printing and Letterpress Printing.	2.29 (Graphic Arts Printing Operations)		Approval.
EPA–453/R–06–003	Flexible Package Printing		Yes	None.[a]
EPA–453/R–06–004	Flat Wood Paneling Coatings		Yes	None.[a]
EPA 453/R–07–003	Paper, Film, and Foil Coatings		Yes	None.[a]
EPA 453/R–07–004	Large Appliance Coatings		Yes	None.[a]
EPA 453/R–07–005	Metal Furniture Coatings		Yes	None.[a]
EPA 453/R–08–003	Miscellaneous Metal Parts Coatings, *Table 2—Metal Parts and Products*.	2.25 (Metal Parts and Products Coating Operations).		Approval.
EPA 453/R–08–003	Miscellaneous Plastic Parts Coatings, *Table 3—Plastic Parts and Products*.		Yes	None.[a]
EPA 453/R–08–003	Miscellaneous Plastic Parts Coatings, *Table 4—Automotive/Transportation and Business Machine Plastic Parts*.		Yes	None.[a]
EPA 453/R–08–003	Miscellaneous Plastic Parts Coatings, *Table 5—Pleasure Craft Surface Coating*.		Yes	None.[a]
EPA 453/R–08–003	Miscellaneous Plastic Parts Coatings, *Table 6—Motor Vehicle Materials*.		Yes	None.[a]
EPA 453/R–08–004	Fiberglass Boat Manufacturing Materials	2.30 (Polyester Resin Operations)		Approval.
EPA 453/R–08–005	Miscellaneous Industrial Adhesives	2.33 (Adhesive Operations)		Approval.
EPA 453/R–08–006	Automobile and Light-Duty Truck Assembly Coatings.		Yes	None.[a]
	Non-CTG Major Sources of NO_X	2.27 (Large Boilers). 2.32 (Stationary Internal Combustion Engines). 2.43 (Biomass Boilers).		Disapproval.[b]
	Non-CTG Major Sources of VOC	2.38 (Standards for Municipal Solid Waste Landfills). 2.41 (Expandable Polystyrene Manufacturing Operations).		Disapproval.[c]

[a] Previously approved on April 5, 2018 (83 FR 14754).
[b] As described in greater detail in the TSD, the proposed disapproval for the non-CTG major sources of NO_X element is based in the deficiencies noted in Rule 2.43 (Biomass Boilers).
[c] As described in greater detail in our the TSD, the proposed disapproval for the non-CTG major sources of NO_X element is based on the deficiencies noted in Rule 2.38 (Standards for Municipal Solid Waste Landfills).

III. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders*.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, will result from this action.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' The EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provision of the Act and applicable federal regulations. 42 U.S.C. 740(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to review state choices, and approve those choices if they meet the minimum criteria of the Act. Accordingly, this proposed action partially approves and partially disapproves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law.

The District did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goals of Executive Order 12898 of achieving environmental justice for people of color, low-income populations, and indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: April 5, 2023.

Kerry Drake,

Acting Regional Administrator, Region IX.

[FR Doc. 2023–07597 Filed 4–10–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2023–0189; FRL–10876–01–R1]

Air Plan Approval; Connecticut; New Source Review Permit Program State Plan Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Connecticut State

Implementation Plan (SIP) concerning its New Source Review (NSR) permit program. The Connecticut Department of Energy and Environmental Protection (CT DEEP) submitted these revisions on December 15, 2020, as well as a supplemental letter on February 14, 2023. The revised state plan incorporates various updates to CT DEEP's NSR procedural requirements, substantive review criteria, provisions related to the control of volatile organic compounds (VOC), and clarifying revisions to existing SIP-approved regulations.

DATES: Written comments must be received on or before May 11, 2023.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2023–0189 at *https://www.regulations.gov,* or via email to *kilpatrick.jessica@epa.gov*. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket.

Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets*. Publicly available docket materials are available at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID–19.

FOR FURTHER INFORMATION CONTACT: Jessica Kilpatrick, Air Permits, Toxics, and Indoor Programs Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Mail Code: 5–MI, Boston, MA 02109–0287. Telephone: 617–918–1652. Fax: 617–918–0652 Email: *kilpatrick.jessica@epa.gov*.

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

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V. Statutory and Executive Order Reviews

I. Background

CT DEEP established its SIP, including its NSR permit program, in 1972 in accordance with Clean Air Act (CAA) section 110 and 40 CFR part 51. Since then, there have been numerous revisions to the SIP in compliance with state and federal air permitting regulations. On December 15, 2020, CT DEEP submitted a SIP amendment to its NSR permitting air quality regulations, Regulations of Connecticut State Agencies (RCSA) 22a–174–1, 22a–174–2a, 22a–174–3a, 22a–174–20, and 22a–174–26, which became effective on November 18, 2020. After initial review of these SIP revisions, EPA requested clarification of the exact regulatory text CT DEEP proposed to incorporate into its SIP. As a result, CT DEEP provided a supplemental clarification letter on February 14, 2023.

II. Review of NSR Program Updates

CT DEEP's revisions includes various changes to the NSR permit program. There are multiple corrections and updates to citations within the RCSA and Connecticut General Statutes (CGS) as well as some grammatical edits and clarifying language that do not substantively change the meaning of the regulations. Significant changes are outlined in the paragraphs below.

The RCSA 22a–174–2a revisions pertain to procedural requirements for NSR permitting. One of these revisions at RCSA 22a–174–2a(d)(9) clarifies the requirements that apply when the commissioner modifies an NSR permit. The provision requires public notice as well as opportunity for public comment and public hearing before granting, granting with conditions, or denying the permit.

Another revision at RCSA 22a–174–2a(e)(3)(C) alters the timeline requirements of the minor permit modification [1] process after an application is submitted, so that there is an exception for implementing the modifications not less than 21 days after filing an application. If the commissioner notifies the applicant during that period, the commissioner can define when the modification can be implemented. If 21 days have passed since filing a complete application and the commissioner has not notified the permittee, the permittee shall comply with the terms and conditions of the proposed modified permit and the terms and conditions of the existing permit that are not being modified, until the commissioner issues or denies the proposed modified permit.

RCSA 22a–174–2a(e)(3) was revised to require a minor permit notification for a permit issued pursuant to RCSA 22a–174–3a or former RCSA 22a–174–3 to include the demonstrations required by RCSA 22a–174–3a(d)(3)(B) and (C). RCSA 22a–174–2a(e) clarifies that the commissioner may modify a NSR permit in accordance with RCSA 22a–174–2a, RCSA 22a–174–3a, and CGS 22a–174c. The revision to RCSA 22a–174–2a(f)(2) requires a permittee of any stationary source for which the commissioner has issued a permit pursuant to RCSA 22a–174–3a or former RCSA 22a–174–3 to submit a written request for a permit revision, for the purpose of implementing a fuel conversion described in section RCSA 22a–174–3a(a)(2)(A)(iii), (iv), or (v). Other purposes established previously include correcting clerical errors, minor administrative changes, revising the name of the authorized representative of the permittee, and more frequent or additional monitoring, record keeping, or reporting.

The revisions to RCSA 22a–174–3a pertain to permitting for constructing and operating stationary sources. Permit exemption criteria are modified at 22a–174–3a(a)(2)(A)(ii)–(v), so that there is a new subclause (v) that exempts any activity that ''constitutes a conversion from fuel oil to liquefied petroleum gas, or in addition to fuel oil, provided such conversion does not increase actual emissions of any individual air pollutant by fifteen (15) tons or more per year, unless such conversion results in reconstruction'' from requiring a permit to construct or operate a

[1] Connecticut's minor NSR permit modification provisions apply to changes to a permit that are required for the permittee to lawfully engage in any of the activities or proposed activities at a stationary source as identified, which would not otherwise be permitted under state's substantive review program at 22a–174–3a, where a 15 tons per year increase threshold for Regulated NSR pollutants review exists.

stationary source or modification. RCSA 22a–174–3a(a)(5) is updated to confirm that any modification or revision to a permit issued in accordance with the section or former RCSA 22a–174–3 shall be made as required in, and in accordance with, the provisions in the section and section 22a–174–2a of the RCSA.

RCSA 22a–174–3a(d)(3)(B) and (C) modify demonstration requirements before issuance of a permit or permit modification. RCSA 22a–174–3a(d)(3)(B) is modified in regard to demonstration requirements for attainment or maintenance of applicable ambient air quality standards or Prevention of Significant Deterioration (PSD) increments. The revision specifies that such demonstration shall be made with respect to any applicable ambient air quality standard or increment in effect at the time the application is submitted: (i) when emissions of the pollutant or a precursor to the pollutant subject to the applicable ambient air quality standard or increment will increase as a result of the construction and operation, or (ii) when any parameter is changed in a manner that may increase the ambient impact. RCSA 22a–174–3a(d)(3)(C) is modified in regard to demonstration requirements for attainment or maintenance of any other states' National Ambient Air Quality Standards (NAAQS) and SIP application requirements. The revision specifies that such demonstration shall be made with respect to any applicable ambient air quality standard or increment in effect at the time the application is submitted: (i) when emissions of the pollutant or a precursor to the pollutant subject to the applicable ambient air quality standard or increment will increase as a result of the construction and operation, or (ii) when any parameter is changed in a manner that may increase the ambient impact.

A revision to RCSA 22a–174–3a(i)(2) specifies that the air quality models, databases, and other techniques used for estimating ambient air quality impacts must also be approved by the EPA Administrator, not just by CT DEEP commissioner.[2] With this revision, Connecticut's SIP will provide for the performance of such air quality modeling as the EPA Administrator has prescribed and will therefore comply with CAA § 110(a)(2)(K). As a result, EPA proposes to convert the conditional approvals, which EPA previously issued for CAA section 110(a)(2)(K) and for the PSD-related requirements of sections 110(a)(2)(D)(i)(II), 110(a)(2)(C), and 110(a)(2)(J) for Connecticut's infrastructure SIP for the 2015 ozone NAAQS, 85 FR 50953 (Aug. 19, 2020), to full approvals.

RCSA 22a–174–3a(j)(8)(A) adds Best Available Control Technology (BACT) restrictions to emissions of any pollutant which would exceed: (ii) any applicable State Implementation Plan limitation or (iii) an emission limitation established in section 22a–174–22e of the RCSA for the applicable category of fuel burning equipment, regardless of whether the equipment is located at a source that is major for nitrogen oxides (NO_X). CT DEEP reserves RCSA 22a–174–3a(k)(3), which exempts a major stationary source or major modification with potential emissions of NO_X of more than twenty-five (25) tons but less than forty (40) tons per year from PSD attainment area permit requirements.

A variety of changes are made to RCSA 22a–174–3a(l)(1), which establishes permit requirements for nonattainment areas. These changes include applicability to any new major stationary source of the pollutants for which the area is designated as nonattainment, or of the precursors to such pollutants. There are also updates to applicability to any major modification that is or will be located at a major stationary source of the pollutant for which the area is designated as nonattainment and that results in a significant net emissions increase of the pollutant for which the area is designated as nonattainment, or results in a significant net emissions increase of a precursor to the pollutant for which the area is designated nonattainment. A new RCSA 22a–174–3a(l)(1)(D) defines applicable precursor pollutants to the subsection: VOC compounds are precursors to ozone, NO_X are precursors to ozone and $PM_{2.5}$, and sulfur dioxide is a precursor to $PM_{2.5}$.

RCSA 22a–174–20(gg), which regulates control of VOC emissions from offset lithographic printing and letterpress printing, has a new subdivision for exemption criteria for fountain solutions at RCSA 22a–174–20(gg)(3)(A) and cleaning solvents at RCSA 22a–174–20(gg)(5)(A) and (B). Exemption criteria are specifically applicable to an owner or operator of a heatset web offset lithographic or heatset letterpress printing press that operates VOC pollution control equipment in accordance with RCSA 22a–174–20(gg)(4). These exemptions are subject to the contingency that the emissions from the use of cleaning solvents and fountain solution are vented to an air pollution control system that is operated when VOC-containing materials are used.

EPA reviewed these SIP revisions for consistency with the CAA. We determined that CT DEEP's implementation and enforcement provisions are at least as stringent as the Federal regulations applicable to NSR permitting at 40 CFR part 51 and 52. The specific changes proposed to be made to the SIP and EPA's rationale for approval are included in a technical support document included in this docket of this action.

III. Proposed Action

EPA is proposing to approve CT DEEP's revised state plan for its NSR permit program. EPA is also proposing to convert several conditional approvals, which EPA previously issued for Connecticut's Infrastructure State Implementation Plan for the 2015 ozone standard, to full approvals. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to this proposed rule by following the instructions listed in the **ADDRESSES** section of this **Federal Register**.

IV. Incorporation by Reference

In this rule, the 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, the EPA is proposing to incorporate by reference the provisions regulating NSR permitting discussed in Section II. of this preamble and as specified in CT DEEP's letter dated February 14, 2023. The EPA has made, and will continue to make, these documents generally available through *https://www.regulations.gov* and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed

[2] The EPA Administrator's approved air quality models, databases, and other requirements are found at EPA's 40 CFR part 51, Appendix W, Guideline on Air Quality Models.

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 Orders12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

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

Dated: April 3, 2023.

David Cash,

Regional Administrator, EPA Region 1.

[FR Doc. 2023–07331 Filed 4–10–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 84

[EPA–HQ–OAR–2021–0289; FRL–10805–01–OAR]

Notification of Determination: Petitions Denied Under Subsection (i) of the American Innovation and Manufacturing Act of 2020

AGENCY: Environmental Protection Agency (EPA).

ACTION: Petition denials.

SUMMARY: The purpose of this notification is to alert the public to and provide explanation of the Environmental Protection Agency's (EPA) decisions to deny two petitions submitted under the American Innovation and Manufacturing Act of 2020. The first petition requests that the Environmental Protection Agency provide an exemption for the use of certain regulated substances in pain relief sprays and the second petition requests that the Agency subject gas canisters of certain regulated substances to import restrictions established under the HFC Allocation Framework Rule. These petitions were submitted to the Agency pursuant to its authority under the Act to promulgate rules that restrict, fully, partially, or on a graduated schedule, the use of a regulated substance in the sector or subsector in which the regulated substance is used.

DATES: EPA denied the two petitions referenced in this notification via letters signed on March 21, 2023. Any petitions for review of the final letters denying the petitions for rulemaking must be filed in the Court of Appeals for the appropriate circuit on or before June 12, 2023.

FOR FURTHER INFORMATION CONTACT: Allison Cain, Stratospheric Protection Division, Office of Atmospheric Programs (6205A), Environmental Protection Agency, telephone number: 202–564–1566; email address: *cain.allison@epa.gov.* You may also visit EPA's website at *https://www.epa.gov/climate-hfcs-reduction* for further information.

SUPPLEMENTARY INFORMATION:

I. Background

Subsection (i) of the American Innovation and Manufacturing Act of 2020 (AIM Act or the Act),[1] entitled ''Technology Transitions,'' provides that the Administrator may by rule restrict, fully, partially, or on a graduated schedule, the use of a regulated substance in the sector or subsector in which the regulated substance is used. Under subsection (i)(3) a person may petition the Environmental Protection Agency (EPA) to promulgate a rule for the restriction on the use of a regulated substance[2] in a sector or subsector, and the Act states that the petition shall include a request that the Administrator negotiate with stakeholders in accordance with subsection (i)(2)(A). Once EPA receives a petition, the AIM Act directs the Agency to make petitions publicly available within 30 days of receipt and to grant or deny the petition within 180 days of receipt. If the EPA denies a petition, the Agency shall publish in the **Federal Register** an explanation of the denial.

II. Which petitions is EPA denying?

The Agency received two petitions that were submitted under subsection (i) of the AIM Act. The first petition requests that the Environmental Protection Agency provide an exemption for the use of certain regulated substances in pain relief sprays and the second petition requests that the Agency subject gas canisters of certain regulated substances to import restrictions established under the HFC Allocation Framework Rule.[3] These petitions were submitted by the Gebauer Company (hereby, ''Gebauer'') on September 23, 2022, and A.V.W. Inc (hereby, ''AVW'') on December 15, 2022, respectively. After reviewing these petitions and considering, to the extent practicable in light of the information provided in the submissions, the

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[1] The AIM Act was enacted as section 103 in Division S, Innovation for the Environment, of the Consolidated Appropriations Act, 2021 (Pub. L. 116–260), and is codified at 42 U.S.C. 7675.

[2] The Act provides that ''regulated substance'' refers to those substances included in the list of regulated substances in subsection (c)(1) of the Act and those substances that the Administrator has designated as a regulated substance under subsection (c)(3). Subsection (c)(1) lists 18 saturated hydrofluorocarbons (HFCs), and by reference their isomers not so listed, as regulated substances. This is the current list of regulated substances, as no additional substances have been designated as regulated substances under subsection (c)(3).

[3] Links to copies of these petitions and other petitions received to date can be found in the table at *https://www.epa.gov/climate-hfcs-reduction/petitions-under-aim-act.* EPA has a docket (Docket ID EPA–HQ–OAR–2021–0289), where all subsection (i) petitions are posted, and where the public may submit information related to those petitions.

''Factors for Determination'' in subsection (i)(4) of the AIM Act, EPA denied the two petitions.[4]

The petition submitted by Gebauer sought an ''Acceptable Use Exemption'' for HFC–245fa and HFC–134a for use as a ''pain relief spray.'' The petition noted these HFCs are currently used by Gebauer to formulate its FDA-cleared medical devices, which provide temporary pain relief or pain prevention by cooling tissue surfaces. EPA explained in its denial that after Gebauer's submitted its petition, the Agency issued a proposed rule titled, ''Phasedown of Hydrofluorocarbons: Restrictions on the Use of Certain Hydrofluorocarbons Under Subsection (i) of the American Innovation and Manufacturing Act of 2020'' (87 FR 76738, December 15, 2022). This rule proposed restrictions on the use of HFCs in aerosol products, among others, and specifically addressed the need for an exemption for HFC use in ''pain relief sprays.'' Because EPA has already initiated a rulemaking that addresses the HFC use covered in this petition, EPA denied the petition as moot. Granting a petition initiates a rulemaking where the Agency will examine restrictions on the use of HFCs covered by the petition. EPA is in the process of assessing whether to allow for continued use of HFCs in ''pain relief sprays,'' factoring in, to the extent practicable, the considerations provided in AIM Act subsection (i)(4), in the current rulemaking. Initiating a new rulemaking on this question while the current rulemaking is ongoing is therefore unnecessary. This denial does not address the merits of the request submitted by Gebauer.[5]

The petition submitted by AVW requested that EPA ''subject the importation of small gas canisters containing 100% HFC–152a to the same import regulations that govern bulk shipments of HFC–152a.'' As explained in its denial, EPA already considered and decided the issue of whether aerosol cans should be treated as bulk in the HFC Allocation Framework Rule.[6] Therefore, to the extent that this petition was a request to alter how allowances are expended under that program, EPA denied the petition on the basis that the request was not properly made under subsection (i) of the AIM Act. Subsection (i) authorizes the EPA to promulgate restrictions specific to uses of HFCs in particular sectors and subsectors. The AVW petition referenced ''packaged dusters'' as one use for EPA to restrict under subsection (i). The December 15, 2022 proposed rule (87 FR 76738) proposed restrictions on the use of HFCs in aerosol products, among others, and specifically proposed restrictions on the use of dusters. Because EPA had already initiated a rulemaking that addressed the use and sector requested by the petition, EPA therefore also denied this aspect of the petition as moot.[7]

III. What happens after EPA denies a petition?

Where the Agency denies a petition submitted under subsection (i) of the AIM Act, the statute requires that the Administrator shall publish in the **Federal Register** an explanation of the denial per subsection (i)(3)(C), which the Agency is doing through this notification.

Judicial Review

The AIM Act provides that certain sections of the Clean Air Act (CAA) ''shall apply to'' the AIM Act and actions ''promulgated by the Administrator of [EPA] pursuant to [the AIM Act] as though [the AIM Act] were expressly included in title VI of [the CAA].'' 42 U.S.C. 7675(k)(1)(C). Among the applicable sections of the CAA is section 307, which includes provisions on judicial review. Under section 307(b)(1) any petitions for review of these actions denying the petitions must be filed in the United States Court of Appeals for the appropriate circuit within 60 days from the date this notification is published in the **Federal Register**.

Cynthia A. Newberg,

Director, Stratospheric Protection Division.

[FR Doc. 2023–06334 Filed 4–10–23; 8:45 am]

BILLING CODE 6560–50–P

[4] The letters denying the two petitions are available in the docket for this action.

[5] EPA notes the petition failed to satisfy the statutory requirement to address negotiated rulemaking. See AIM Act subsection (i)(3)(A).

[6] The HFC Allocation Framework Rule, also referred to as the ''Phasedown of Hydrofluorocarbons: Establishing the Allowance Allocation and Trading Program Under the American Innovation and Manufacturing Act,'' can be found in the **Federal Register** (86 FR 55116).

[7] EPA notes the petition failed to satisfy the statutory requirement to address negotiated rulemaking. See AIM Act subsection (i)(3)(A).

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 16–271, 18–143, 19–195; DA 23–259, FR ID 135133]

Comment Sought on Continued Filing of Alaska Plan FCC Form 477 Mobile Deployment Data; Waiver of Interim PR–USVI Mobile Milestone Filing and Information Provided for Final Milestone Filing

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Wireless Telecommunications Bureau (WTB) and Office of Economics and Analytics (OEA) seek comment on the process to continue the filing of mobile deployment data consistent with previous FCC Form 477 filings for mobile participants of the Alaska Plan. The document also provides information from the Wireline Competition Bureau (WCB) for mobile recipients of the Uniendo a Puerto Rico Fund and Connect USVI Fund to file their FCC Form 477 network coverage data as part of their final milestone requirement. In addition, WCB waives the data reporting requirement for the interim milestone for mobile recipients of the Uniendo a Puerto Rico Fund and the Connect USVI Fund.

DATES: Comments are due on or before April 26, 2023, and Reply Comments are due May 8, 2023. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this document, you should advise the contact listed in the following as soon as possible.

ADDRESSES: Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *https://www.fcc.gov/ecfs/filings.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by commercial overnight courier, or by first-class or

overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

• U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.

• Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19.

Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with § 1.49 and all other applicable sections of the Commission's rules. The Commission directs all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments.

To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

FOR FURTHER INFORMATION CONTACT: For additional information on the proceeding, contact Matthew Warner of the Wireless Telecommunications Bureau, Competition and Infrastructure Policy Division, *matthew.warner@fcc.gov,* (202) 418–0247; Dangkhoa Nguyen, Wireline Competition Bureau, Telecommunications Access Policy Division, *dangkhoa.nguyen@fcc.gov,* (202) 418–7865.

SUPPLEMENTARY INFORMATION: This is a summary of the Bureau's Public Notice in WC Docket Nos. 16–271, 18–143, 19–195; DA 23–259, released on March 27, 2023. The full text of this document is available at the following internet address: *https://docs.fcc.gov/public/attachments/DA-23-259A1.pdf.*

Ex Parte Rules: This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

1. In 2022, the Federal Communications Commission (Commission) instituted the Broadband Data Collection (BDC), which required the filing of mobile deployment data similar to that collected through FCC Form 477, though with significant differences. The specified requirements of the BDC can lead to different coverage area data than what mobile providers submitted pursuant to FCC Form 477.

2. On December 9, 2022, as a further step in implementing the BDC, the Commission adopted an order, *Form 477 Sunset Order,* 87 FR 76949, December 16, 2022, sunsetting the collection of broadband and mobile voice deployment data through FCC Form 477. The Commission recognized, however, that it currently relies upon information from its FCC Form 477 data collection in other contexts, including, among other things, to assess the deployment of broadband services. Accordingly, the Form 477 Sunset Order (1) delegated authority to WTB and OEA to instruct mobile participants of the Alaska Plan how to submit coverage data specific to Alaska after sunsetting FCC Form 477 deployment data, and (2) delegated authority to WCB to instruct mobile providers that participate in either the Bringing Puerto Rico Together Fund or the Connect USVI Fund on how to submit coverage data for Puerto Rico and USVI, respectively.

3. Alaska Plan. WTB and OEA propose to require mobile participants in the Alaska Plan to file deployment data consistent with FCC Form 477 and seek comment on the proposal. The *Alaska Plan Order,* 81 FR 69696, October 7, 2016, required mobile provider participants of the Alaska Plan to submit performance plans in 2016, with commitments due in 2021 and 2026. These original performance plans and any revised plans approved by WTB were based on mobile coverage consistent with the FCC Form 477 requirements. The propagation models and the speeds in these approved performance plans often do not align with BDC requirements. Continued filing of deployment data under the previous FCC Form 477 instructions will allow for like comparisons to the previous deployment data on which Alaska Plan mobile providers based their commitments. WTB and OEA believe such data are, therefore, essential for understanding whether providers met their commitments.

4. WTB and OEA propose that all mobile participants in the Alaska Plan file deployment data consistent with FCC Form 477 instructions. Mobile Alaska Plan participants would file these deployment data annually until March 1, 2028. These data will allow like comparisons to continue throughout the ten-year Alaska Plan, with an additional year of data after the final commitment. The data would be submitted through the BDC special collections portal. For the first year, data representing December 2022 would be due by June 30, 2023. Subsequently, the FCC Form 477-based data would be due March 1 of each year. WTB and OEA seek comment on the proposal.

5. WCB requires Stage 2 mobile recipients of the Uniendo a Puerto Rico Fund and the Connect USVI Fund to file FCC Form 477 network deployment data for their final 100% network coverage area data submission in the BDC special collections portal. WCB also waives, on its own motion, the requirement for mobile providers receiving support to resubmit interim milestone reports demonstrating 66% mobile network coverage area.

6. In 2017, Hurricanes Irma and Maria caused massive devastation to Puerto Rico (PR) and the United States Virgin

Islands (USVI). In response, the Commission created the Uniendo a Puerto Rico Fund and the Connect USVI Fund. As part of Stage 2 of those Funds, the Commission has authorized approximately $385.9 million in universal service support to facilitate and harden deployment of advanced broadband networks. More than $250 million of this funding was dedicated to mobile broadband restoration, hardening, and improvement over a three-year period. Specifically as to mobile support recipients, the Commission required, as a condition of support, that providers meet interim and final network coverage area milestones. At the end of the three-year term of support, each mobile support recipient must have restored its mobile network coverage to an area that is equal to or greater than 100% of the pre-hurricane network coverage area when compared with its June 2017 FCC Form 477 coverage data.

7. In the *2019 PR USVI Order,* 84 FR 59937, November 7, 2019, the Commission provided that the filing of coverage data pursuant to FCC Form 477 instructions is essential for like comparisons to assess whether providers fulfilled this requirement. The Commission required PR/USVI Fund mobile recipients to file FCC Form 477 network deployment data for their final 100% network coverage area data submission. The deadline for mobile providers to file their final 100% network coverage area data submission is January 30, 2024. As directed by the Commission, the final network coverage area report would be based on FCC Form 477 data and shall reflect the network coverage area for a provider as of the end of its three-year Stage 2 support term. Providers shall file consistent with previous FCC Form 477 instructions, submitting through the BDC special collections portal utilizing the data specifications released by the Bureau.

8. While WCB is committed to ensuring the full restoration of mobile networks to their pre-hurricane coverage areas, it takes this opportunity to waive, on its own motion, the interim milestone report for mobile providers receiving support to demonstrate 66% mobile network coverage area for the Uniendo a Puerto Rico Fund and the Connect USVI Fund. WCB finds this waiver for the filing of the network coverage report to be warranted and in the public interest based on the Commission's receipt of FCC Form 477 reporting data, which were submitted and certified by mobile providers subject to the interim milestone report. An analysis comparing FCC Form 477 data for June 2017 and subsequent filing periods from PR and USVI mobile providers verified that each provider has restored more than 66% of its network coverage area that existed prior to the 2017 hurricanes, thus meeting the interim milestone under § 54.1514(a) of the Commission's rules. WCB concludes that limiting the burden on providers and not requiring them to expend their resources to resubmit FCC Form 477 data already in the Commission's possession is in the public interest.

9. While WCB finds a waiver of the 66% interim milestone report is warranted, WCB maintains the Commission's requirement for ensuring mobile providers meet their network performance commitments and their final 100% network coverage area milestone reports and certifications. In a separate public notice, WCB and OEA will provide instructions regarding the reporting of drive, drone, and/or scattered site test data for network coverage and reporting of network performance as part of the final 100% milestone report.

Federal Communications Commission.

Amy Brett,

Acting Chief of Staff, Wireless Telecommunications Bureau.

[FR Doc. 2023–07563 Filed 4–10–23; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2022–0093; FF09E22000 FXES1113090FEDR 223]

RIN 1018–BG56

Endangered and Threatened Wildlife and Plants; Removal of the Colorado Hookless Cactus From the Federal List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; availability of draft post-delisting monitoring plan.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to remove the Colorado hookless cactus (*Sclerocactus glaucus*) from the Federal List of Endangered and Threatened Plants (List) due to recovery. Recent taxonomic studies have indicated that the currently listed entity is actually two species: *Sclerocactus glaucus* and *Sclerocactus dawsonii.* We find that neither species should be listed as a threatened or endangered species under the Endangered Species Act of 1973, as amended (Act). Our review of the best available scientific and commercial data indicates that the threats to the species have been eliminated or reduced to the point that these species no longer meet the definition of a threatened or endangered species under the Act. We request information and comments from the public regarding this proposed rule and the draft post-delisting monitoring (PDM) plan for Colorado hookless cactus (*S. glaucus* and *S. dawsonii*). If this proposal is finalized, Colorado hookless cactus will be removed from the List and the prohibitions and conservation measures provided by the Act, particularly through sections 7 and 9, will no longer apply to the species.

DATES: We will accept comments received or postmarked on or before June 12, 2023. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. eastern time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by May 26, 2023.

ADDRESSES: 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–R6–ES–2022–0093, which is the docket number for this rulemaking. 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–R6–ES–2022–0093, U.S. Fish and Wildlife Service, MS: PRB/3W; 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *https://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

Availability of supporting materials: This proposed rule and supporting documents, including the species status assessment (SSA) report and post-delisting monitoring plan, are available at *https://fws.gov/species/colorado-hookless-cactus-sclerocactus-glaucus,* at *https://www.regulations.gov* under Docket No. FWS–R6–ES–2022–0093, and at the Colorado Ecological Services

Field Office (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Creed Clayton, Acting Western Colorado Field Supervisor, U.S. Fish and Wildlife Service, Colorado Ecological Services Office, 445 West Gunnison Ave., Suite 240, Grand Junction, CO 81501; telephone 970–628–7187. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, a species warrants removal from the Federal Lists of Endangered and Threatened Wildlife and Plants if it no longer meets the definition of an endangered species (in danger of extinction throughout all or a significant portion of its range) or a threatened species (likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range). The Colorado hookless cactus is listed as threatened, and we are proposing to remove (delist) it from the List of Endangered and Threatened Plants because we have determined it does not meet the Act's definition of an endangered or threatened species. Delisting a species can be completed only by issuing a rule through the Administrative Procedure Act rulemaking process (5 U.S.C. 551 *et seq.*).

What this document does. This action proposes to remove Colorado hookless cactus from the List of Endangered and Threatened Plants (*i.e.,* ''delist'' the species) based on its recovery.

The basis for our action. Under the Act, we may determine that a species is an endangered species or a threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. The determination to delist a species must be based on an analysis of the same factors.

Under the Act, we must review the status of all listed species at least once every five years. We must delist a species if we determine, on the basis of the best available scientific and commercial data, that the species is neither a threatened species nor an endangered species. Our regulations at 50 CFR 424.11 identify three reasons why we might determine that a listed species is neither an endangered species nor a threatened species: (1) The species is extinct; (2) the species has recovered, or (3) the original data used at the time the species was classified were in error. Here, we have determined that Colorado hookless cactus should be proposed for delisting under the Act because, based on an analysis of the five listing factors, it has recovered and no longer meets the definition of an endangered or threatened species.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning this proposed rule.

We particularly seek comments concerning:

(1) Reasons we should or should not delist the Colorado hookless cactus.

(2) New information on the historical and current status, range, distribution, and population size of the Colorado hookless cactus.

(3) New information on the known and potential threats to the Colorado hookless cactus, including livestock use, invasive species, oil and gas development, off-highway vehicle use, development and maintenance of utility corridors, and climate change.

(4) New information regarding the taxonomy, life history, ecology, and habitat use of the Colorado hookless cactus.

(5) Current or planned activities within the geographic range of the Colorado hookless cactus that may have either a negative or positive impact on the species.

(6) Information regarding management plans or other mechanisms that provide protection to the Colorado hookless cactus and its habitat.

(7) The draft PDM plan and the methods and approach described.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, do not provide substantial information necessary to support a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or a threatened species must be made solely on the basis of the best scientific and commercial data available.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via *https://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *https://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *https://www.regulations.gov.*

Because we will consider all comments and information we receive during the comment period, our final determinations may differ from this proposal. Based on the new information we receive (and any comments on that new information), we may conclude that the species should remain listed as threatened instead of being delisted, or we may conclude that the species should be reclassified from threatened to endangered.

Public Hearing

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received by the date specified in **DATES**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing. We may hold the public hearing in person or virtually via webinar. We will announce any public hearing on our website, in addition to the **Federal Register**. The use of these virtual public

hearings is consistent with our regulation at 50 CFR 424.16(c)(3).

Peer Review

A species status assessment (SSA) team prepared an SSA report for the Colorado hookless cactus to inform the 2021 5-year review and updated it in 2022. The SSA team was composed of Service biologists who consulted with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species.

In accordance with our July 1, 1994, peer review policy (59 FR 34270; July 1, 1994) and our August 22, 2016, Director's Memo on the Peer Review Process, we solicited independent scientific reviews of the information contained in the Colorado hookless cactus SSA report. We sent the SSA report to five independent and appropriate peer reviewers and received three responses. Results of this structured peer review process can be found at *https://regulations.gov.* In preparing this proposed rule, we incorporated the results of these reviews, as appropriate, into the final SSA report, which is the foundation for this proposed rule.

Summary of Peer Reviewer Comments

As discussed in *Peer Review* above, we received comments from three peer reviewers on the draft SSA report. We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding the information contained in the SSA report. In some cases, these reviewers provided additional information, clarifications, and suggestions to improve the final SSA report. The reviewers also provided new references or corrected existing references we cited in our SSA report; we revised or included relevant references, as appropriate. We summarize the additional substantive feedback we received from peer reviewers below.

Comment 1: One reviewer commented on our range and analytical units (AU) maps that some cactus occurrences were not included in AUs.

Our Response: The maps in the SSA do not depict each individual plant occurrence included in the AUs; however, our AUs contain all records of known occurrences.

Comment 2: One reviewer asked why recreational trails for mountain bikes, hiking, camping and other recreational uses were discussed as a stressor, but were not included in our table summarizing stressors in the SSA.

Our Response: Recreational uses other than OHV use have the potential to cause direct impacts to individuals; however, due to their relatively small footprint, the BLM's ability to largely avoid Colorado hookless cactus when designing non-motorized trail routes, and the rarity of humans trampling cacti, we believe that these localized impacts to individuals do not present species or AU-level effects. Therefore, we did not further consider this stressor (*i.e.,* non-motorized recreation) in our analysis, so they are not discussed in tables summarizing stressors in the SSA.

Comment 3: One reviewer shared that recent genetic research found that a closely related species, *S. parviflorus,* occurs on the western edge of *S. glaucus'* range and is capable of hybridizing.

Our Response: Hybridization with other *Sclerocactus* species in Colorado was not found to be recent or ongoing, and thus is not a conservation concern for *S. dawsonii* or *S. glaucus* (McGlaughlin and Naibauer 2021, p. 22). We therefore do not include this stressor in our analysis of species' current of future condition in the SSA.

Comment 4: One reviewer commented that pollinators were only briefly discussed in the SSA and they requested a more in-depth discussion on which pollinators are important for the species.

Our Response: The purpose of the SSA is to gather and compile information on the status of these species in order to assess their current condition and project the species' future condition. Adding a detailed inventory of known pollinators is not necessary to assess the current and future conditions for these species in the SSA report, because pollinators of *Sclerocactus* species are adequately discussed in other papers (see BLM 2020a, pp. 17–18, Tepedino et al. 2010, pp. 382–383). Over 100 species have been documented visiting *Sclerocactus* species (BLM 2020a, p. 17). As we summarize in the SSA, there is no information to indicate that Colorado hookless cactus species require specialist pollinators (Service 2022, pp. 11–12). Moreover, the majority of pollinator species one researcher observed visiting *Sclerocactus* plants are generalists themselves; these bee species visit a wide variety of flowers and only require a general diversity and abundance of native flowers in the environment (Tepedino et al. 2010, pp. 382–383).

Comment 5: One reviewer stated that the patterns of genetic diversity for each species were unclear in the SSA report. This reviewer questioned how the AUs are genetically connected and whether *S. dawsonii* exhibits genetic connectivity. Another reviewer similarly suggested that, while genetic variability is described as being important for the species, information about genetic variability within the species is missing from the SSA.

Our Response: In the SSA, we discuss the relevant information on genetic diversity of both species, summarizing more detailed information contained in a report of recent genetic analyses (Service 2022, pp. 10, 25; McGlaughlin and Naibauer 2021, entire). These analyses indicate that genetic diversity is low to moderate, with limited evidence of inbreeding for both species (McGlaughlin and Naibauer 2021, p. 22). *S. glaucus* demonstrates sufficient connectivity, which results in ongoing and recent genetic exchange (McGlaughlin and Naibauer 2021, p. 2). *S. dawsonii* is genetically isolated from *S. glaucus,* but individuals are connected within and between the species' AUs (McGlaughlin and Naibauer 2021, p. 22). More detail on the specific patterns of genetic variability in both species is available in McGlaughlin and Naibauer (2021, entire).

Comment 6: One reviewer commented that the methods from the novel sampling-based procedure, which BLM used to derive population estimates, were not described in detail.

Our Response: As we discuss above, the purpose of the SSA is to gather and compile information on the status of this species in order to assess its current condition and project the species' future condition. Adding detailed information on the monitoring methodologies our partners use is not necessary to assess the current and future conditions for this species in the SSA report, because these methods are adequately described in other resources. More details on monitoring methods are available in Krening et al. (2021, entire), which provides an in-depth explanation of the sampling-based monitoring procedure. We briefly summarize the methods of the sampling-based monitoring procedure in the SSA (Service 2022, p. 13).

Comment 7: One reviewer asked how many occurrences of each cactus species occur on Federal lands as opposed to private lands. The reviewer also requested clarification to the statement that occurrences on some Federal lands ''are not likely to be disturbed or adversely altered by land-use actions.''

Our Response: Due to the methodology that BLM uses to extrapolate the number of occurrences

in a given AU based on plant density (see Krening et al. 2021, entire), the best available science on plant occurrences does not indicate the specific number of plants that occur on public rather than private lands. Therefore, we could not add the breakdown of cactus occurrences this reviewer requested to the SSA, given the lack of this specific distribution information. However, we report in the SSA the proportion of land area in each AU that is Federally owned and managed (Service 2022, p. 21). The majority of lands within both Colorado hookless cactus species' ranges are Federally owned and managed and a subset of these Federal lands have special BLM land management designations (*e.g.,* National Conservation Areas (NCA), Areas of Critical Environmental Concerns (ACEC), and a wilderness area over which BLM has authority). These areas with special land management designations help to facilitate the maintenance and recovery of cactus occurrences given that they are areas where Colorado hookless cactus occurrences are not likely to be disturbed or adversely altered by land-use actions (BLM 2020a p. 26). As we explain in Table 6 of the SSA, these areas may provide no-surface-occupancy stipulations (which prevent oil and gas development), may prohibit the use of motorized recreational vehicles, and may prohibit livestock grazing (Service 2022, pp. 18–21). While we did not add more detail to the SSA to further describe these conservation efforts in response to this comment (beyond the list of conservation practices specific to each NCA, ACEC, or wilderness area already provided in Table 6 of the SSA) (Service 2022, pp. 18–21), we further clarify and describe how these areas promote conservation of the species under *Stressors* and *Conservation Efforts and Regulatory Mechanisms* in this proposed rule below.

Comment 8: One reviewer questioned why the stressors of predation, herbicide/pesticide application, and commercial trade were excluded from the analysis; they noted that we did not provide supporting reasons or evidence for why these stressors do not present AU-level or species-level effects besides ''the best professional judgement of species experts.''

Our Response: Small mammals may predate individual plants and, while this does present a source of mortality, we do not have any evidence to indicate that predation is having lasting, population-level effects for the species (Service 2022, pp. 17–18). The application of herbicides and pesticides on Federal lands is highly regulated; moreover, managers only apply these chemicals in targeted, isolated areas throughout the species' ranges (BLM 2020a, p. 45). Therefore, we did not find this stressor to present more than localized effects to individual plants. Additionally, collection from the wild has not occurred at the level anticipated at the time of listing; collection is not having population- or species-level effects on either species (BLM 2020a, p. 36). Therefore, these stressors do not have species or AU-level effects. Thus, we did not further analyze the effects of predation, herbicide and pesticide application, or collection and commercial trade in our SSA analyses of current and future conditions.

Comment 9: One reviewer commented that it would be useful to understand the background data being used to model habitat condition for these two species and what an ''AIM/LMF sample point'' is. The reviewer also asked which factors were used to assess habitat quality.

Our Response: BLM species and habitat experts analyzed habitat condition for the two species, and detailed their methods and source data in Holsinger and Krening (2021, entire). They analyzed habitat quality using BLM Assessment, Inventory, and Monitoring (AIM) and Landscape Management Framework (LMF) data. AIM and LMF sample points are geographic locations distributed throughout the landscape to which BLM biologists return on a regular basis to collect data on environmental conditions and vegetation health (*e.g.,* ground cover, grass height, weed cover). BLM experts used data from the 134 individual AIM/LMF sample points within the AUs for this analysis of habitat condition. Data from three separate indicators were used to evaluate habitat quality: invasive species cover, amount of bare ground, and native perennial cover.

Comment 10: One reviewer expressed surprise that there were no AUs with a low habitat condition score. However, this reviewer did not provide any information to suggest the scores should change.

Our Response: BLM experts developed a Habitat Condition Index to evaluate habitat condition (see response to Comment 9). This index produced a single habitat condition score from the aggregated rankings of three biologically relevant habitat condition categories: habitat quality, habitat size, and habitat type (Service 2022, pp. 43–44; Holsinger and Krening 2021, entire). The result of the Habitat Condition Index is a habitat condition score (high, moderate, or low) for each AU (Holsinger and Krening 2021, p. 2). Detailed information on the methods for this evaluation can be found in Holsinger and Krening (2021, entire). According to this analysis, in each AU, both species generally have the level of invasive species cover, bare ground, and native perennial cover they require (the three indicators that made up the ''habitat quality'' score). Only 4 of the 10 AUs received a low score for any of these three categories; however, the AUs that received a low score for these habitat quality categories were relatively large (*i.e.,* they received high scores for the ''habitat size'' category) and had high probability of species' occurrence, according to the results of a predictive model for Colorado hookless cactus (*i.e.,* they received high scores for the ''habitat type'' category) (Holsinger and Krening 2021, entire). These high scores for the habitat size and habitat type categories balanced the lower scores for the habitat quality category, resulting in no AUs with a low score for overall habitat condition.

Previous Federal Actions

The Service listed *Sclerocactus glaucus* as threatened on October 11, 1979 (44 FR 58868). After its 1979 listing, the species underwent a series of taxonomic revisions. When listed, the range of *Sclerocactus glaucus* was considered to include western Colorado and northeastern Utah (Uinta Basin hookless cactus complex). A reevaluation of morphological characteristics, phylogenetic studies, and common garden experiments led to the determination that the Uinta Basin hookless cactus complex was in fact three distinct species: *Sclerocactus glaucus* (Colorado hookless cactus), *Sclerocactus brevispinus* (Pariette cactus), and *Sclerocactus wetlandicus* (Uinta Basin hookless cactus) (Heil and Porter 2004, pp. 197–207; Hochstätter 1993, pp. 82–92). *Sclerocactus glaucus* was determined to be restricted to the Colorado and Gunnison River basins in western Colorado, while *Sclerocactus brevispinus* and *Sclerocactus wetlandicus* are limited to the Uinta Basin in eastern Utah. In 2009, the Service published a final rule recognizing and accepting this revised taxonomy of the three species and determined that all three species would continue to be listed as threatened (74 FR 47112, September 15, 2009). The Service has not designated critical habitat for the Colorado hookless cactus (*Sclerocactus glaucus*). The species also lacks a recovery plan.

On January 21, 2021, we published a notice of initiation of a 5-year review for the Colorado hookless cactus in the

Federal Register and requested information that could have a bearing on the status of Colorado hookless cactus (86 FR 2442). We completed the 5-year status review on August 10, 2021; this 5-year status review recommended (1) acknowledging that Colorado hookless cactus, as listed, is two taxonomically distinct entities (*Sclerocactus glaucus* and *Sclerocactus dawsonii*) and (2) that neither *S. glaucus* nor *S. dawsonii* meet the definition of an endangered species or a threatened species under the Act. Therefore, the 5-year status review recommended removing *S. glaucus* from the list of threatened plants; it also recommended that *S. dawsonii* need not be listed as a threatened or endangered species under the Act.

Background

A thorough review of the taxonomy, life history, and ecology of the Colorado hookless cactus (*Sclerocactus glaucus* and *Sclerocactus dawsonii*) is presented in the SSA Report Version 1.1 (Service 2022, entire).

As discussed above under Previous Federal Actions, Colorado hookless cactus has undergone a series of taxonomic revisions since its original 1979 listing. Most recently, in 2017, genetic studies identified three distinct regional groups of Colorado hookless cactus in Colorado: the Northern, Grand Valley, and Gunnison River groups (Schwabe et al. 2015, p. 447; McGlaughlin and Ramp-Neale 2017, p. 5). The most recent genetic analyses, using Random Site-Associated DNA sequencing (RADseq), determined that the Northern group should be recognized as a distinct species, hereinafter *Sclerocactus dawsonii,* or *S. dawsonii* (McGlaughlin and Naibauer 2021, p. 3). The Grand Valley and Gunnison River groups share connectivity and form a genetically cohesive group, which represents a second distinct species, hereinafter collectively referred to as *Sclerocactus glaucus,* or *S. glaucus* (McGlaughlin and Naibauer 2021, p. 3). Because of the recency of this taxonomic split, the currently listed entity is still considered to be the Colorado hookless cactus, which encompasses both *S. glaucus* and *S. dawsonii;* thus, both *Sclerocactus glaucus* and *Sclerocactus dawsonii* are the subjects of our SSA report and this proposed delisting rule.

Given the recent nature of this new taxonomic information, most literature on the species draws conclusions regarding both *S. glaucus* and *S. dawsonii* without distinguishing between the two. Thus, when we use the common name ''Colorado hookless cactus'' in this proposed rule, we are referring to information or conclusions regarding both species (*S. glaucus* and *S. dawsonii*). When we are referring to information or analysis pertaining to one species, we will use the new scientific names of *S. glaucus* or *S. dawsonii.*

S. glaucus and *S. dawsonii* are endemic cactus species found in the Colorado and Gunnison River basins and their tributary canyons in Garfield, Mesa, Montrose, and Delta Counties in western Colorado. The species occur on alluvial benches and colluvial slopes from 4,500 to 7,200 feet (1,372 to 2,195 meters) in semi-arid high-elevation desert (Holsinger 2021, pers. comm.; Service 2022, p. 9). The species display a patchy, generalist distribution and have been found to grow primarily in small, discrete colonies of individuals in various upland desert habitats and communities (BLM 2020a, p. 18; Service 2022, p. 9).

For the purposes of analysis in our SSA report, we divided the ranges of both species into analysis units (AUs). *S. glaucus* occurs in eight AUs in a range that extends approximately 1,082 square miles (mi^2) (2,802 square kilometers (km^2)) from the Grand Valley, through the high desert at the foot of the Grand Mesa, and along the alluvial terraces of the Gunnison River and the Dominguez and Escalante Creek drainages to near Montrose. *S. dawsonii* occurs over an area of approximately 195 mi^2 (505 km^2) in two AUs along the Colorado River from DeBeque downstream toward the Grand Valley and along the Roan and Plateau Creek drainages. BLM owns and manages approximately 72 percent and 68 percent, respectively, of the land that comprises *S. glaucus* and *S. dawsonii* AUs (Service 2022, pp. 18–21).

S. glaucus and *S. dawsonii* are morphologically indistinguishable from each other and can be identified from one another only by genetic analysis or location. They are both leafless, flowering, stem-succulent plants with short, cylindrical bodies usually 3 to 12 centimeters (cm) (1.2 to 4.8 inches (in)), but up to 30 cm (12 in), tall, and 4 to 9 cm (1.6 to 3.6 in) in diameter (Service 2022, pp. 7–8). The brown coloring of the spines on mature plants is unique to *S. glaucus, S. dawsonii,* and *S. parviflorus,* as compared to other cactus species in the area (Service 2022, p. 7).

Colorado hookless cactus has three life stages: seeds, seedlings, and mature reproductive adults. Colorado hookless cactus plants are considered hardy, long-lived perennial species (*i.e.,* high survival probabilities and low levels of recruitment) (BLM 2018, p. 15). Based on high observed seedling survival, once a seedling is established, there is a high probability of an individual persisting to reproductive stage (BLM 2018, p. 14; Service 2022, p. 13). Pollinator-assisted outcrossing (xenogamy) is the primary mode of genetic exchange for the Colorado hookless cactus (Janeba 2009, p. 67; Tepedino et al. 2010, p. 382; Service 2022, p. 8). Plants usually flower in late April and early May. Plants do not flower until they reach a diameter of more than 4 cm (1.6 in) (BLM 2018, p. 14); plants are likely at least 4 to 6 years old before they become reproductive and continue to flower throughout their relatively long life (DePrenger-Levin 2021, pers. comm.; Service 2022, p. 13). Colorado hookless cactus can live for many years, but their exact longevity is unknown.

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species is an endangered species or a threatened species. On July 5, 2022, the U.S. District Court for the Northern District of California vacated regulations that the Service (jointly with the National Marine Fisheries Service) promulgated in 2019 modifying how the Services add, remove, and reclassify threatened and endangered species and the criteria for designating listed species' critical habitat (*Center for Biological Diversity* v. *Haaland,* No. 4:19–cv–05206–JST, Doc. 168 (*CBD* v. *Haaland*). As a result of that vacatur, regulations that were in effect before those 2019 regulations now govern species classification and critical habitat decisions. Subsequently, on September 21, 2022, the U.S. Circuit Court of Appeals for the Ninth Circuit stayed the district court's July 5, 2022, order vacating the 2019 regulations until a pending motion for reconsideration before the district court is resolved (In re: Cattlemen's Ass'n, No. 22–70194). The effect of the stay is that the 2019 regulations are the governing law as of September 21, 2022.

Our analysis for this proposal applied those 2019 regulations. However, given the continued uncertainty resulting from the ongoing litigation, we also undertook an analysis of whether this final rule would be different if we were to apply the pre-2019 regulations. We concluded that we would have reached the same proposal if we had applied the pre-2019 regulations because both before and after the 2019 regulations, the standard for whether a species

warrants delisting has been, and will continue to be, whether the species meets the definition of an endangered species or a threatened species. Further, we concluded that our determination of the foreseeable future would be the same under the 2019 regulations as under the pre-2019 regulations. The analysis based on the pre-2019 regulations is included in the decision file for this proposal.

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

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

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

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

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

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

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

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the species' expected response and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species—such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

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

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

Analytical Framework

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the species, including an assessment of the potential threats to the species. The SSA report does not represent our decision on whether the species should be proposed for delisting. However, it does provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies.

To assess Colorado hookless cactus viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency is the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years), redundancy is the ability of the species to withstand catastrophic events (for example, droughts, large pollution events), and representation is the ability of the species to adapt to both near-term and long-term changes in its physical and biological environment (for example, climate conditions, pathogens). In general, species viability will increase with increases in resiliency, redundancy, and representation (Smith et al. 2018, p. 306). Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

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

The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at Docket FWS–R6–ES–2022–0093 on *https://www.regulations.gov* and at *https://fws.gov/species/colorado-hookless-cactus-sclerocactus-glaucus.*

Summary of Biological Status and Threats

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

viability. In addition, the SSA (Service 2022, entire) documents our comprehensive biological status review for the species, including an assessment of the potential threats to the species. The following is a summary of this status review and the best available information gathered since that time that has informed this decision.

Species Needs

Individuals of both species of Colorado hookless cactus need certain habitat factors, including: shallow exposed sandy or shale soils of sedimentary parent material or gravelly deposits of river alluvium; a semi-arid, high-elevation desert climate (elevations from 1,200–2,000 meters (m) (3,937–6,561 feet (ft))) with 20–30 cm (8–12 in) of rain per year; and a period of deep cold during winter months to facilitate germination the following spring (Service 2022, p. 11). To be sufficiently resilient, AUs of both species require survivorship and recruitment at rates that are able to sustain AUs, in addition to pollinator connectivity between individuals and clusters of plants within the AU. Adequately resilient AUs also contain enough individuals across each life stage (seed, seedling, and mature reproductive adult) to bounce back after experiencing environmental stressors such as intermediate disturbance, occasional drought, or intensive grazing.

The number of AUs across the landscape influence redundancy of Colorado hookless cactus. More AUs across the range of each species increase each species' ability to withstand catastrophic events. Individuals and AUs inhabiting diverse ecological settings and exhibiting genetic or phenological variation add to the level of representation across the species' ranges. The greater diversity observed in Colorado hookless cactus genetics, habitats, and morphology, the more likely it is to be able to adapt to change over time. Both species, thus, need (1) a sufficient number and distribution of sufficiently resilient AUs to withstand catastrophic events (redundancy) and (2) a range of variation that allows the species to adapt to changing environmental conditions (representation) (Service 2022, p. 15). The SSA report provides additional detail on the species' individual-, population-, and species-level needs (Service 2022, pp. 10–16).

Stressors

In our SSA, we evaluated stressors and other actions that can positively or negatively affect Colorado hookless cactus at the individual, AU, or species levels, either currently or into the future (Service 2022, pp. 16–18). A wide variety of stressors may influence the resiliency of Colorado hookless cactus, either by directly affecting individuals or by reducing the quality and quantity of habitats.

Stressors that have the potential to present AU-level effects for both species include livestock use; invasive species; oil and gas development; OHV recreational use; development and maintenance of utility corridors; and the effects of global climate change (BLM 2020a, p. 30; Service 2022, pp. 16–18). We determined that predation, herbicide and pesticide application, or collection and commercial trade were not threats to the species (even though they were identified as such in the 1979 listing rule), so we do not discuss them in detail in this rule (Service 2022, pp. 16–18).

Additionally, approximately 30 percent of the land in *S. glaucus* AUs and 41 percent of the land in *S. dawsonii* AUs have special BLM land management designations in the form of National Conservation Areas (NCAs), Areas of Critical Environmental Concern (ACECs), and a Wilderness Area. These designations limit or exclude the authorization of certain land uses, and some designations were specifically created for the conservation of natural resources. The protections provided by these management designations are not contingent upon the species' federally listed status, and these designations help to facilitate the maintenance and recovery of cactus occurrences because they are areas where Colorado hookless cactus is not likely to be disturbed or adversely altered by land-use actions (BLM 2020a, p. 26). All but 4 of 11 ACECs specifically referenced the protection of Colorado hookless cactus as a foundational goal. We discuss the specific protections each of these areas provides, and the ways in which they reduce specific stressors, under the relevant stressors below; we also discuss these conservation measures further under *Conservation Efforts and Regulatory Mechanisms.*

Livestock Use

BLM owns and manages approximately 72 percent and 68 percent, respectively, of the land that comprises *S. glaucus* and *S. dawsonii* AUs (Service 2022, pp. 18–21); nearly all habitat that occurs on BLM lands allows for livestock use. Moderate to heavy domestic livestock grazing has been observed to cause physical damage to *Sclerocactus* plants through trampling, but we have no evidence to indicate that cattle browse on individual *Sclerocactus* plants (Service 1990, p. 11). A study on another federally listed cactus, *S. wrightiae,* found that cacti density increased more rapidly in a fenced plot excluded from cattle grazing than in an unfenced plot with a reduced cattle stocking rate (Clark and Clark 2007, p. 21). Overgrazing (the continued heavy grazing beyond the recovery capacity of forage plants) by domestic livestock can have a negative impact on North American xeric ecosystems (Jones 2000, p. 158). For example, overgrazing can facilitate the establishment of invasive species like *Bromus tectorum,* known as cheatgrass (Masters and Sheley 2001, p. 503; DiTomaso et al. 2016, p. 435), which are difficult to eradicate and tend to outcompete native vegetation, including cacti.

Currently, BLM implements 15 nondiscretionary conservation measures to minimize or reduce the effects of grazing on the Colorado hookless cactus, which are contained in a 2012 programmatic biological opinion (BLM 2020a, p. 41). BLM also manages livestock activities to protect sensitive plants in the Adobe Badlands, River Rims, and Escalante Canyon ACECs (BLM 2017, p. 240, p. 258; BLM 2020a, p. 28; Service 2022, pp. 19–20). In the Atwell Gulch ACEC, BLM excludes livestock grazing entirely on 2,600 ac (1,052 ha), and in the Pyramid Rock ACEC, no livestock grazing is allowed (BLM 2020a, p. 29; Service 2022, pp. 19–20). BLM's management plans allow it to include stipulations in its grazing permit renewals that require reductions in the number of livestock and adjustments to the timing, duration, and season of livestock use for the benefit of natural resources; such changes in grazing permits would primarily affect future grazing intensity in the Cactus Park (*S. glaucus*), Devil's Thumb (*S. glaucus*), Gunnison River East (*S. glaucus*), Roan Creek (*S. dawsonii*), and Plateau Creek AUs (*S. dawsonii*).

Currently, livestock use is affecting only individual plants; however, these effects could increase in the future if no corrective action is taken to address future problem areas. Thus, we included an analysis in the SSA to examine species' potential response to future changes in this stressor (Service 2022, pp. 18–21).

Invasive Species

Invasive weeds, including *Bromus tectorum* (cheatgrass) and *Halogeton glomeratus* (halogeton), are prevalent on BLM and private lands within the range of Colorado hookless cactus (BLM 2020a, p. 35). Invasive weeds alter the ecological characteristics of cactus habitat, making it less suitable for the

species (Service 1990, p. 11). In addition, invasive annual weeds are often able to outcompete perennial native species for the essential nutrient nitrogen under drought conditions (Everard et al. 2010, pp. 85, 93–94). However, despite their prevalence throughout the range of Colorado hookless cactus species, individual plants experience extreme detrimental effects of invasive weeds only in localized areas (Service 2022, pp. 18–21; BLM 2020a, p. 35).

Currently, invasive vegetation affects only individual Colorado hookless cactus plants; invasive species are not causing any broad-scale reductions in recruitment or survival in entire AUs. However, the effects of invasive vegetation could increase in the future if infestations expand or if treatments become less effective. Thus, we included an analysis in the SSA to examine species' potential response to future changes in this stressor (Service 2022, pp. 18–21).

Oil and Gas Development

Oil and gas development can also affect Colorado hookless cactus plants and habitat. Increased surface disturbance from wells, roads, and pipelines for oil and gas projects can fragment or destroy habitat; disturb individuals; increase erosion, soil compaction, and sedimentation; destroy pollinator habitat; increase airborne dust and subsequent dust accumulation on cacti, which can increase tissue temperature and reduce photosynthesis, thus decreasing plant growth, vigor, and water use efficiency; indirectly increase recreational access to habitat through increased road construction; and increase invasive vegetation because of the associated surface disturbances (Service 2010, pp. 6–7).

For *S. glaucus,* only 5 percent of the AUs (19,365 leased ac (7,837 ha) of 379,348 total ac (153,517 ha) of habitat) are within BLM lands leased for oil and gas (BLM 2021a, unpaginated). This proportion is higher for *S. dawsonii;* 58 percent of the area within AUs are leased for oil and gas development on BLM lands (65,384 ac (26,419 ha) of 112,723 total ac (45,617 ha) of habitat) (BLM 2021a, unpaginated). However, leased areas do not equate to areas of surface disturbance; even if these areas are leased for oil and gas development, only small subsets of these areas are actually being actively explored or extracted (Colorado Oil and Gas Conservation Commission (COGCC) 2022a, unpaginated). Moreover, oil and gas development does not occur throughout all of the species' ranges; for *S. glaucus,* active wells are only in the Devil's Thumb AU (one active well site), North Fruita Desert AU (10 active well sites), Whitewater AU (26 active well sites), and a very small portion of the Palisade AU (one active well site) (COGCC 2022b, unpaginated). For *S. dawsonii,* while oil and gas development occurs in both AUs (Roan Creek (60 active well sites) and Plateau Creek (51 active well sites)), 42 percent of these AUs are not leased for oil and gas development (COGCC 2022b, unpaginated; BLM 2021a, unpaginated). Additionally, there are no new or pending permits to drill new oil and gas wells within either species' range; however, as we describe in more detail below, development could increase within portions of *S. dawsonii*'s range in the future (COGCC 2022c, unpaginated; COGCC 2022d, unpaginated).

Additionally, BLM's resource planning documents include conservation measures to minimize adverse impacts of natural resource extraction to listed and sensitive species, including the Colorado hookless cactus; this includes limiting oil and gas development within a 200-m (656-ft) buffer around any currently occupied or historically occupied Colorado hookless cactus habitat, when possible and with some exceptions (BLM 2020a, p. 34; BLM 2015a, p. B–13; BLM 2015b, p. B–22; BLM 2020b, p. B–9). These limitations and buffers apply to *S. glaucus* and *S. dawsonii* while they are federally listed species or BLM sensitive species; if these species are no longer Federally listed or on BLM's sensitive species list, these buffers would no longer apply. However, even then, as we describe above, based on our analysis of Colorado Oil and Gas Conservation Commission (COGCC) data, oil and gas extraction is relatively limited throughout the range of both species compared to the amount of occupied habitat (COGCC 2022a, unpaginated; COGCC 2022b, unpaginated; COGCC 2022c, unpaginated; COGCC 2022d, unpaginated). Moreover, due to their biology and life history characteristics, both species are relatively resilient to nearby disturbance (as we discuss further in our analysis of *Current Condition* below).

Furthermore, approximately 30 percent of the land in *S. glaucus* AUs and 41 percent of the land in *S. dawsonii* AUs have special BLM land management designations in the form of NCAs, ACECs, and a Wilderness Area, which further protect the species from the impacts of oil and gas development (Service 2022, p. 10). The protections provided by these management designations are not contingent upon the species' federally listed status, and these designations help to facilitate the maintenance and recovery of cactus occurrences because they are areas where Colorado hookless cactus is not likely to be disturbed nor will its habitat be adversely altered by land-use actions (BLM 2020a, p. 26). All 30 percent of the areas within *S. glaucus* AUs that have special land management designations include stipulations that either withdraw lands from oil, gas, and mineral development; implement ''no-surface-occupancy'' stipulations; or prohibit surface disturbing activities (Service 2022, pp. 19–22). Therefore, no new oil and gas activity is permitted in almost 30 percent of *S. glaucus*'s range (with the exception of portions of the Devil's Thumb AU); these areas where no new oil and gas activity is permitted coincide with over half (over 56 percent) of the estimated *S. glaucus* occurrences (Service 2022, pp. 14, 30). Similarly, all 41 percent of the areas within *S. dawsonii* AUs that have special land management designations include no-surface-occupancy stipulations that limit oil and gas development in these portions of the species' range.

Thus, currently, oil and gas development is affecting only a small proportion of individual Colorado hookless cactus plants, due to limited leasing and development and BLM's protective measures; however, the effects of oil and gas development could increase in the future. Nevertheless, given the variable oil and gas potential of the area, and the protections outlined above, the only AUs where oil and gas development could plausibly increase in the future are the Roan Creek and Plateau Creek AUs (*S. dawsonii*) (Service 2022, p. 30). Thus, we included an analysis in the SSA to examine the species' potential response to future changes in this stressor (Service 2022, pp. 18–21).

Off-Highway Vehicle Recreational Use

Off-highway vehicle (OHV) use can cause soil compaction and erosion, which can physically damage habitat, the surrounding plant community, and the hydrology of the area. OHVs can also carry invasive and introduced plants to new sites and present a risk of spilled contaminants, such as oil spills, gasoline, and grease. OHV use can also injure or kill above-ground plants or cause direct harm to plants through accumulation of dust. OHV use can create especially negative impacts when users travel off designated routes (Service 2022, pp. 18–21).

The relatively barren nature and other topographical features of Colorado

hookless cactus habitat make it desirable to OHV users (BLM 2020a, p. 38). Even though OHV recreation is popular and widespread within Colorado hookless cactus habitat, there is little evidence of direct negative impacts to plants (Service 2010, p. 8; BLM 2020a, p. 38).

BLM's resource planning documents include conservation measures to minimize adverse impacts of land use to listed and sensitive species, including the Colorado hookless cactus (BLM 2015a, pp. 49, 102–105; BLM 2015b, pp. 26, 101–103, 123, 145, 147, 150; BLM 2015c, p. M–25; BLM 2020b, pp. II–87, I–4–I–10). In their Travel Management Plans for the Grand Junction and Uncompahgre Field Offices, BLM identified multiple routes for closure to protect sensitive areas (BLM 2015c, p. M–24; BLM 2020b, p. I–7). These two travel management plans cover the entirety of *S. glaucus'*s range and the majority of *S. dawsonii'*s range. While the resource management plan for the Colorado River Valley Field Office, which covers the remainder of *S. dawsonii'*s range, does not contain a travel management plan specifically, it includes strategies for ''Comprehensive Trails and Travel Management,'' including limiting recreational use to designated routes (BLM 2015b, pp. 102–104). Additionally, approximately 30 percent of the land in *S. glaucus* AUs and 41 percent of the land in *S. dawsonii* AUs have special BLM land management designations in the form of NCAs, ACECs, and a Wilderness Area, which further protect the species from the impacts of OHV use by limiting routes within 200 m (656 ft) of sensitive plants or prohibiting all motorized travel (BLM 2020a, pp. 27–29; Service 2022, pp. 19–21). For example, when the Dominguez-Escalante NCA was created in 2009, which covers 210,172 ac (85,053 ha) within the Dominguez-Escalante, Gunnison River East, and Cactus Park AUs, many ''miles of routes were closed to mechanized and motorized travel,'' which includes the use of OHVs (BLM 2020a, p. 27).

As human populations continue to grow in the areas surrounding Colorado hookless cactus, demand for OHV recreation is likely to continue to increase. However, BLM would be able to add routes only in areas outside of the aforementioned ACECs and Wilderness Area. Any increases in designated OHV routes would occur as a result of land use planning processes that would comply with the stipulations of the Federal Land Policy and Management Act of 1976 and the National Environmental Policy Act (BLM 2020a, p. 38). Given the protections detailed above, and the accessibility of certain areas to OHV users, the only AUs where OHV use could plausibly increase in the future are the North Fruita Desert, Devil's Thumb, Gunnison Gorge, and Whitewater AUs (*S. glaucus*) (Service 2022, p. 30). The area represented in these four AUs constitutes approximately half of *S. glaucus'* AU range, but it is unlikely OHV use would occur across the entire area of these AUs. Through similar processes, BLM may also choose to close areas to recreation or access if necessary to protect sensitive resources (BLM 2020a, p. 38). It is plausible that implementation of travel management plans could lead to route closures in *S. glaucus* AUs (Devil's Thumb, Gunnison Gorge, Whitewater, Palisade, Dominguez-Escalante, North Fruita Desert) and *S. dawsonii* AUs (Plateau Creek, and Roan Creek AUs).

Thus, currently, OHV use is affecting only a small proportion of individual Colorado hookless cactus plants; however, the effects of OHV use could increase in the future if recreational opportunities expand. Therefore, we included an analysis in the SSA to examine species' potential response to future changes in this stressor (Service 2022, pp. 18–21).

Development and Maintenance of Utility Corridors

The installation and maintenance of utility corridors can result in damage, loss, or relocation of plants; fragmentation of habitat; and increases in invasive species (BLM 2020a, p. 34; Service 2022, p. 17). Multiple transmission lines occur within Colorado hookless cactus habitat and ''approximately 1,200 plants have been transplanted in association with these projects'' (Bio-Logic 2008 as cited in BLM 2020a, p. 34). While every AU has a utility corridor within it, most corridors intersect only a small portion of the AU. Additionally, some of these utility lines are along already-disturbed corridors (*e.g.,* major highways).

In addition to the limited scope of utility corridor development and maintenance within Colorado hookless habitat, federally protected areas further limit the impacts that utility corridor development can have on the species. All but one of the seven ACECs within *S. glaucus'* range and all four of the ACECs within *S. dawsonii'*s range include right-of-way exclusion or avoidance areas (Service 2022, pp. 19–21).

Based on practical locations for utility corridors, and on these protections, it is only plausible that development could increase in the energy corridor that intersects the Whitewater, Devil's Thumb, and Cactus Park AUs and along the I–70 corridor in the Palisade AU (Service 2022, p. 30). It is also possible that developers could replace an existing powerline with a larger structure in the Devil's Thumb and Whitewater AUs to increase capacity, which could cause significant ground disturbance (Service 2022, p. 30). Finally, developers could build additional pipelines in the Roan Creek and Plateau Creek AUs (Service 2022, p. 30).

Thus, currently, development and maintenance of utility corridors are affecting only individual Colorado hookless cactus plants, partly due to BLM's avoidance and mitigation measures; however, the effects of this stressor could increase in the future if development expands. Therefore, we included an analysis in the SSA to examine species' potential response to future changes in this stressor.

Climate Change

Climate change may affect long-term survival of native species, including *Sclerocactus,* especially if longer or more frequent droughts occur. Within the range of Colorado hookless cactus, under lower emission scenarios, summer maximum temperature is expected to increase 4 °F (2.2 °C) and under higher emission scenarios summer maximum temperature is expected to increase 10 °F (5.6 °C) by mid-century, compared to the historical average between 1971 and 2000 (North Central Climate Adaptation Science Center and CIRES 2021, unpaginated). Extreme droughts, like those that occurred in 2002 and 2018, could also become more frequent by mid-century. Historically, droughts of this scale did not occur within the range of the species (North Central Climate Adaptation Science Center and CIRES 2021, unpaginated). By mid-century, under lower emissions scenarios, these extreme droughts could occur two to three times per decade or, under higher emissions scenarios, eight to nine times per decade (North Central Climate Adaptation Science Center and CIRES 2021, unpaginated).

In addition, invasive annual weeds are often able to outcompete perennial native species for the essential nutrient nitrogen under drought conditions (Everard et al. 2010, pp. 85, 93–94). Drought conditions could further hinder BLM's efforts to control invasive weeds and restore native vegetation, which is already difficult due to the extreme environment of the Colorado and

Gunnison River basins (Service 1990, p. 11; BLM 2008a, p. 44).

Climate change vulnerability analyses concluded that Colorado hookless cactus likely has low vulnerability to climate change (BLM 2020a, pp. 43–44); however, these analyses predated the taxonomic split of Colorado hookless cactus and thus analyzed the range that contains both *S. glaucus* and *S. dawsonii*. First, NatureServe's Climate Change Vulnerability Index (CCVI), which evaluates species' vulnerability to climate change based on multiple factors, indicated that Colorado hookless cactus was ''not vulnerable'' or ''presumed stable'' rangewide, meaning the number of plants or range extent is not likely to increase or decrease considerably by mid-century (Treher et al. 2012, pp. 52, 8). Second, a combination of CCVI and species distribution modeling (SDM) methods in indicated that Colorado hookless cactus ''will not be vulnerable to climate change'' within the next 30 years (Still et al. 2015, p. 116). This analysis predicted that the species' range could shift or increase under projected changes in climate given the species has no dispersal constraints and vast areas of suitable habitat beyond known occurrences (Still et al. 2015, p. 116). Finally, an additional SDM effort, which aimed to predict changes to the species' range under five different future climate scenarios, concluded that climate change does not present a threat, because all but one model indicate that either no range contraction will occur or that range extent will expand by midcentury (Price 2018, appendix 3 of BLM 2020a, p. 60).

Although multiple different models predict the Colorado hookless cactus has low vulnerability to climate change, CNHP's CCVI suggested that Colorado hookless cactus is extremely vulnerable to climate change given ''(1) natural and anthropogenic barriers to movement; (2) likelihood of short seed dispersal distances; (3) lack of variation in annual precipitation in occupied habitat over last 50 years; (4) potential increase in climate influenced disturbances within its habitat, (5) potential for wind and solar energy development within its range, and (6) pollinator specificity'' (CNHP 2015, p. 533). Although the weight of research indicates both species likely have low vulnerability to climate change, given the uncertainty this CNHP study introduced, we included an analysis in the SSA to examine species' potential response to future changes in this stressor.

Cumulative Effects

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have analyzed not only the individual effects various stressors could have on the species but also their potential cumulative effects. We incorporate the cumulative effects into our SSA analysis when we characterize the current and future condition of the species. To assess the current and future condition of the species, we undertake an iterative analysis that encompasses and incorporates the threats individually and then accumulates and evaluates the effects of all the factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative effects analysis. For example, to assess current resiliency, we used a condition category table (see *Current Condition* below) to analyze how livestock use, invasive species, oil and gas development, OHV recreational use, development and maintenance of utility corridors, and the effects of global climate change, taken together, may influence habitat condition, survivorship, population size, and water availability. Similarly, we analyzed how changes in these stressors, when considered together, may influence habitat condition, survivorship, population size, and water availability in the future. We also considered how these same stressors may affect species' current and future redundancy and representation.

Current Condition

In our SSA report, we evaluate current condition by examining current levels of resiliency in the eight *S. glaucus* AUs and two *S. dawsonii* AUs, and implications for redundancy and representation. Here, we summarize our evaluation of current condition for resiliency, redundancy, and representation. Additional detail regarding our analysis is provided in the SSA report (Service 2022, pp. 22–28).

Resiliency

We describe the resiliency for each of the 10 AUs in terms of the habitat and demographic factors needed by the Colorado hookless cactus (Service 2022, pp. 10–16, 22–28). We developed a categorical model to calibrate resiliency based on the range of habitat and demographic conditions in each AU. In a categorical model, we first identify resource or demographic factors that contribute to the species' resiliency; typically, these factors align with the individual resource needs and population-level needs we identified in the SSA analysis. We then define threshold values for each identified resource or demographic factor that represent high, moderate, or low levels of that factor. Finally, we evaluate whether the current levels of each resource or demographic factor in an AU fall within the predetermined thresholds for a high, moderate, or low score for the category; we then average these scores for each category to develop an overall current resiliency score for each AU.

For Colorado hookless cactus, our categorical model assessed the resiliency of each AU by evaluating (1) the condition of habitat in each AU based on an index that evaluates a number of habitat factors including invasive species cover, bare ground, native perennial cover, the relative size of the AU, and the probability of occurrence based on a BLM habitat suitability model (Holsinger and Krening 2021, p. 5); (2) the summer water deficit, a proxy for drought and soil moisture that approximates the availability of water; (3) survival rates for each species, calculated from long-term monitoring data; and (4) a minimum population size estimate for each AU (Service 2022, pp. 22–24). We selected these habitat and demographic factors based on their importance to the species' resiliency and because we could evaluate them relatively consistently across all 10 AUs. We then used this categorical model as a key to evaluate resiliency for each AU by systematically evaluating the current condition of each habitat and demographic factor. The AUs with higher overall resiliency are at less risk from potential stochastic events, such as climatic variation, than AUs with lower overall resiliency. Our SSA report provides additional detail regarding the methodology we used to evaluate resiliency for each of the 10 AUs (Service 2022, pp. 22–28).

When measured against the metrics outlined in our categorical model (Service 2022, pp. 22–24), all but one of the *S. glaucus* AUs have high resiliency. This finding is due to the large estimated number of individuals in each AU, high levels of survivorship, adequate habitat resources, and a current summer water deficit (averaged over the past decade) that is similar to the historical average. The only AU that does not have high resiliency is the

Palisade AU, which has moderate resiliency overall due to its extremely small population size and moderate score for the habitat condition index. This AU is considerably smaller in area than the other AUs. A major highway (U.S. Interstate 70) and the Colorado River also cut through this AU, fragmenting the habitat. Additionally, a high proportion of this AU is private and State land, which contain existing forms of development (*e.g.,* truck stop, shooting range, power plant) that present additional stressors to the species and its habitat (Lincoln 2021, pers. comm.).

Both *S. dawsonii* AUs have high resiliency (see Table below). This score is due to the high estimated number of individuals in each AU, high levels of survivorship, high and moderate availability of habitat features that support the cactus, and a current summer water deficit that is similar to the historical average. The stressors operating in the Plateau Creek AU and the Roan Creek AU are comparable, but the Plateau Creek AU is geographically smaller, which partly influences its lower rating for the population size category (Lincoln 2021, pers. comm.).

Rangewide monitoring efforts have demonstrated a stable trend over recent years and have also provided a detailed understanding of demographic features and population dynamics. Across their limited ranges, both species of Colorado hookless cactus are relatively abundant, which contributes to the high levels of resiliency in all but one AU. At the time of listing in 1979, and prior to the taxonomic splits between the two Utah *Sclerocactus* species and Colorado's *S. glaucus* and *S. dawsonii,* it was thought that the combined total for the now four species consisted of approximately 15,000 individual plants in both Colorado and Utah (44 FR 58868, October 11, 1979). After the taxonomic split in 2009, estimates from CNHP suggested there were approximately between 19,000 and 22,000 plants for the total rangewide number of individuals in both species (*S. glaucus* and *S. dawsonii*), based on observations within element occurrence records, which do not necessarily represent a total count of plants for the entire range of the species (Service 2022, p. 13). However, as we discuss below, we now know that there are many more plants than previously reported.

In a recent paper from BLM, a novel sampling-based procedure was used to estimate the minimum population size of *S. glaucus.* They estimated the minimum population size for the entire area of occupation of the taxon by using plant density estimates derived from sampled macroplots and extrapolating them to known habitat areas. This method produced population size estimates for the species that are much higher than previous estimates (Krening et al. 2021, entire). Using this sampling-based procedure to determine the minimum number of plants in each AU, *S. glaucus* has at least 68,120 plants (90 percent lower confidence level estimate) and a minimum population estimate of 103,086 plants; *S. dawsonii* has at least 21,058 plants and a minimum population estimate of 31,867 (Service 2022, p. 14; Holsinger and Krening 2021, p. 10). Based on the 2021 BLM monitoring report for the species, which we received after completion of the SSA report, population sizes have not changed considerably relative to the 2020 estimates evaluated in the SSA (BLM 2021b, p. 7). Over the entire period of BLM monitoring, the species still demonstrates an increasing trend (BLM 2021b, p. 7).

TABLE—MEASURE OF CURRENT RESILIENCY OF S. GLAUCUS AND S. DAWSONII BASED ON CURRENT DEMOGRAPHIC, DISTRIBUTION, AND HABITAT CONDITIONS IN THE SPECIES' AUS

[Service 2022, pp. 26–27]

Species	Analysis unit	Habitat condition index	Survivorship	Minimum population size	Summer water deficit	Overall AU resiliency score
S. glaucus	Whitewater	High	High	High	High	High.
	Palisade	Moderate		Low	High	Moderate.
	Dominguez-Escalante	High		High	High	High.
	North Fruita Desert	Moderate		Moderate	High	High.
	Devil's Thumb	High		Moderate	High	High.
	Cactus Park	High		High	High	High.
	Gunnison Gorge	Moderate		Moderate	High	High.
	Gunnison River East	High		High	High	High.
S. dawsonii	Plateau Creek	Moderate	High	Moderate	High	High
	Roan Creek	High		High	High	High.

Redundancy

Redundancy describes the number and distribution of AUs, such that the greater the number and the wider the distribution of the AUs, the better the Colorado hookless cactus can withstand catastrophic events. The plausibility of catastrophic events also influences species' redundancy; if catastrophic events are unlikely within the range of the species, catastrophic risk is inherently lower. We are unaware of any plausible activity or naturally occurring event that would constitute a catastrophic event for this species. For example, fire is not a common occurrence in *S. glaucus* or *S. dawsonii* habitat as this habitat lacks the fuels to sustain a burn, though increased invasive species presence could elevate this risk (Service 2022, p. 28). Additionally, the range of both species contain natural and humanmade barriers (*i.e.,* rivers, canyons, highways) that would prevent the spread of any catastrophic fire throughout the entire range of the species. Redundancy for narrow endemic species is intrinsically limited; however, *S. glaucus* plants are distributed broadly across the range of the species in eight AUs, providing redundancy throughout its relatively small geographic range. With only two AUs, redundancy of *S. dawsonii* is limited; however, as a narrowly endemic plant, it has likely always had a small range and limited redundancy, and there has not been a known decrease in redundancy compared with its historical range. Additionally, given the lack of plausible catastrophic events across the range of both species, even the narrow range of *S. dawsonii* does not introduce appreciable catastrophic risk.

Representation

Both species exhibit some ecological and morphological variability, coupled with low to moderate genetic diversity among AUs (McGlaughlin and Naibauer 2021, p. 22). Inbreeding is not an immediate concern for either species (McGlaughlin and Naibauer 2021, p. 22). Additionally, *S. glaucus* demonstrates sufficient connectivity, which results in ongoing and recent genetic exchange (McGlaughlin and Naibauer 2021, p. 2). *S. dawsonii* is genetically isolated and diverged from *S. glaucus;* all genetic analyses support that *S. dawsonii* is a distinct entity (McGlaughlin and Naibauer 2021, p. 2). Recent population bottlenecks do not appear to be a concern, based on the relative consistency of levels of genetic diversity found in recent studies (McGlaughlin and Naibauer 2021, p. 22).

Future Scenarios and Future Condition

In our SSA report, we forecasted the resiliency of *S. glaucus* and *S. dawsonii* AUs and the redundancy and representation of each species to mid-century (the mean of projections for 2040 to 2069) using a range of plausible future scenarios. After mid-century, the changes in climate conditions that different climate models and emissions scenarios project begin to diverge widely (Rangwala et al. 2021, p. 4); in other words, the spread of potential projected temperature increases broadens substantially after mid-century. Therefore, we focused our analysis of future condition on mid-century to avoid the large uncertainty in climate change at the end of the twenty-first century (Rangwala et al. 2021, p. 4). We also selected this timeframe because we can make reliable predictions regarding changes in other stressors to the species, such as land management (*i.e.,* this timeframe encompasses at least one revision to BLM resource management plans), and is biologically meaningful to the species to begin to understand the response of ecosystems to those changes.

We used future climate models downscaled to the ranges of the species, in combination with forecasted changes in the location and intensity of stressors, to develop three future scenarios and evaluate the condition of the species under each of those scenarios. By capturing a range of plausible future scenarios, we can assume that actual future conditions will likely fall somewhere between these projected scenarios. Detailed descriptions of each scenario are available in the SSA report (Service 2022, pp. 29–36).

As many of the stressors that affect *S. glaucus* and *S. dawsonii* occur on BLM lands, future scenarios were developed with input from BLM about plausible changes in the location and intensity of stressors on BLM land. Given some level of uncertainty about the conditions that will occur by mid-century, these scenarios represent optimistic, continuation, and pessimistic future conditions to capture the plausible range of future conditions the species may experience. Therefore, our evaluation of future conditions presents a plausible range of expected species responses. While the metrics used to assess the current resiliency of *S. glaucus* and *S. dawsonii* AUs are quantitative, we do not have a reliable way to quantitatively forecast these metrics into the future. Instead, future conditions are expressed qualitatively, using the results of our current condition analysis as the baseline. Species experts used professional judgement to predict how the species and their habitats would respond to each future scenario (Krening 2021, pers. comm.).

In the Optimistic scenario, the overall resiliency of each AU for both species remains the same as current condition. Although the overall resiliency of each AU does not change, the resiliency of the Plateau Creek (*S. dawsonii*) and Devil's Thumb (*S. glaucus*) AUs increase slightly due to higher ratings for habitat conditions and population size, respectively. Under this scenario, decreases in activities such as grazing and OHV use (consistent with current stipulations in BLM grazing permits and travel management plans) that degrade *S. glaucus* and *S. dawsonii* habitat allow for passive restoration, which leads to improved habitat conditions in the Plateau Creek AU and an increase in population size in the Devil's Thumb AU. Summer water deficit is expected to slightly decrease, meaning more water is available for germination, growth, and reproduction. Redundancy and representation for *S. dawsonii* increase under this scenario, as compared to current condition, due to an increase in resiliency in the Plateau Creek AU. Redundancy and representation of *S. glaucus* also increase slightly under this scenario due to an increase in resiliency in the Devil's Thumb AU.

In the Continuation scenario, we expect resiliency, redundancy, and representation to remain relatively unchanged from the current condition. Resiliency of the Palisade AU (*S. dawsonii*) is moderate; resiliency of all other AUs is high. Despite the increase in water deficit as compared to historical conditions under this scenario (meaning that less water would be available to the plants), this slight decrease in water availability would have minimal impact, because it is well within the range of variability that the species have historically experienced.

In the Pessimistic scenario, hot and dry conditions may negatively affect survivorship and recruitment of the species. Water deficit is more than one standard deviation higher than the historical mean, meaning that on average, less water is available to support germination, growth, and reproduction. Under the Pessimistic scenario, although BLM land management direction and special land management designations do not change, continued ground disturbance and habitat degradation caused by grazing, increasing OHV use (due to increased demand from population growth), increasing demand for oil and gas development and utility corridor development, and an increase in invasive plant species negatively affect the amount and quality of habitat available and reduce survival rates and overall population sizes, leading to a decrease in resiliency in the Whitewater, Palisade, North Fruita Desert, Devil's Thumb, Cactus Park, Gunnison Gorge, and Gunnison River East AUs (*S. glaucus*) and in the Plateau Creek AU (*S. dawsonii*). Overall, one *S. glaucus* AU is in high condition, six *S. glaucus* AUs are in moderate condition, and one is in low condition. *S. dawsonii* has one AU in high condition and one AU in moderate condition.

Redundancy and representation of *S. glaucus* decreases slightly in this scenario due to the decrease in resiliency in all but one AU; although no AUs are expected to be extirpated, each AU contains multiple clusters of plants, and some diversity within AUs could be lost. However, even in the most pessimistic plausible scenario, all but one of the eight AUs are expected to have at least 500 to 10,000 plants, thereby preserving much of the species' redundancy and representation. Despite high and moderate resiliency of the two *S. dawsonii* AUs, representation and redundancy are lower than under the Optimistic and Continuation scenarios and under current condition due to the Plateau Creek AU's moderate resiliency; this AU had high resiliency under all other scenarios. With only two known *S. dawsonii* AUs, the loss of one of these AUs due to catastrophic, natural, or human-caused events would cause a severe loss of redundancy and representation of the species; however, loss of either AU is not expected, even under the Pessimistic scenario. As with *S. glaucus,* some variation within AUs

could be reduced under this scenario; however, ecological, morphological, and genetic variation will continue to be represented by the multiple AUs across *S. dawsonii*'s range.

Conservation Efforts and Regulatory Mechanisms

Positive actions, in the form of conservation efforts such as land protections and regulations, have reduced sources of habitat degradation, and multiple agencies, volunteers, and community members are committed to the conservation and preservation of Colorado hookless cactus. BLM owns and manages approximately 72 percent and 68 percent, respectively, of the land that comprises *S. glaucus* and *S. dawsonii* AUs (Service 2022, pp. 18–21). The majority of the remaining habitat is privately owned; less than 1 percent is owned by State or local governments (Service 2022, p. 18).

Within the range of the Colorado hookless cactus, the BLM has included conservation measures in its resource planning documents to minimize adverse impacts of land use to listed and sensitive species, including the Colorado hookless cactus (BLM 2020a, p. 26). For example, BLM resource management plans (RMPs) for the Colorado River Valley, Grand Junction, and Uncompahgre field offices (the three BLM field offices within the range of the species) include motorized recreation restrictions, energy development restrictions, and grazing management; provisions for research to aid in better understanding the effects of stressors on the species and guide conservation efforts; and provisions for habitat improvements and vegetation management (*e.g.,* reducing encroachment of woody species, fuels management, closing of livestock allotments, or maintaining rangeland health standards) (Service 2022, pp. 18–21, 28–36; BLM 2015a, pp. 41, 68; BLM 2020b, p. II–24).

The current condition of the species provides insight into the effectiveness of these measures and management; all but one of the *S. glaucus* AUs and both *S. dawsonii* AUs have high resiliency, including moderate to high habitat condition (Service 2022, pp. 26–27). This conclusion demonstrates that, both due to the species' natural hardiness and to these conservation efforts and other land protections, the stressors are not currently meaningfully reducing the species' survival and growth.

Even without the protections of the Act, both species would remain BLM sensitive species for at least 5 years (BLM 2008b, pp. 3, 36). If these species are no longer on the Federal List of Endangered and Threatened Plants or BLM's sensitive species list, the measures specific to listed and sensitive species in these RMPs would no longer apply (*e.g.,* buffers around oil and gas development). However, the majority of measures in these RMPs are not unique to Colorado hookless cactus, but rather provide general guidance for effective land management and rangeland health. Continued responsible management of the landscapes in which the Colorado hookless cactus occurs, even if not directed specifically towards the species, will still provide benefit.

Further, approximately 30 percent of the land in *S. glaucus* AUs and 41 percent of the land in *S. dawsonii* AUs have special BLM land management designations in the form of NCAs, ACECs, and a Wilderness Area (Service 2022, pp. 18–21). These designations limit or exclude the authorization of certain land uses, and some designations were specifically created for the conservation of natural resources; all but 3 of 11 ACECs specifically referenced the protection of Colorado hookless cactus as a foundational goal. The protections provided by these management designations are not contingent upon the species' federally listed status, and these designations help to facilitate the maintenance and recovery of cactus occurrences, because they are areas where Colorado hookless cactus is not likely to be disturbed or adversely altered by land-use actions (BLM 2020a, p. 26). We discuss the specific protections each of these areas provides under the relevant stressors above.

BLM's ACECs do not have an expiration date, and removing an ACEC designation is not simple. A withdrawal of an ACEC can be made only by the Office of the Secretary (43 U.S.C. 1714); additionally, the ACECs that include *S. glaucus* and *S. dawsonii* habitat were designated to protect multiple species and resources in addition to the Colorado hookless cactus (Service 2022, table 6, pp. 19–21). Likewise, NCAs and Wilderness Areas are designated by Congress and are designed to protect multiple resources, not only the Colorado hookless cactus. Therefore, it is unlikely these special management designations will change in the coming decades, even if the Colorado hookless cactus species are delisted.

We describe each of these BLM areas with special management designations, and the specific protections they provide, in table 6 of the SSA (Service 2022, pp. 19–21) and in table 2 of the 5-year status review (Service 2021, pp. 10–11). The current condition of the species provides insight into the effectiveness of these protected areas; all but one of the *S. glaucus* AUs and both *S. dawsonii* AUs have high resiliency, including moderate to high habitat condition (Service 2022, pp. 26–27). This conclusion demonstrates that, both due to the species' natural hardiness and to these land protections and other conservation efforts, the stressors are not currently meaningfully affecting the species' survival and growth.

A recovery plan for Colorado hookless cactus has not been developed; therefore, there are no specific delisting criteria for the species. We developed a recovery outline for Colorado hookless cactus in 2010 (Service 2010, entire). Additionally, we reviewed the status of the species in the 2008 and 2021 5-year status reviews (Service 2008, entire; Service 2021, entire). In the 2008 review, we identified remaining threats to the species and actions that could be taken to make progress in addressing those threats and ensuring long-term management. One such recommendation was to conduct rangewide inventories and improve population monitoring (Service 2008, p. 4). Denver Botanic Gardens and BLM have closely monitored the species at multiple sites throughout the range of both Colorado hookless cactus species since 2007 (DePrenger-Levin and Hufft 2021, entire; BLM 2021b, entire). Based on over a decade of this rich monitoring data, BLM developed a method of estimating population size and trends in 2021 (Krening et al. 2021, entire).

The 2010 recovery outline also included an initial action plan for the species' recovery that included actions such as (1) expanding comprehensive surveying to improve our understanding of trends; (2) establishing formal land management designations to provide for long-term protection of important populations and habitat; (3) directing development projects to avoid cactus occurrences and incorporate standard conservation measures; (4) encouraging investigations into Sclerocactus species' vulnerability to climate change; and (5) resolving open taxonomic questions for the species. The Service and its partners have since accomplished all five of these actions.

Since 2010, BLM and the Denver Botanic Gardens have expanded their annual monitoring program to improve estimation of the species population sizes; these estimates indicate there are substantially more plants on the landscape than were known at the time of listing, and have changed our understanding of the degree to which the species is resilient to the purported threats at the time of listing. BLM has also established multiple ACECs and an

NCA that provide long-term protection to sensitive plants and habitats. In the past 11 years, multiple assessments of the species' vulnerability to climate change have concluded that Colorado hookless cactus has low vulnerability to future climatic changes (Price 2018, appendix 3 of BLM 2020a, p. 60; Still et al. 2015, p. 116; Treher et al 2012, pp. 52, 8). Finally, recent research determined that Colorado hookless cactus is in fact two separate species: *S. glaucus* and *S. dawsonii.*

As a result, the Service recommended that threats to the species had been sufficiently ameliorated such that listing was no longer warranted in our 2021 5-year status review.

Determination of Colorado Hookless Cactus (S. glaucus and S. dawsonii) Status

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

When we listed the Colorado hookless cactus as threatened on October 11, 1979, we identified the potential development of oil shale deposits and gold mining (Factor A), off-road vehicle use (Factor A), collecting pressure (Factor B), livestock grazing (Factor C), and an inadequacy of existing regulatory mechanisms (Factor D) as threats to the existence of the species (44 FR 58868, October 11, 1979). In our SSA, we evaluated these stressors and additional stressors that were identified after the time of listing. Much more is presently known about the species' stressors than at the time of listing.

Several of the stressors identified in the original listing decision are no longer relevant. Given the taxonomic changes, and thus range extent changes, that the species has undergone in the past 40 years, oil shale and tar sands development and hybridization are no longer relevant stressors (Service 2022, p. 18; Service 2021, pp. 19–20). Additionally, collection from the wild has not occurred at the level anticipated at the time of listing; collection is not having population- or species-level effects on either species (BLM 2020a, p. 36). Thus, stressors that could influence both species of the Colorado hookless cactus at the AU- or species-scale include livestock use (Factor A), invasive species (Factor A), oil and gas development (Factor A), OHV recreational use (Factor A), development and maintenance of utility corridors (Factor A), and the effects of global climate change (Factor A). Although livestock grazing was categorized as a stressor under Factor C at the time of listing, we believe that the effects of livestock grazing are better characterized by Factor A. The spines on cactus plants generally make them undesirable to livestock; however, livestock can degrade habitat conditions by trailing through and trampling habitat. Only on rare occasions do cattle directly trample or dislodge cactus plants.

We also evaluated a variety of conservation efforts and mechanisms across the 10 AUs of both species that either reduce or ameliorate stressors, or improve the condition of habitats or demographics. These conservation efforts and mechanisms include: three BLM RMPs that taken together, cover the range of the species, which include motorized recreation restrictions, energy development restrictions, and grazing management; research to aid in better understanding the effects of stressors on the species and guide conservation efforts; and habitat improvements and vegetation management (Service 2022, pp. 18–21, 28–36). With 72 percent of *S. glaucus* and 68 percent of *S. dawsonii* AU acres occurring on BLM land, BLM's implementation of the regulatory mechanisms in their resource planning documents on all of their lands within the range of the species (Factor D) has helped to address the stressors we identified under Factors A and B. While we cannot attribute the currently high resiliency of both species to one specific conservation measure, this high resiliency demonstrates the amelioration of relevant stressors and the adequacy of the existing regulatory mechanisms, both due to the combination of conservation measures in place and the hardiness of the plant (which has shown an ability to tolerate nearby disturbance).

In addition to the implementation of measures that minimize impacts to the Colorado hookless cactus on all BLM lands, approximately 30 percent of the land in *S. glaucus* AUs and 41 percent of the land in *S. dawsonii* AUs have special BLM land management designations (Factor D), which further limit or exclude the authorization of certain land uses and further help to facilitate the maintenance and recovery of cactus occurrences, because they are areas where Colorado hookless cactus occurrences are not likely to be disturbed or adversely altered by land-use actions (BLM 2020a, p. 26). The protections provided by these management designations are not contingent upon the species' federally listed status.

Status Throughout All of Its Range: Sclerocactus glaucus

Currently, seven of the eight *S. glaucus* AUs have high resiliency, and one AU has moderate resiliency (Service 2022, pp. 26–27). The highly resilient AUs have high estimated numbers of individuals, high levels of survivorship, adequate habitat resources, and a current water deficit that is similar to the historical average. One AU has moderate resiliency due to its extremely small population size and moderate score for the habitat index; this AU covers a considerably smaller area than other AUs. Rangewide monitoring has shown a stable trend for Colorado hookless cactus, with no indication of widespread decline. This monitoring has also informed our understanding that *S. glaucus* is currently much more abundant than originally estimated at the time of listing in 1979. At the time of listing, and prior to the taxonomic splits between the two Utah *Sclerocactus* species and Colorado's *S. glaucus* and *S. dawsonii,* it was thought that the combined total for the now four species consisted of approximately 15,000 individual plants in both Colorado and Utah; now, the minimum population estimate for *S. glaucus* is 103,086 plants.

We are unaware of any plausible activity or naturally occurring event that would constitute a catastrophic event for this species. Thus, while the species is a narrow endemic with a small range compared to wide-ranging species, *S. glaucus*'s relatively large range for a narrow endemic, with eight AUs, and the lack of plausible catastrophic events reduce catastrophic risk for this species, thereby enhancing redundancy. The individuals within and among the AUs also exhibit genetic, ecological, and

morphological diversity, contributing to the species' representation.

Moreover, our understanding of the species' stressors has changed since the time the species was listed. Multiple identified stressors are no longer relevant to the species, given past taxonomic changes and subsequent changes in the geographic range of the species (*i.e.,* oil shale and tar sands development) or because they are not occurring at a scale anticipated at the time of listing (*i.e.,* collection). We also have found that, while OHV use and invasive species had the potential to detrimentally impact the species, they have caused only minor, localized impacts (BLM 2020a, pp. 35, 38). Oil and gas development occurs in only a small portion of three of the eight *S. glaucus* AUs.

Since the species was listed, BLM also designated NCAs, ACECs, and a Wilderness Area (Service 2022, pp. 19–21). These designations limit or exclude the authorization of certain land uses, and most of these designations specifically referenced the protection of Colorado hookless cactus as a foundational goal. The protections provided by these management designations are not contingent upon the species' federally listed status, and these designations have helped to facilitate the maintenance and recovery of cactus occurrences, because they are areas where Colorado hookless cactus is not likely to be disturbed or its habitat adversely altered by land-use actions (BLM 2020a, p. 26). While we cannot attribute the currently high resiliency of all but one AU to one specific conservation measure, this high resiliency demonstrates the amelioration of relevant stressors, both due to the combination of conservation measures in place and the hardiness of the plant (which has shown an ability to tolerate nearby disturbance).

Given the currently high level of resiliency in seven of the eight *S. glaucus* AUs and moderate resiliency of one AU, the additional plants we now know to occur throughout the species' range, the lack of significant imminent stressors, and the low likelihood of catastrophic events, we find that *S. glaucus* currently has sufficient ability to withstand stochastic and catastrophic events, and to adapt to environmental changes. After evaluating threats to the species and assessing the cumulative effect of the threats under the section 4(a)(1) factors, we conclude that the current risk of extinction is low, such that *S. glaucus* is not currently in danger of extinction throughout all of its range.

Under the Act, a threatened species is any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (16 U.S.C. 1532(20)). The foreseeable future extends only so far into the future as the Service can reasonably determine that both the future threats and the species' responses to those threats are likely (50 CFR 424.11(d)). The Service describes the foreseeable future on a case-by-case basis, using the best available data and taking into account considerations such as the species' life history characteristics, threat-projection timeframes, and environmental variability (50 CFR 424.11(d)). The key statutory difference between a threatened species and an endangered species is the timing of when a species may be in danger of extinction, either now (endangered species) or in the foreseeable future (threatened species).

For the purposes of our analysis, we defined the foreseeable future for both species (*S. glaucus* and *S. dawsonii*) to mid-century (the mean of 2040 to 2069). After mid-century, the changes in climate conditions that different climate models and emissions scenarios project begin to diverge widely (Rangwala et al. 2021, p. 4); in other words, the spread of potential projected temperature increases broadens substantially after mid-century. Therefore, we focused our analysis of future condition on mid-century to avoid the large degree of uncertainty in how climate change is projected to manifest at the end of the twenty-first century (Rangwala et al. 2021, p. 4). We also selected this timeframe because it allows us to reliably predict changes in other species' stressors and land management, and is biologically meaningful to the species to begin to understand the response of ecosystems to those changes.

By mid-century, we anticipate a range of plausible future conditions for *S. glaucus.* Under the Optimistic scenario, the condition of the species is likely to improve over the current condition, with resiliency projected to increase slightly in one *S. glaucus* AU. BLM's closure of certain OHV routes and effective implementation of changes in grazing permit stipulations leads to decreased grazing and OHV pressures, causing improved habitat conditions and an increase in the number of individuals in the AU (Service 2022, p. 30). In the Continuation scenario, we expect resiliency, redundancy, and representation to remain relatively unchanged from the current condition, because stressors and conservation efforts remain very similar to what the species is currently experiencing. In the Pessimistic scenario, although BLM management planning documents and special land management designations do not change, continued ground disturbance and habitat degradation from grazing, an increase in OHV use, increased demand for utility corridor development, an increase in invasive plant species, and a considerable decrease in water availability due to climate change negatively affect the amount and quality of habitat available, and reduce survival rates and overall population sizes. This is the only scenario in which the condition of the species is projected to decline for *S. glaucus;* one AU's resiliency remains high, six AUs decrease from high to moderate resiliency, and one AU decreases to low resiliency. Even under this pessimistic scenario, the species maintains moderate levels of survival and high or moderate habitat condition in the majority of AUs, despite increasing stressors. In all three scenarios, all eight AUs will remain extant, thereby continuing to contribute to the redundancy and representation of the species.

Given these future projections of resiliency, redundancy, and representation to mid-century, *S. glaucus* could experience a slight decrease in viability under one of the three future scenarios (the pessimistic scenario); however, even in this most pessimistic scenario, all AUs will remain extant and seven of the eight AUs will have moderate to high resiliency.

Two factors support this consistently moderate to high future resiliency: BLM conservation actions and the species' biological characteristics. First, the high to moderate resiliency of *S. glaucus* AUs is, in part, due to land protections and regulations implemented by BLM (Factor D) that will continue to be implemented into the future, even in the absence of protections afforded by the Act, as described under *Conservation Efforts and Regulatory Mechanisms* above. These protections will continue to limit the potential effects of stressors on *S. glaucus* in the future.

Second, independent of future BLM management, the species' biological characteristics moderate its response to increasing stressors. *S. glaucus* is a habitat generalist, which means the species is not constrained to a specific habitat niche; the species' flexible resource requirements increase its resiliency to potential future increases in stressors and its ability to adapt to future change (representation). This determination is evidenced by the species' past ability to maintain high survivorship and resiliency, even in the face of ongoing stressors that the Service

originally determined could lead to decline (*e.g.,* OHV use, invasive species). Additionally, multiple modeling efforts have concluded that Colorado hookless cactus likely has low vulnerability to climate change, given its dispersal capabilities and opportunities for expansion into vast areas of suitable habitat (BLM 2020a, pp. 43–44). Although conditions could become considerably drier under the Pessimistic climate scenario, *S. glaucus* is hardy and already adapted to arid environments. Individuals of this species live many decades and have maintained healthy recruitment and survival, even through droughts and other climatic variation in the past (BLM 2018, pp. 14–15; Hegewisch and Abatzoglou 2020, entire). These characteristics allow the species to maintain moderate survivorship and resiliency, even under the Pessimistic scenario.

Considering the levels of resiliency, redundancy, and representation predicted under each of the future scenarios described in the SSA, *S. glaucus* will be able to withstand stochastic events, catastrophic events, and environmental change into the foreseeable future. Therefore, after assessing the best available information, we conclude that *S. glaucus* is not likely to become in danger of extinction within the foreseeable future throughout all of its range.

Status Throughout All of Its Range: Sclerocactus Dawsonii

Currently, both *S. dawsonii* AUs have high resiliency (Service 2022, pp. 25–26). The highly resilient AUs have moderate to high estimated numbers of individuals (*i.e.,* a minimum population estimate of 31,867 plants total), high levels of survivorship, high and moderate condition of habitat features, and a current water deficit that is similar to the historical average. These high current levels of resiliency reduce the current extinction risk for *S. dawsonii* because they lower the risk to the species from stochastic variation. Rangewide monitoring has shown a stable trend for Colorado hookless cactus, with no indication of widespread decline. This monitoring has also informed our understanding that *S. dawsonii* is currently much more abundant than originally estimated at the time of listing in 1979. At the time of listing, and prior to the taxonomic splits between the two Utah *Sclerocactus* species and Colorado's *S. glaucus* and *S. dawsonii,* it was thought that the combined total for the now four species consisted of approximately 15,000 individual plants in both Colorado and Utah; now, the minimum population estimate for *S. dawsonii* plants is 31,867 plants.

Additionally, the two AUs and the individuals within the AUs exhibit ecological and morphological diversity, contributing to the representation of the species. In terms of redundancy, we are unaware of any plausible activity or naturally occurring event that would constitute a catastrophic event for this species. Given the lack of plausible catastrophic events across the range of *S. dawsonii,* even its narrow range (two AUs) does not introduce appreciable catastrophic risk.

Moreover, our understanding of species' stressors has changed since the time the species was listed. Multiple identified stressors are no longer relevant to the species, given past taxonomic changes and subsequent changes in the geographic range of the species (*e.g.,* oil shale and tar sands development) or because they are not occurring at a scale anticipated at the time of listing (*i.e.,* collection). We also have found that, while OHV use and invasive species had the potential to detrimentally impact the species, they have only caused minor, localized impacts (BLM 2020a, pp. 35, 38).

Since the species was listed, BLM also designated NCAs, ACECs, and a Wilderness Area (Service 2022, pp. 19–21). These designations limit or exclude the authorization of certain land uses, and most of these designations specifically referenced the protection of Colorado hookless cactus as a foundational goal. The protections provided by these management designations are not contingent upon the species' federally listed status, and these designations have helped to facilitate the maintenance and recovery of cactus occurrences, because they are areas where Colorado hookless cactus is not likely to be disturbed or adversely altered by land-use actions (BLM 2020a, p. 26). While we cannot attribute the currently high resiliency of both AUs to one specific conservation measure, this high resiliency demonstrates the amelioration of relevant stressors, both due to the combination of conservation measures in place and the hardiness of the plant (which has shown an ability to tolerate nearby disturbance).

Given the currently high level of resiliency in both of the *S. dawsonii* AUs, the additional plants we now know to occur throughout the species' range, the lack of significant imminent stressors, and the low likelihood of imminent catastrophic events, we find that *S. dawsonii* currently has sufficient ability to withstand stochastic and catastrophic events and to adapt to environmental changes. Therefore, we conclude that the current risk of extinction is low, such that *S. dawsonii* is not currently in danger of extinction throughout all of its range.

By mid-century (the foreseeable future), we anticipate a range of plausible future conditions for *S. dawsonii.* Under the Optimistic scenario, the condition of the species improves, with resiliency expected to increase slightly in one *S. dawsonii* AU due to decreased grazing and OHV pressures, causing improved habitat conditions. In the Continuation scenario, we expect resiliency, redundancy, and representation to remain relatively unchanged from the current condition, as stressors and conservation efforts remain very similar to what the species is currently experiencing. In the Pessimistic scenario, although BLM management planning documents and special land management designations do not change, continued ground disturbance and habitat degradation from grazing, increasing demand for oil and gas development and utility corridor development, and an increase in invasive plant species negatively affect the species, which causes a decrease in resiliency in one of the two *S. dawsonii* AUs. Additionally, only under this Pessimistic scenario does water availability drop considerably below the historical average (*i.e.,* more than one standard deviation). This is the only scenario in which we foresee resiliency decreasing for either of the species' two AUs; one AU's resiliency remains high, and one AU decreases to moderate resiliency. Even in the Pessimistic scenario, survivorship in both AUs remains high. In all three scenarios, both AUs will remain extant, thereby continuing to contribute to the redundancy and representation of the species.

Given these future projections of resiliency, redundancy, and representation to mid-century, *S. dawsonii* could experience a slight increase in extinction risk under one of the three future scenarios (the pessimistic scenario); however, even in this most pessimistic scenario, both AUs will remain extant with moderate to high resiliency.

Two factors support this moderate to high future resiliency: BLM conservation actions and the species' biological characteristics. First, this high to moderate resiliency of *S. dawsonii* AUs is, in part, due to land protections and regulations implemented by BLM (Factor D) that will continue to be implemented into the future even in the absence of protections afforded by the

Act, as described under *Conservation Efforts and Regulatory Mechanisms* above. These protections will continue to limit the potential effects of stressors on *S. dawsonii* in the future.

Second, independent of future BLM management, the species' biological characteristics moderate its response to increasing stressors. Like *S. glaucus, S. dawsonii* is a habitat generalist, which means the species is not constrained to a specific habitat niche; the species' flexible resource requirements increase its resiliency to potential future increases in stressors and its ability to adapt to future change (representation). This finding is evidenced by the species' past ability to maintain high survivorship and resiliency, even in the face of ongoing stressors that the Service originally determined could lead to decline (*e.g.,* OHV use, invasive species). Additionally, multiple modeling efforts have indicated that Colorado hookless cactus likely has low vulnerability to climate change, given its dispersal capabilities and opportunities for expansion into vast areas of suitable habitat (BLM 2020a, pp. 43–44). Although conditions could become considerably drier under the Pessimistic climate scenario, the *S. dawsonii* is hardy and already adapted to arid environments. Individuals of this species live many decades and have maintained healthy recruitment and survival, even through droughts and other climatic variation in the past (BLM 2018, pp. 14–15; Hegewisch and Abatzoglou 2020, entire). These characteristics allow the species to maintain high survivorship and moderate to high resiliency, even under the Pessimistic scenario.

Considering the levels of resiliency, redundancy, and representation in each of the future scenarios described in the SSA, under each plausible future scenario, *S. dawsonii* will be able to withstand stochastic events, catastrophic events, and environmental change. Therefore, after assessing the best available information, we conclude that *S. dawsonii* is not likely to become in danger of extinction within the foreseeable future throughout all of its range.

Status Throughout a Significant Portion of Their Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. Having determined that *S. glaucus* and *S. dawsonii* are not in danger of extinction or likely to become so in the foreseeable future throughout all of their range, we now consider whether either may be in danger of extinction (*i.e.,* endangered) or likely to become so in the foreseeable future (*i.e.,* threatened) in a significant portion of its range—that is, whether there is any portion of the species' range for which both (1) the portion is significant; and, (2) the species is in danger of extinction or likely to become so in the foreseeable future in that portion. Depending on the case, it might be more efficient for us to address the ''significance'' question or the ''status'' question first. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the species' range.

In undertaking this analysis for *S. glaucus* and *S. dawsonii,* we choose to address the status question first. We began by identifying portions of the range where the biological status of the species may be different from their biological status elsewhere in their range. For this purpose, we considered information pertaining to the geographic distribution of (a) individuals of the species, (b) the threats that the species face, and (c) the resiliency condition of populations.

For *S. glaucus,* we evaluated the range of the species to determine if the species is in danger of extinction now or likely to become so in the foreseeable future in any portion of its range. The range of a species can theoretically be divided into portions in an infinite number of ways. We focused our analysis on portions of the species' range that may meet the definition of an endangered species or a threatened species. For *S. glaucus,* we considered whether the threats or their effects on the species are greater in any biologically meaningful portion of the species' range than in other portions such that the species is in danger of extinction now or likely to become so in the foreseeable future in that portion. We examined the following threats: livestock use, invasive species, oil and gas development, OHV use, development and maintenance of utility corridors, and climate change, including cumulative effects.

Livestock use, invasive species, OHV use, development and maintenance of utility corridors, and climate change occur uniformly across the species' range; there are no portions of the species' range where these stressors occur more intensely. Oil and gas development is occurring in only three AUs (North Fruita Desert, Whitewater, and Palisade AUs), so this threat may be elevated in this area. However, despite this development activity, the North Fruita Desert and Whitewater AUs currently have high resiliency and are expected to maintain this high resiliency under two of three future scenarios. Under the Pessimistic scenario, North Fruita Desert and Whitewater AUs have moderate resiliency. Oil and gas development is occurring in only a small portion of the Palisade AU (there is only one active well site across more than 9,269 ac (3,751 ha)) and, while this AU has moderate resiliency currently and could drop to low resiliency under the Pessimistic scenario, this is due to the AU's small size and thus inherently low number of plants, not due to oil and gas development. Thus, even though oil and gas development may be concentrated in these AUs, it is not producing a species' response that would indicate the plants therein are in danger of extinction now or in the foreseeable future.

Moreover, although the Palisade AU has a low population size and is the only AU to rank low in resiliency in any future scenario, the AU occupies the smallest area of any *S. glaucus* AU and contributes the least to the species' redundancy and representation. Therefore, this AU is not considered to be a biologically meaningful portion of the species' range where threats are impacting individuals differently from how they are affecting the species elsewhere in its range such that the status of the species in that portion differs from its status in any other portion of the species range.

Overall, we found no biologically meaningful portions of the species' range where threats are impacting individuals differently from how they are affecting the species elsewhere in its range such that the status of the species in that portion differs from its status in any other portion of the species' range. Therefore, we find that the species is not in danger of extinction now or likely to become so in the foreseeable future in any significant portion of its range. This does not conflict with the courts' holdings in *Desert Survivors* v. *Department of the Interior,* 336 F. Supp. 3d 1131 (N.D. Cal. 2018), and *Center for Biological Diversity* v. *Jewell,* 248 F. Supp. 3d. 946, 959 (D. Ariz. 2017) because, in reaching this conclusion, we did not apply the aspects of the Final Policy on Interpretation of the Phrase ''Significant Portion of Its Range'' in the Endangered Species Act's Definitions of ''Endangered Species'' and ''Threatened Species'' (79 FR 37578; July 1, 2014), including the definition of ''significant'' that those court decisions held to be invalid.

For *S. dawsonii,* we evaluated the range of the species to determine if the species is in danger of extinction now or likely to become so in the foreseeable future in any portion of its range. The range of a species can theoretically be divided into portions in an infinite number of ways. We focused our analysis on portions of the species' range that may meet the definition of an endangered species or a threatened species. For *S. dawsonii,* we considered whether the threats or their effects on the species are greater in any biologically meaningful portion of the species' range than in other portions such that the species is in danger of extinction now or likely to become so in the foreseeable future in that portion. We examined the following threats: livestock use, invasive species, oil and gas development, OHV use, development and maintenance of utility corridors, and climate change, including cumulative effects.

Overall, the threats to this species are uniformly distributed throughout its range and we did not identify a significant concentration of threats that would increase extinction risk in any portion. Oil and gas development occurs in both AUs, as does livestock use, OHV use, invasive species infestation, and development and maintenance of utility corridors. The small range of the species will not experience substantially different temperature or precipitation changes as a result of climate change.

We found no biologically meaningful portions of the species' range where threats are impacting individuals differently from how they are affecting the species elsewhere in its range such that the status of the species in that portion differs from its status in any other portion of the species' range. Therefore, we find that the species is not in danger of extinction now or likely to become so in the foreseeable future in any significant portion of its range. This does not conflict with the courts' holdings in *Desert Survivors* v. *Department of the Interior,* 336 F. Supp. 3d 1131 (N.D. Cal. 2018), and *Center for Biological Diversity* v. *Jewell,* 248 F. Supp. 3d. 946, 959 (D. Ariz. 2017) because, in reaching this conclusion, we did not apply the aspects of the Final Policy on Interpretation of the Phrase ''Significant Portion of Its Range'' in the Endangered Species Act's Definitions of ''Endangered Species'' and ''Threatened Species'' (79 FR 37578; July 1, 2014), including the definition of ''significant'' that those court decisions held to be invalid.

Determination of Status

Our review of the best available scientific and commercial information indicates that *S. glaucus* and *S. dawsonii* do not meet the definition of endangered species or threatened species in accordance with section 3(6) and 3(20) of the Act. In accordance with our regulations at 50 CFR 424.11(d)(2) currently in effect, *S. glaucus* and *S. dawsonii* have recovered and no longer warrant listing. Therefore, we propose to remove Colorado hookless cactus (*S. glaucus* and *S. dawonii*) from the Federal List of Endangered and Threatened Plants.

Effects of This Rule

This proposed rule, if made final, would revise 50 CFR 17.12(h) by removing Colorado hookless cactus from the Federal List of Endangered and Threatened Plants.

The prohibitions and conservation measures provided by the Act, particularly through sections 7 and 9, would no longer apply to this species. Federal agencies would no longer be required to consult with the Service under section 7 of the Act in the event that activities they authorize, fund, or carry out may affect Colorado hookless cactus.

There is no critical habitat designated for this species, so there would be no affect to 50 CFR 17.96.

Post-Delisting Monitoring

Section 4(g)(1) of the Act requires us, in cooperation with the States, to implement a monitoring program for not less than 5 years for all species that have been delisted due to recovery. Post-delisting monitoring (PDM) refers to activities undertaken to verify that a species delisted due to recovery remains secure from the risk of extinction after the protections of the Act no longer apply. The primary goal of PDM is to monitor the species to ensure that its status does not deteriorate, and if a decline is detected, to take measures to halt the decline so that proposing it as endangered or threatened is not again needed.

We are proposing to delist Colorado hookless cactus based on new information we have received as well as conservation actions taken. Given that delisting would be, in part, due to conservation taken by land managers and other stakeholders, we have prepared a draft PDM plan for Colorado hookless cactus. The draft PDM plan discusses the current status of the taxon and describes the methods proposed for monitoring if we delist the taxon. The draft PDM plan: (1) Summarizes the status of Colorado hookless cactus at the time of proposed delisting; (2) describes frequency and duration of monitoring; (3) discusses monitoring methods and potential sampling regimes; (4) defines what potential triggers will be evaluated to address the need for additional monitoring; (5) outlines reporting requirements and procedures; (6) proposes a schedule for implementing the PDM plan; and (7) defines responsibilities. The Service prepared this draft PDM plan in coordination with BLM and the Denver Botanic Gardens. The Service designed the PDM plan to detect substantial declines in Colorado hookless cactus occurrences and any changes in stressors with reasonable certainty and precision. It meets the requirement set forth by the Act because it monitors the status of Colorado hookless cactus using a structured sampling regime over a 10-year period. It is our intent to work with our partners toward maintaining the recovered status of both Colorado hookless cactus species.

We seek public comments on the draft PDM plan, including its objectives and procedures (see Information Requested, above), with the publication of this proposed rule.

Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal

Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. While we notified the Ute Mountain, Jicarilla Apache Nation, Southern Ute, Ute Mountain Ute, and Navajo Nation Tribes of our recommendation to delist the Colorado hookless cactus in our 5-year status review in 2021, we are not aware of any Tribal interests or concerns associated with this proposed rule. We will reach out to affected Tribes upon publication of this proposed rule and invite them to comment on the proposed rule and/or initiate government-to-government consultation.

References Cited

A complete list of references cited in this rulemaking is available on the internet at *https://www.regulations.gov* and upon request from the Colorado Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Colorado Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

§ 17.12 [Amended]

■ 2. Amend § 17.12 in paragraph (h) in the List of Endangered and Threatened Plants by removing the entry under Flowering Plants for ''*Sclerocactus glaucus* (Colorado hookless cactus)''.

Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2023–07119 Filed 4–10–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 226

[Docket No.230309–0070; RTID 0648–XC913]

Endangered and Threatened Wildlife and Plants; Threatened Listing Determination for the Sunflower Sea Star Under the Endangered Species Act; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of public hearings.

SUMMARY: We, NMFS, will hold two public hearings related to our March 16, 2023, proposed rule to list the sunflower sea star (*Pycnopodia helianthoides*) as threatened under the Endangered Species Act (ESA).

DATES: Written comments must be received by May 15, 2023. Both hearings are open to all interested parties and we encourage participation by members of the public wishing to provide oral comments. In-person public hearings will be held, convening at 4 p.m. and concluding no later than 7 p.m. Alaska Daylight Time (AKDT), on the following dates: May 2, 2023 (Kodiak, Alaska) and May 10, 2023 (Petersburg, Alaska). Teleconference will also be available (see **ADDRESSES**). NMFS may close the hearings 15 minutes after the conclusion of public testimony and after responding to any clarifying questions from hearing participants about the proposed rule. Contact Sadie Wright (see **FOR FURTHER INFORMATION CONTACT**) if you intend to join the public hearing after 5:30 p.m. so we can leave the public testimony portion open to accommodate you.

ADDRESSES: The May 2 public hearing will be held in the Harbor Room of the Best Western Kodiak Inn at 236 Rezanof Drive, Kodiak, Alaska 99615. The May 10 public hearing will be held at Petersburg Borough Assembly Chambers at 12 South Nordic Drive, Petersburg, Alaska 99833. Individuals unable to attend in person may participate in either hearing via conference call. Toll free conference call information for both hearings is the same: Telephone: (888) 790–2053, Conference Code: 2314303.

You may submit written data, information, or comments regarding the proposed rule to list the sunflower sea star as threatened under the ESA, identified by Docket ID NOAA–NMFS–2021–0130–0038, by either of the following methods:

- *Electronic Submission:* Submit all electronic comments via the Federal eRulemaking Portal. Go to *www.regulations.gov,* and enter NOAA–NMFS–2021–0130 in the Search box. Click the ''Submit a Formal Comment'' or ''Comment'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Dayv Lowry, NMFS West Coast Region Lacey Field Office, 1009 College St. SE, Lacey, WA 98503, USA.

Instructions: NMFS may not consider comments sent by any other method, to any other address or individual, or received after the end of the comment period. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

The proposed rule and supporting documents are available in the docket for the proposed rule at *www.regulations.gov,* and on the NMFS website at *https://www.fisheries.noaa.gov/species/sunflower-sea-star#conservation-management.*

FOR FURTHER INFORMATION CONTACT: Sadie Wright, NMFS Alaska Region, (907) 586–7630, *sadie.wright@noaa.gov;* or Dayv Lowry, NMFS West Coast Region, (253) 317–1764, *david.lowry@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On August 18, 2021, we received a petition from the Center for Biological Diversity to list the sunflower sea star (*Pycnopodia helianthoides*) as a

threatened or endangered species under the ESA. On December 27, 2021, we published a positive 90-day finding (86 FR 73230, December 27, 2021) announcing that the petition presented substantial scientific or commercial information indicating that the petitioned action may be warranted. We also announced the initiation of a status review of the species, as required by section 4(b)(3)(A) of the ESA, and requested information to inform the agency's decision on whether this species warrants listing as threatened or endangered. We completed a comprehensive status review for the sunflower sea star. Based on the best scientific and commercial information available (including the draft status review report), and after taking into account efforts being made to protect the species, we determined that the sunflower sea star is likely to become an endangered species within the foreseeable future throughout its range. Therefore, on March 16, 2023, we proposed to list the sunflower sea star as a threatened species under the ESA. The proposed rule opened a public comment period through May 15, 2023.

Public Hearings

We will hold two in-person public hearings, with associated conference calls, to accept comments on the proposed rule to list the sunflower sea star as threatened under the ESA on the dates and at the times listed above (see **ADDRESSES** and **DATES**). Please see the Public Comments Solicited section of the March 16, 2023, proposed rule regarding the types of information and data we particularly seek (88 FR 16212).

During each public hearing, NMFS will provide a brief opening presentation on the proposed ESA-listing rule before accepting public testimony for the record. The hearings will be recorded for the purpose of preparing transcripts of oral comments received. Attendees will be asked to identify themselves before giving testimony in-person or before joining the hearing via teleconference. For the teleconference, once connected to the call, telephone lines will be automatically muted. During the public testimony portion of the hearing, the teleconference moderator will ask participants if they have comments. The teleconference moderator will inform participants with comments when it is their turn to comment. When it is your turn to offer your comment, the moderator will unmute your individual line. Commenters will be asked to state their full name and the identity of any organization on whose behalf they may be speaking. In the event that attendance at the public hearings is large, the time allotted for each commenter may be limited.

Anyone wishing to make an oral statement at the public hearing is encouraged to also submit a written copy of their statement to us during the comment period by either of the methods identified above (see **ADDRESSES** and **DATES**). There are no limits on the length of written comments submitted to us. Written statements and supporting data and information submitted during the comment period will be considered with the same weight as oral statements provided during the public hearings.

These public hearings are physically accessible to people with disabilities. People needing reasonable accommodations to participate in these hearings should submit a request as soon as possible, and no later than 10 business days before the accommodation is needed, by contacting Sadie Wright (see **FOR FURTHER INFORMATION CONTACT**).

Authority: 16 U.S.C. 1531 *et seq.*

Dated: April 5, 2023.

Angela Somma,

Chief, Endangered Species Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–07437 Filed 4–10–23; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 88, No. 69

Tuesday, April 11, 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

Animal and Plant Health Inspection Service

[Docket No. APHIS–2020–0098]

Pioneer Hi-Bred International, Inc.; Availability of a Draft Plant Pest Risk Assessment and Draft Environmental Assessment for Determination of Nonregulated Status for Insect Resistant and Herbicide-Tolerant Maize

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared a draft plant pest risk assessment and draft environmental assessment regarding a request from Pioneer Hi-Bred International, Inc., seeking a determination of nonregulated status for DP23211 maize (corn), which was developed using genetic engineering for insect resistance to western corn rootworm and contains the gene that codes for the phosphinothricin acetyltransferase protein responsible for tolerance to glufosinate-ammonium herbicides. DP23211 corn also contains the gene that encodes for the phosphomannose isomerase protein, which is used as a selectable marker. We are making these documents available for public review and comment.

DATES: We will consider all comments that we receive on or before May 11, 2023.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Enter APHIS–2020–0098 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–2020–0098, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

The petition, draft environmental assessment, draft plant pest risk assessment, and any comments we receive on this docket may be viewed at *www.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) 7997039 before coming.

Supporting documents for this petition are also available on the APHIS website at *https://www.aphis.usda.gov/aphis/ourfocus/biotechnology/regulatory-processes/petitions/petition-status.*

FOR FURTHER INFORMATION CONTACT: Dr. Alan Pearson, Biotechnology Regulatory Services, APHIS, USDA, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 851–3944; email: *alan.pearson@usda.gov.*

SUPPLEMENTARY INFORMATION:

Under the authority of the plant pest provisions of the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the regulations in 7 CFR part 340, ''Movement of Organisms Modified or Produced Through Genetic Engineering,'' regulate, among other things, the importation, interstate movement, or release into the environment of organisms modified or produced through genetic engineering that are plant pests or pose a plausible plant pest risk.

The petition for nonregulated status described in this notice is being evaluated under the version of the regulations effective at the time that it was received. The Animal and Plant Health Inspection Service (APHIS) issued a final rule, published in the **Federal Register** on May 18, 2020 (85 FR 29790–29838, Docket No. APHIS–2018–0034) [1], revising 7 CFR part 340; however, the final rule is being implemented in phases. The new Regulatory Status Review (RSR) process, which replaces the petition for determination of nonregulated status process, became effective on April 5, 2021, for corn, soybean, cotton, potato, tomato, and alfalfa. The RSR process is effective for all crops as of October 1, 2021. However, ''[u]ntil RSR is available for a particular crop. . .APHIS will continue to receive petitions for determination of nonregulated status for the crop in accordance with the [legacy] regulations at 7 CFR 340.6'' (85 FR 29815). This petition for a determination of nonregulated status is being evaluated in accordance with the regulations at 7 CFR 340.6 (2020) as it was received by APHIS on July 21, 2020.

Pioneer Hi-Bred International (Pioneer) has submitted a petition (APHIS Petition Number 20–203–01p) to APHIS seeking a determination of nonregulated status for DP23211 maize (corn), which was developed using genetic engineering for insect resistance to western corn rootworm and contains the gene that codes for the phosphinothricin acetyltransferase protein responsible for tolerance to glufosinate-ammonium herbicides. DP23211 corn also contains the gene that encodes for the phosphomannose isomerase protein, which is used as a selectable marker. The petition states that DP23211 corn is unlikely to pose a plant pest risk and, therefore, should not be regulated under APHIS' regulations in 7 CFR part 340.

According to our process [2] for soliciting public comment when considering petitions for determination of nonregulated status of organisms developed using genetic engineering, APHIS accepts written comments regarding a petition once APHIS deems the petition complete. On November 3, 2020, APHIS announced in the **Federal Register** [3] (85 FR 69564–69566, Docket No. APHIS–2020–00*98)* the availability of the Pioneer petition for public comment. APHIS solicited comments on

[1] To view the final rule, go to *www.regulations.gov* and enter APHIS–2018–0034 in the Search field.

[2] On March 6, 2012, APHIS published in the **Federal Register** (77 FR 13258–13260, Docket No. APHIS–2011–0129) a notice describing our public review process for soliciting public comments and information when considering petitions for determinations of nonregulated status for organisms developed using genetic engineering. To view the notice, go to *www.regulations.gov* and enter APHIS–2011–0129 in the Search field.

[3] To view the notice, its supporting documents, and the comments that we received, go to *www.regulations.gov* and enter APHIS–2020–0098 in the Search field.

the petition for 60 days ending January 4, 2021.

APHIS received four comments on the petition during the comment period. One comment was from an individual, which stated opposition to biotechnology-derived crops in general. Three comments were received from industry organizations, which generally supported approval of the petition.

After public comments are received on a completed petition, APHIS evaluates those comments and then provides a second opportunity for public involvement in our decision-making process. According to our public review process (see footnote 2), the second opportunity for public involvement follows one of two approaches, as described below.

If APHIS decides, based on its review of the petition and its evaluation and analysis of comments received during the 60-day public comment period on the petition, that the petition involves an organism that raises no substantive new issues, APHIS will follow Approach 1 for public involvement. Under Approach 1, APHIS prepares and announces in the **Federal Register** the availability of APHIS' preliminary regulatory determination along with its draft EA, preliminary finding of no significant impact (FONSI), and its draft plant pest risk assessment (PPRA) for a 30-day public review period. APHIS will evaluate any information received related to the petition and its supporting documents during the 30-day public review period. If APHIS determines that no substantive information has been received that would warrant APHIS altering its preliminary regulatory determination or FONSI, or substantially change the analysis of impacts in the EA, our preliminary regulatory determination will become final and effective upon notification of the public through an announcement on our website. No further **Federal Register** notice will be published announcing the final regulatory determination.

Under Approach 2, if APHIS decides, based on its review of the petition and its evaluation and analysis of comments received during the 60-day public comment period on the petition, that the petition involves an organism that raises substantive new issues, APHIS first solicits written comments from the public on a draft EA and draft PPRA for a 30-day comment period through the publication of a **Federal Register** notice. Then, after reviewing and evaluating the comments on the draft EA and draft PPRA and other information, APHIS will revise the draft PPRA as necessary. It will then prepare a final EA, and based on the final EA, a National Environmental Policy Act (NEPA) decision document (either a FONSI or a notice of intent to prepare an environmental impact statement).

For this petition, we will be following Approach 2.

As part of our decision-making process regarding an organism's regulatory status, APHIS prepared a PPRA to assess the plant pest risk of the organism, and an EA to evaluate potential impacts on the human environment. This will provide the Agency and the public with a review and analysis of any potential environmental impacts that may result if the petition request is approved.

APHIS' draft PPRA compared the pest risk posed by DP23211 corn with that of the unmodified variety from which it was derived. The draft PPRA concluded that DP23211 corn is unlikely to pose an increased plant pest risk compared to the unmodified corn.

The draft EA evaluated potential impacts that may result from the commercial production of DP23211 corn, to include potential impacts on conventional and organic corn production; the acreage and area required for U.S. corn production; agronomic practices and inputs; the physical environment; biological resources; human health and worker safety; animal health and welfare; and socioeconomic impacts. No significant impacts were identified with the production and marketing of DP23211 corn.

The draft EA was prepared in accordance with (1) NEPA, as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

We are making available for a 30-day comment period our draft EA and draft PPRA. These documents are available as indicated under **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** above. Copies of these documents may also be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 5th day of April 2023.

Michael Watson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2023–07569 Filed 4–10–23; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2023–0020]

Notice of Request for Extension of Approval of an Information Collection; Imported Seeds and Screening

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: 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 an extension of approval of an information collection associated with the regulations for the importation of seeds and screenings from Canada into the United States.

DATES: We will consider all comments that we receive on or before June 12, 2023.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Enter APHIS–2023–0020 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–2023–0020, 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 regulations related to the importation of seeds and screenings, contact Mrs. Heather Coady, Senior Regulatory Policy Specialist, PPQ, APHIS, USDA, 4700 River Road Unit 137, Riverdale, MD 20737–1231; (240) 935–1598; *heather.s.coady@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: Imported Seeds and Screenings.

OMB Control Number: 0579–0124.

Type of Request: Extension of approval of an information collection.

Abstract: Under the authority of the Federal Seed Act (FSA) of 1939, as amended (7 U.S.C. 1551 *et seq.*), the U.S. Department of Agriculture regulates the importation and interstate movement of certain agricultural and vegetable seeds and screenings. Title III of the FSA, ''Foreign Commerce,'' requires shipments of imported agricultural and vegetable seeds to be labeled correctly and to be tested for the presence of the seeds of certain noxious weeds as a condition of entry into the United States. The Animal and Plant Health Inspection Service's (APHIS') regulations implementing the provisions of Title III of the FSA are found in 7 CFR part 361.

The regulations in 7 CFR part 361, ''Importation of Seed and Screenings under the Federal Seed Act'' (§§ 361.1 to 361.10, referred to below as the regulations), prohibit or restrict the importation of agricultural seed, vegetable seed, and screenings into the United States. Section 361.7 provides the regulations for special provisions for Canadian-origin seed and screenings, and § 361.8 provides the regulations for the cleaning of imported seed and processing of certain Canadian-origin screenings.

APHIS' Plant Protection and Quarantine program operates a seed analysis program with Canada that allows U.S. companies that import seed for cleaning or processing to enter into compliance agreements with APHIS. This program eliminates the need for sampling shipments of Canadian-origin seed at the U.S.-Canadian border and allows certain seed importers to clean the seed without direct supervision of an APHIS inspector. The program provides a safe and expedited process for the importation of seed and screenings into the United States without posing a plant pest or noxious weed risk.

The seed analysis program involves the use of information collection activities, including a compliance agreement, seed analysis certificate, declaration for importation, container labeling, notification of seed location, a seed return request, seed identity maintenance, documentation for U.S. origin exported seed returned to the United States, written appeal for cancellation of a compliance agreement and request for a hearing, and associated recordkeeping.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities 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

(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 0.36 hours per response.

Respondents: Commercial importers, seed cleaning/processing facility personnel, seed laboratory personnel, and government food inspection agency officials.

Estimated annual number of respondents: 1,153.

Estimated annual number of responses per respondent: 23.

Estimated annual number of responses: 27,041.

Estimated total annual burden on respondents: 9,632 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 5th day of April 2023.

Michael Watson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2023–07571 Filed 4–10–23; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Domestic Sugar Program—2023 Cane Sugar Marketing Allotments and Cane and Beet Processor Allocations

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture (USDA) is issuing this notice to increase the fiscal year 2023 (FY23) overall sugar marketing allotment quantity (OAQ); increase beet and State cane sugar allotments; revise company allocations to sugar beet and sugar cane processors; and reassign beet and cane sugar marketing allocations to raw cane sugar imports already anticipated. These actions apply to all domestic beet and cane sugar marketed for human consumption in the United States from October 1, 2022, through September 30, 2023.

FOR FURTHER INFORMATION CONTACT: Kent Lanclos; telephone, (202) 720–0114; or email, *kent.lanclos@usda.gov.* Individuals who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay Service (both voice and text telephone users can initiate this call from any telephone).

SUPPLEMENTARY INFORMATION: On September 30, 2022, USDA announced the initial FY23 OAQ, which was established at 10,646,250 short tons, raw value, (STRV) equal to 85 percent of the estimated quantity of sugar for domestic human consumption for the fiscal year of 12,525,000 STRV as forecast in the September 2022 World Agricultural Supply and Demand Estimates report (WASDE). The Agricultural Adjustment Act of 1938 (Pub. L. 75–430) requires that 54.35 percent of the OAQ be distributed among beet processors and 45.65 percent be distributed among the sugarcane States and cane processors.

In the March 2023 WASDE release, USDA increased the FY23 estimate of sugar consumption for food use to 12,600,000 STRV. As a result, USDA is increasing the FY23 OAQ to 10,710,000 STRV. The revised beet sector allotment is 5,820,885 STRV (an increase of 34,648) and the revised cane sector allotment is 4,889,115 STRV (an increase of 29,102). The revised beet and cane sector allotments are distributed to individual processors according to statutory formulas as shown in the table below (see the column labeled ''Preliminary Revised Allocation'').

In accordance with section 359e of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1359ee), after evaluating each sugar beet processor's ability to market its full allocation, USDA is transferring FY23 allocations from sugar beet processors with surplus allocation to those with deficit allocation listed in the table below. USDA has also determined

that domestic beet sugar supplies are inadequate to fill the FY23 beet sugar marketing allotment.

In accordance with 7 U.S.C. 1359ee(b)(2), USDA is reassigning 250,000 STRV of the deficit to raw cane sugar imports already anticipated, given the absence of any Commodity Credit Corporation (CCC) stocks of sugar. In the table below, each sugar beet processor's allocation following these changes is shown in the column labeled ''Revised FY23 Allocations'' and the amount of change in each processor's allocation in the column labeled ''Reassigned Amount.''

In accordance with section 7 U.S.C. 1359ee(b)(1), after evaluating each sugarcane processor's ability to market its full allocation, USDA is transferring FY23 allocations from sugarcane processors with surplus allocation to those with deficit allocation in the table below. USDA has also determined that domestic cane sugar supplies are inadequate to fill the FY23 cane sugar marketing allotment.

In accordance with 7 U.S.C. 1359ee(b)(1), USDA is reassigning 500,000 STRV of the deficit to raw cane sugar imports already anticipated, given the absence of any CCC stocks of sugar. In the table, each sugarcane processor's allocation following these changes is shown in the column labeled ''Revised FY23 Allocations'' and the amount of change in each processor's allocation in the column labeled ''Reassigned Amount.''

FY23 Revised Beet and Cane Allotments and Allocations *

[Short tons, raw value]

Distribution	Initial FY23 allocations	Allocation increase	Preliminary revised allocations	Reassigned amount	Revised FY23 allocations
Beet Sugar	5,786,237	34,648	5,820,885	−250,000	5,570,885
Cane Sugar	4,860,013	29,102	4,889,115	−500,000	4,389,115
Total OAQ	10,646,250	63,750	10,710,000	−750,000	9,960,000
Beet Processors Marketing Allocations:					
Amalgamated Sugar	1,238,877	7,418	1,246,296	−52,558	1,193,737
American Crystal Sugar	2,128,113	12,774	2,140,887	−100,973	2,039,915
Michigan Sugar	597,577	3,578	601,155	106,126	707,281
Minn-Dak Farmers Coop	401,848	2,406	404,254	15,500	419,754
So Minn Beet Sugar	780,958	4,676	785,634	−135,040	650,595
Western Sugar	590,415	3,505	593,919	−78,400	515,519
Wyoming Sugar	48,449	290	48,739	−4,655	44,085
Total Beet Sugar	5,786,237	34,648	5,820,885	−250,000	5,570,885
State Cane Sugar Allotments:					
Florida	2,612,146	15,642	2,627,788	−475,313	2,152,475
Louisiana	2,020,789	12,101	2,032,889	102,107	2,134,997
Texas	227,078	1,360	228,438	−126,795	101,643
Total Cane Sugar	4,860,013	29,102	4,889,115	−500,000	4,389,115
Cane Processors Marketing Allocation:					
Florida:					
Florida Crystals	1,075,489	6,440	1,081,929	−309,510	772,420
Growers Coop	469,887	2,814	472,700	−66,443	406,257
U.S. Sugar	1,066,770	6,388	1,073,158	−99,360	973,798
Total Florida	2,612,146	15,642	2,627,788	−475,313	2,152,475
Louisiana:					
LA Sugarcane Products	1,402,896	8,401	1,411,296	52,636	1,463,932
M.A. Patout	617,893	3,700	621,593	49,471	671,065
Total Louisiana	2,020,789	12,101	2,032,889	102,107	2,134,997
Texas:					
Rio Grande Valley	227,078	1,360	228,438	−126,795	101,643

* Numbers may not sum to row or column totals due to rounding.

These FY23 sugar marketing allotment program actions will not prevent any domestic sugarcane or sugar beet processor from marketing all of its FY23 sugar supply. USDA will closely monitor stocks, consumption, imports, and all sugar market and program variables on an ongoing basis and may make further program adjustments during FY23, if needed.

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and USDA civil rights regulations and policies, USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family or parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Individuals who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET

Center at (202) 720–2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay Service (both voice and text telephone users can initiate this call from any telephone). Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint* and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410 or email: *OAC@usda.gov.*

USDA is an equal opportunity provider, employer, and lender.

Zach Ducheneaux,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 2023–07509 Filed 4–10–23; 8:45 am]

BILLING CODE 3411–E2–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–882]

Certain Cold-Rolled Steel Flat Products From the Republic of Korea: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2020

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that Hyundai Steel Co., Ltd., also referred to as Hyundai Steel Company (Hyundai Steel) and POSCO received *de minimis* net countervailable subsidies during the period of review (POR) January 1, 2020, through December 31, 2020, while other producers/exporters of certain cold-rolled steel flat products (cold-rolled steel) from the Republic of Korea (Korea) received countervailable subsidies during the producers/exporters POR.

DATES: Applicable April 11, 2023.

FOR FURTHER INFORMATION CONTACT: Tyler Weinhold or Harrison Tanchuck, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1121 or (202) 482–7421, respectively.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the *Preliminary Results* of this administrative review on October 6, 2022.[1] For a description of the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[2]

Scope of the Order [3]

The merchandise covered by this *Order* is cold-rolled steel. For a complete description of the scope of this *Order, see* the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in interested parties' case briefs are addressed in the Issues and Decision Memorandum accompanying this notice. A list of the issues raised by parties, and to which Commerce responded in the Issues and Decision Memorandum, is provided in appendix I to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (the Act), in September 2022, Commerce conducted an on-site verification of the subsidy information reported by Hyundai Steel.[4] We used standard on-site verification procedures, including an examination of relevant accounting records and original source documents provided by the respondent.

Changes Since the *Preliminary Results*

Based on the results of verification, we made certain changes to Hyundai's countervailable subsidy rate calculations from the *Preliminary Results.*

Methodology

Commerce conducted this review in accordance with section 751(a)(1)(A) of the Act. For each of the subsidy programs found countervailable, we find that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[5] For a description of the methodology underlying all of Commerce's conclusions, *see* the Issues and Decision Memorandum.

Companies Not Selected for Individual Review

The statute and Commerce's regulations do not directly address the countervailing duty (CVD) rates to be applied to companies not selected for individual examination where Commerce limits its examination in an administrative review pursuant to section 777A(e)(2) of the Act. However, Commerce normally determines the rates for non-selected companies in reviews in a manner that is consistent with section 705(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation. Section 777A(e)(2) of the Act provides that ''the individual countervailable subsidy rates determined under subparagraph (A) shall be used to determine the all-others rate under section 705(c)(5) {of the Act}.'' Section 705(c)(5)(A) of the Act states that for companies not investigated, in general, we will determine an all-others rate by weight-averaging the countervailable subsidy rates established for each of the companies individually investigated, excluding zero and *de minimis* rates or any rates based solely on the facts available.

Accordingly, to determine the rate for companies not selected for individual examination, Commerce's practice is to

[1] *See Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review; 2020,* 87 FR 60653 (October 6, 2022) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results and Partial Rescission of the 2020 Administrative Review of the Countervailing Duty Order on Certain Cold-Rolled Steel Products from the Republic of Korea,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See Certain Cold-Rolled Steel Flat Products from Brazil, India, and the Republic of Korea: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order (the Republic of Korea) and Countervailing Duty Orders (Brazil and India),* 81 FR 64436 (September 20, 2016) (*Order*).

[4] *See* Memorandum, ''Verification of the Questionnaire Responses of Hyundai Steel Company,'' dated December 1, 2022.

[5] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

weight average the net subsidy rates for the selected mandatory companies, excluding rates that are zero, *de minimis,* or based entirely on facts available.[6] In this review, we have calculated *de minimis* subsidy rates for each of the mandatory respondents (*i.e.,* Hyundai Steel and POSCO) during the POR. In CVD proceedings where the number of respondents being individually examined has been limited, Commerce has determined that a ''reasonable method'' to use to determine the rate applicable to companies that were not individually examined when all the rates of selected mandatory respondents are zero or *de minimis* or based entirely on facts available*,* is to assign to the non-selected respondents the average of the most recently determined rates for the mandatory respondents (*i.e.,* Hyundai Steel and POSCO) that are not zero, *de minimis,* or based entirely on facts available.[7] However, where a non-selected respondent has its own calculated rate in a prior segment of the proceeding, Commerce has found it appropriate to apply the prior rate that represents the most recently calculated rate for that respondent, unless Commerce determines that prior rate to be obsolete.[8]

We have determined that it is appropriate to assign to the companies subject to the review, but not selected for individual examination, the weighted average of the most recently calculated countervailable subsidy rates that are not zero or *de minimis* rates, or based solely on facts available from the prior review (*i.e., Cold-Rolled Steel from Korea AR 2018 Final Results*), *i.e.,* 1.93 percent.[9] For a list of the companies for which a review was requested and not rescinded, and which were not selected as mandatory respondents or found to be cross-owned with a mandatory respondent, *see* appendix II to this notice.[10]

Recission of Administrative Review, in Part

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party or parties that requested a review withdraw the request within 90 days of the publication date of the notice of initiation of the requested review. As noted above, all requests for administrative review were timely withdrawn for certain companies.[11] Therefore, in accordance with 19 CFR 351.213(d)(1), we are rescinding this administrative review with respect to the companies listed in appendix III.

Final Results of Review [12]

We determine that, for the period January 1, 2020, through December 31, 2020, the following total net countervailable subsidy rates exist:

Producer/exporter	Subsidy rate (percent *ad valorem*)
Hyundai Steel Co., Ltd., also referred to as Hyundai Steel Company [13]	0.27 (*de minimis*).
POSCO [14]	0.20 (*de minimis*).
Non-Selected Companies [15]	1.93.

Disclosure

Commerce intends to disclose the calculations performed for these final results of review within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rate

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(2), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries of subject merchandise in accordance with the final results of this review, for the above-listed companies at the applicable *ad valorem* assessment rates listed. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will

[6] *See, e.g., Certain Pasta from Italy: Final Results of the 13th (2008) Countervailing Duty Administrative Review,* 75 FR 37386, 37387 (June 29, 2010).

[7] *See, e.g., Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review; Calendar Year 2012 and Rescission of Countervailing Duty Administrative Review, in Part,* 79 FR 51140, 51141 (August 27, 2014); and *Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2012,* 79 FR 46770 (August 11, 2014), and accompanying Issues and Decision Memorandum (IDM), at ''Non-Selected Rate''; and *Steel Concrete Reinforcing Bar from the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review and Intent To Rescind the Review in Part; 2017,* 85 FR 3030 (January 17, 2020), and accompanying PDM, at ''Non-Selected Rate,'' unchanged in *Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2017,* 85 FR 42353 (July 14, 2020), and accompanying IDM, at ''Non-Selected Rate.''

[8] *Id.*

[9] *See Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2018,* 86 FR 40465 (July 28, 2021) (*Cold-Rolled Steel from Korea AR 2018 Final Results*).

[10] In these final results, we are correcting the *Preliminary Results,* at appendix II, to remove 41 companies for which all requests for administrative review were timely withdrawn. *See* appendix II of this notice. In addition, we identify these same 41 companies in appendix III, ''List of Rescinded Companies.'' *See* appendix III.

[11] Commerce received timely withdrawal of requests for administrative review from KG Dongbu Steel Co., Ltd. (KG Dongbu Steel), Dongbu Steel, and Dongbu Incheon Steel, as well as from Nucor Corporation, Cleveland-Cliffs Inc., Steel Dynamics Inc., and United States Steel Corporation (collectively, the petitioners). *See* KG Dongbu Steel, Dongbu Steel, and Dongbu Incheon Steel's Letter, ''Withdrawal of Administrative Review Request,'' dated January 26, 2022; *see also* Petitioner's Letter, ''Partial Withdrawal of Request for Administrative Review,'' dated February 3, 2022.

[12] Dongbu Steel/Dongbu Incheon Steel and the corresponding 9.18 percent subsidy rate listed in the *Preliminary Results* have been removed for these final results, as we are rescinding this review with respect to these companies.

[13] As discussed in the *Preliminary Results* PDM, Commerce has found the following company to be cross-owned with Hyundai Steel: Hyundai Green Power Co. Ltd.

[14] As discussed in the *Preliminary Results* PDM, Commerce has found the following companies to be cross-owned with POSCO: Pohang Scrap Recycling Distribution Center Co. Ltd.; POSCO Chemical; POSCO M-Tech; POSCO Nippon Steel RHF Joint Venture Co., Ltd.; POSCO Terminal, and POSCO Steel Processing and Service. In the *Preliminary Results,* POSCO Steel Processing and Service was omitted from the list of companies that are cross-owned with POSCO. The subsidy rate applies to all cross-owned companies. We note that POSCO has an affiliated trading company through which it exported certain subject merchandise, POSCO International Corporation (POSCO International). POSCO International was not selected as a mandatory respondent but was examined in the context of POSCO. Therefore, we are not establishing a rate for POSCO International and POSCO International's subsidies are accounted for in POSCO's total subsidy rate. Instead, entries of subject merchandise exported by POSCO International will receive the rate of the producer listed on the entry form with U.S. Customs and Border Protection. Thus, the subsidy rate applied to POSCO and POSCO's cross-owned affiliated companies is also applied to POSCO International for entries of merchandise produced by POSCO.

[15] *See* appendix II.

direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Rates

In accordance with section 751(a)(1) of the Act, Commerce intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown for each of the respective companies listed above on shipments of the subject merchandise entered, or withdrawn from warehouse for consumption on or after the date of publication of the final results of this administrative review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposits, effective upon the publication of the final results of this review, shall remain in effect until further notice.

Administrative Protective Order

This notice also serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

These final results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

Dated: April 4, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Period of Review
V. Subsidies Valuation Information
VI. Analysis of Programs
VII. Discussion of Comments
  Comment 1: Whether the Provision of Carbon Emissions Permits is Countervailable
  Comment 2: Whether the Provision of Port Usage Rights at the Port of Incheon is Countervailable
  Comment 3: Whether Hyundai Green Power is Cross-Owned With Hyundai Steel
  Comment 4: Whether POSCO Chemicals' Local Tax Exemptions Under Restriction of Special Local Taxation Act Article 78 Are Tied to Non-Subject Merchandise
  Comment 5: Whether POSCO Steel Processing Service's Local Tax Exemptions under Restriction of Special Local Taxation Act Article 57–2 Constitute a Financial Contribution and a Benefit
  Comment 6: Whether Quota and Tariff Import Duty Exemptions Received On Items Are Tied to Non-Subject Merchandise
  Comment 7: Whether Commerce May Rely on Information Submitted by the Government of Korea and POSCO that Commerce Did Not Verify
  Comment 8: Whether Electricity is Subsidized by the Government of Korea
  Comment 9: Whether Draft Customs Instructions Issued by Commerce Require Revisions
VIII. Recommendation

Appendix II

List of Non-Selected Companies

1. Hyundai Group
2. POSCO C&C Co., Ltd.
3. POSCO Daewoo Corp.
4. POSCO International Corporation

Appendix III

List of Rescinded Companies

1. AJU Steel Co., Ltd.
2. Amerisource Korea
3. Amerisource International
4. BC Trade
5. Busung Steel Co., Ltd.
6. Cenit Co., Ltd.
7. Daewoo Logistics Corp.
8. Dai Yang Metal Co., Ltd.
9. DK GNS Co., Ltd
10. Dongbu Incheon Steel Co., Ltd.
11. Dongbu Steel Co., Ltd.
12. KG Dongbu Steel Co., Ltd. [16]
13. Dong Jin Machinery
14. Dongkuk Industries Co., Ltd.
15. Dongkuk Steel Mill Co., Ltd.
16. Eunsan Shipping and Air Cargo Co., Ltd.
17. Euro Line Global Co., Ltd.
18. Golden State Corp.
19. GS Global Corp.
20. Hanawell Co., Ltd.
21. Hankum Co., Ltd.
22. Hyosung TNC Corp.
23. Hyuk San Profile Co., Ltd.
24. Iljin NTS Co., Ltd.
25. Iljin Steel Corp.
26. Jeen Pung Industrial Co., Ltd.
27. JT Solution
28. Kolon Global Corporation
29. Nauri Logistics Co., Ltd.
30. Okaya (Korea) Co., Ltd.
31. PL Special Steel Co., Ltd.
32. Samsung C&T Corp.
33. Samsung STS Co., Ltd.
34. SeAH Steel Corp.
35. SM Automotive Ltd.
36. SK Networks Co., Ltd.
37. Taihan Electric Wire Co., Ltd.
38. TGS Pipe Co., Ltd.
39. TI Automotive Ltd.
40. Xeno Energy
41. Young Steel Co., Ltd.

[FR Doc. 2023–07537 Filed 4–10–23; 8:45 am]

BILLING CODE 3510–DS–P

[16] *See Preliminary Results* at appendix II; *see also Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 61121 (November 5, 2021) (*Initiation Notice*); *Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2019,* 87 FR 20821 (April 8, 2022) (*Cold-Rolled Steel from Korea AR 2019 Final Results*), and accompanying IDM, at Comment 8. Appendix II of the *Preliminary Results* lists company name ''KG Dongbu Steel Co., Ltd. (formerly Dongbu Steel Co., Ltd.).'' The company name should be amended, per the *Initiation Notice* and *Cold-Rolled Steel from Korea AR 2019 Final Results* IDM at Comment 8, to delete ''(formerly Dongbu Steel Co., Ltd.).'' ''KG Dongbu Steel Co., Ltd.'' and ''Dongbu Steel Co., Ltd.'' are listed separately here.

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 99–15A05]

Export Trade Certificate of Review

ACTION: Notice of Application To Amend the Export Trade Certificate of Review Issued to California Almond Export Association, LLC, Application No. 99–15A05.

SUMMARY: The Secretary of Commerce, through the Office of Trade and Economic Analysis (''OTEA'') of the International Trade Administration, received an application for an amended Export Trade Certificate of Review (''Certificate''). This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Joseph Flynn, Director, OTEA, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number) or email at *etca@trade.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) (''the Act'') authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. The regulations implementing Title III are found at 15 CFR part 325. OTEA is issuing this notice pursuant to 15 CFR 325.6(a), which requires the Secretary of

Commerce to publish a summary of the application in the **Federal Register**, identifying the applicant and each member and summarizing the proposed export conduct for which certification is sought.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked as privileged or confidential business information will be deemed to be nonconfidential.

Written comments should be sent to *etca@trade.gov.* An original and two (2) copies should also be submitted no later than 20 days after the date of this notice to Office of Trade and Economic Analysis, International Trade Administration, U.S. Department of Commerce, Room 21028, Washington, DC 20230.

Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the amended Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 99–15A05.''

Summary of the Application

Applicant: California Almond Export Association, LLC (''CAEA'')
Contacts: Jared Smith (Officer, CAEA); Michael Willemse (CPA, Wahl, Willemse & Wilson, LLP)
Application No.: 99–15A05
Date Deemed Submitted: March 29, 2023
Proposed Amendment: CAEA seeks to amend its Certificate as follows:

1. Removing the following Member:
   - Baldwin-Minkler Farms (Orland, CA)
2. Changing the names of the following Members:
   - Fair Trade Corner, Inc. (Chico, CA) is now Farmer's International, Inc. (Chico, CA)
   - Nutco, LLC d.b.a. Spycher Brothers (Turlock, CA) is now Nutco, LLC d.b.a. Spycher Brothers—Select Harvest (Turlock, CA)
3. Correcting the name of the following Member:
   - VF Marking Corporation DBA Vann Family Orchards (Williams, CA) is now VF Marketing Corporation DBA Vann Family Orchards (Williams, CA)

CAEA's proposed amendment of its Certificate would result in the following Members list:

Almonds California Pride, Inc., Caruthers, CA
Bear Republic Nut, Chico, CA
Blue Diamond Growers, Sacramento, CA
Campos Brothers, Caruthers, CA
Chico Nut Company, Chico, CA
Del Rio Nut Company, Livingston, CA
Farmer's International, Inc., Chico, CA
Fisher Nut Company, Modesto, CA
Hilltop Ranch, Inc., Ballico, CA
Hughson Nut, Inc., Hughson, CA
JSS Almonds, LLC, Bakersfield, CA
Mariani Nut Company, Winters, CA
Nutco, LLC d.b.a. Spycher Brothers—Select Harvest, Turlock, CA
Pearl Crop, Inc., Stockton, CA
P–R Farms, Inc., Clovis, CA
Roche Brothers International Family Nut Co., Escalon, CA
RPAC, LLC, Los Banos, CA
South Valley Almond Company, LLC, Wasco, CA
Stewart & Jasper Marketing, Inc., Newman, CA
SunnyGem, LLC, Wasco, CA
VF Marketing Corporation DBA Vann Family Orchards, Williams, CA
Western Nut Company, Chico, CA
Wonderful Pistachios & Almonds, LLC, Los Angeles, CA

Dated: April 5, 2023.

Joseph Flynn,

Director, Office of Trade and Economic Analysis, International Trade Administration, U.S. Department of Commerce.

[FR Doc. 2023–07522 Filed 4–10–23; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) has received requests to conduct administrative reviews of various antidumping duty (AD) and countervailing duty (CVD) orders with February anniversary dates. In accordance with Commerce's regulations, we are initiating those administrative reviews.

DATES: Applicable April 11, 2023.

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION:

Background

Commerce has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various AD and CVD orders with February anniversary dates.

All deadlines for the submission of various types of information, certifications, or comments or actions by Commerce discussed below refer to the number of calendar days from the applicable starting time.

Notice of No Sales

With respect to antidumping administrative reviews, if a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review (POR), it must notify Commerce within 30 days of publication of this notice in the **Federal Register**. All submissions must be filed electronically at *https://access.trade.gov,* in accordance with 19 CFR 351.303.[1] Such submissions are subject to verification, in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act). Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy must be served on every party on Commerce's service list.

Respondent Selection

In the event Commerce limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the POR. We intend to place the CBP data on the record within five days of publication of the initiation notice and to make our decision regarding respondent selection within 35 days of publication of the initiation **Federal Register** notice. Comments regarding the CBP data and respondent selection should be submitted within seven days after the placement of the CBP data on the record of this review. Parties wishing to submit rebuttal comments should submit those comments within five days after the deadline for the initial comments.

In the event Commerce decides it is necessary to limit individual

[1] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act, the following guidelines regarding collapsing of companies for purposes of respondent selection will apply. In general, Commerce has found that determinations concerning whether particular companies should be ''collapsed'' (*e.g.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this AD proceeding (*e.g.,* investigation, administrative review, new shipper review, or changed circumstances review). For any company subject to this review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, Commerce will not collapse companies for purposes of respondent selection.

Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value (Q&V) Questionnaire for purposes of respondent selection, in general, each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where Commerce considered collapsing that entity, complete Q&V data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that Commerce may extend this time if it is reasonable to do so. Determinations by Commerce to extend the 90-day deadline will be made on a case-by-case basis.

Deadline for Particular Market Situation Allegation

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of a particular market situation (PMS) for purposes of constructed value under section 773(e) of the Act.[2] Section 773(e) of the Act states that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(2)(v) set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of initial responses to section D of the questionnaire.

Separate Rates

In proceedings involving non-market economy (NME) countries, Commerce begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is Commerce's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, Commerce analyzes each entity exporting the subject merchandise. In accordance with the separate rates criteria, Commerce assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a Separate Rate Application or Certification, as described below. For these administrative reviews, in order to demonstrate separate rate eligibility, Commerce requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on Commerce's website at *https://access.trade.gov/Resources/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the ''Instructions for Filing the Certification'' in the Separate Rate Certification. Separate Rate Certifications are due to Commerce no later than 30 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding[3] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,[4] should

[2] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

[3] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (*e.g.,* an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently completed segment of the proceeding in which they participated.

[4] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding

timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Application will be available on Commerce's website at *https://access.trade.gov/Resources/nme/nme-sep-rate.html* on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Application, refer to the instructions contained in the application. Separate Rate Applications are due to Commerce no later than 30 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

Exporters and producers must file a timely Separate Rate Application or Certification if they want to be considered for individual examination. Furthermore, exporters and producers who submit a Separate Rate Application or Certification and subsequently are selected as mandatory respondents will no longer be eligible for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents.

Initiation of Reviews

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following AD and CVD orders and findings. We intend to issue the final results of these reviews not later than February 28, 2024.[5]

	Period to be reviewed
AD Proceedings	
INDIA: Certain Frozen Warmwater Shrimp, A–533–840	2/1/22–1/31/23
Abad Fisheries; Abad Fisheries Pvt. Ltd.	
Accelerated Freeze Drying Co., Ltd.	
ADF Foods Ltd.	
Akshay Food Impex Private Limited	
Alashore Marine Exports (P) Ltd.	
Albys Agro Private Limited	
Al-Hassan Overseas Private Limited	
Allana Frozen Foods Pvt. Ltd.	
Allanasons Ltd.	
Alpha Marine	
Alps Ice & Cold Storage Private Limited	
Amaravathi Aqua Exports Private Ltd.	
Amarsagar Seafoods Private Limited	
Amulya Seafoods	
Ananda Enterprises (India) Private Limited	
Ananda Aqua Applications; Ananda Aqua Exports (P) Limited; Ananda Foods	
Anantha Seafoods Private Limited	
Anjaneya Seafoods	
Apex Frozen Foods Limited	
Aquatica Frozen Foods Global Pvt. Ltd.	
Arya Sea Foods Private Limited	
Asvini Agro Exports	
Asvini Fisheries Ltd.; Asvini Fisheries Private Ltd.	
Avanti Frozen Foods Private Limited	
Ayshwarya Sea Food Private Limited	
B R Traders	
Baby Marine Eastern Exports	
Baby Marine Exports	
Baby Marine International	
Baby Marine Sarass	
Baby Marine Ventures	
Balasore Marine Exports Private Limited	
Basu International	
BB Estates & Exports Private Limited	
Bell Foods (Marine Division); Bell Exim Private Limited (Bell Foods (Marine Divison)); Bhatsons Aquatic Products	
Bhavani Seafoods	
Bhimraj Exports Private Limited	
Bijaya Marine Products	
Blue-Fin Frozen Foods Private Limited	
Blue Water Foods & Exports P. Ltd.	
Bluepark Seafoods Pvt. Ltd.	
BMR Exports; BMR Exports Private Limited	
BMR Industries Private Limited	
B-One Business House Pvt. Ltd.	
Britto Seafood Exports Pvt Ltd.; Britto Exports; Britto Exports Pvt Ltd.	
C.P. Aquaculture (India) Pvt. Ltd.	
Calcutta Seafoods Pvt. Ltd.; Bay Seafood Pvt. Ltd.; Elque & Co.	
Canaan Marine Products	
Capithan Exporting Co.	

new trade names may be submitted via a Separate Rate Certification.

[5] In the notice of *Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 88 FR 15642 (March 14, 2023) for AD and CVD orders with January anniversary dates, Commerce inadvertently listed January 31, 2023, as the intended final results issuance date. Commerce hereby clarifies that this date should have been identified as January 31, 2024.

	Period to be reviewed
Cargomar Private Limited	
Castlerock Fisheries Ltd.	
Chakri Fisheries Private Limited	
Chemmeens (Regd)	
Cherukattu Industries (Marine Div); Cherukattu Industries	
Choice Canning Company	
Choice Trading Corporation Pvt. Ltd.	
Coastal Aqua Private Limited	
Coastal Corporation Ltd.	
Cochin Frozen Food Exports Pvt. Ltd.	
Cofoods Processors Private Limited	
Continental Fisheries India Private Limited	
Coreline Exports	
Corlim Marine Exports Private Limited	
CPF (India) Private Limited	
Crystal Sea Foods Private Limited	
Danica Aqua Exports Private Limited	
Datla Sea Foods	
Deepak Nexgen Foods and Feeds Pvt. Ltd.	
Delsea Exports Pvt. Ltd.	
Devi Fisheries Limited; Satya Seafoods Private Limited; Usha Seafoods; Devi Aquatech Private Limited	
Devi Marine Food Exports Private Ltd.; Kader Exports Private Limited; Kader Investment and Trading Company Private Limited; Liberty Frozen Foods Private Limited; Liberty Oil Mills Limited; Premier Marine Products Private Limited; Universal Cold Storage Private Limited [6]	
Devi Sea Foods Limited [7]	
DSF Aquatech Private Limited	
Dwaraka Sea Foods	
Empire Industries Limited	
Entel Food Products Private Limited	
Esmario Export Enterprises	
Everblue Sea Foods Private Limited	
Falcon Marine Exports Limited; KR Enterprises	
Febin Marine Foods Private Limited; Febin Marine Foods	
Fedora Sea Foods Private Limited	
Five Star Marine Exports Private Limited	
Food Products Pvt., Ltd.; Parayil Food Products Pvt., Ltd.	
Forstar Frozen Foods Pvt. Ltd.	
Fouress Food Products Private Limited	
Frontline Exports Pvt. Ltd.	
G A Randerian Ltd.; G A Randerian (P) Limited	
Gadre Marine Exports; Gadre Marine Exports Pvt. Ltd.	
Galaxy Maritech Exports P. Ltd.	
Geo Aquatic Products (P) Ltd.	
Geo Seafoods	
Godavari Mega Aqua Food Park Private Limited	
Grandtrust Overseas (P) Ltd.	
Green Asia Impex Private Limited	
Growel Processors Private Limited	
GVR Exports Pvt. Ltd.	
Hari Marine Private Limited	
Haripriya Marine Exports Pvt. Ltd.	
High Care Marine Foods Exports Private Limited	
HIC ABF Special Foods Pvt. Ltd.	
Highland Agro	
Hiravati Exports Pvt. Ltd.	
Hiravati International Pvt. Ltd.	
Hiravati Marine Products Private Limited	
HMG Industries Ltd.	
HN Indigos Private Limited	
HT Foods Private Limited	
Hyson Exports Private Limited	
Hyson Logistics and Marine Exports Private Limited	
IFB Agro Industries Limited	
Indian Aquatic Products	
Indo Aquatics	
Indo Fisheries	
Indo French Shellfish Company Private Limited	
International Freezefish Exports	
ITC Ltd.	
Jagadeesh Marine Exports	
Jaya Lakshmi Sea Foods Pvt. Ltd.	
Jinny Marine Traders	
Jude Foods India Private Limited	

	Period to be reviewed
K.V. Marine Exports	
The Kadalkanny Group; Diamond Seafoods Exports; Edhayam Frozen Foods Pvt. Ltd.; Kadalkanny Frozen Foods; Theva & Company	
Kalyan Aqua & Marine Exp. India Pvt. Ltd.	
Karunya Marine Exports Private Limited	
Kaushalya Aqua Marine Product Exports Pvt. Ltd.	
Kay Kay Exports; Kay Kay Foods	
Kings Infra Ventures Limited	
Kings Marine Products	
KNC Agro Limited; KNC AGRO PVT. LTD.	
Koluthara Exports Ltd.	
Libran Foods	
Lito Marine Exports Private Limited	
LNSK Greenhouse Agro Products LLP	
Magnum Export; Magnum Exports Pvt. Ltd.	
Magnum Sea Foods Limited; Magnum Estates Limited; Magnum Estates Private; Magnum Estates Private Limited Mangala Marine Exim India Pvt. Ltd.	
Mangala Sea Products	
Mangala Seafoods; Mangala Sea Foods	
Marine Harvest India	
Megaa Moda Pvt. Ltd.	
Milesh Marine Exports Private Limited	
Milsha Agro Exports Pvt. Ltd.	
Milsha Sea Products	
Minaxi Fisheries Private Limited	
Mindhola Foods LLP	
Minh Phu Group	
MMC Exports Limited	
Monsun Foods Pvt. Ltd.	
Mourya Aquex Pvt. Ltd.	
MTR Foods	
Munnangi Seafoods (Pvt) Ltd.	
Naga Hanuman Fish Packers	
Naik Frozen Foods Private Limited; Naik Frozen Foods	
Naik Oceanic Exports Pvt. Ltd.; Rafiq Naik Exports Pvt. Ltd.	
Naik Seafoods Ltd.	
Naq Foods India Private Limited	
NAS Fisheries Pvt. Ltd.	
Neeli Aqua Private Limited	
Nekkanti Mega Food Park Private Limited	
Nekkanti Sea Foods Limited	
Nezami Rekha Sea Foods Private Limited; Nezami Rekha Sea Food Private Limited	
Nila Sea Foods Exports; Nila Sea Foods Pvt. Ltd.	
Nine Up Frozen Foods	
N.K. Marine Exports LLP	
Nutrient Marine Foods Limited	
Oceanic Edibles International Limited	
Orchid Marine Exports Private Limited	
Paragon Sea Foods Pvt. Ltd.	
Paramount Seafoods	
Pasupati Aquatics Private Limited	
Penver Products (P) Ltd.	
Pesca Marine Products Pvt., Ltd.	
Poyilakada Fisheries Private Limited	
Pijikay International Exports P Ltd.	
Pravesh Seafood Private Limited	
Premier Exports International	
Premier Marine Foods	
Premier Seafoods Exim (P) Ltd.	
Protech Organo Foods Private Limited	
R V R Marine Products Private Limited	
Raju Exports	
Rajyalaksmi Marine Exports	
Ram's Assorted Cold Storage Limited	
Raunaq Ice & Cold Storage	
Razban Seafoods Ltd.	
RDR Exports	
RF Exports Private Limited	
Rising Tide	
Riyarchita Agro Farming Private Limited	
Royal Imports and Exports	
Royale Marine Impex Pvt. Ltd.	
RSA Marines; Royal Oceans	

	Period to be reviewed
Rupsha Fish Private Limited	
S Chanchala Combines	
S.A. Exports	
Safera Food International	
Sagar Grandhi Exports Pvt. Ltd.	
Sagar Samrat Seafoods	
Sahada Exports	
Sai Aquatechs Private Limited	
Sai Marine Exports Pvt. Ltd.	
Sai Sea Foods	
Salet Seafoods Pvt. Ltd.	
Samaki Exports Private Limited	
Sanchita Marine Products Private Limited	
Sandhya Aqua Exports Pvt. Ltd.; Sandhya Aqua Exports	
Sandhya Marines Limited	
Sassoondock Matsyodyog Sahakari Society Ltd.	
Sea Doris Marine Exports	
Sea Foods Private Limited	
Seagold Overseas Pvt. Ltd.	
Seasaga Enterprises Private Limited; Seasaga Group	
Sharat Industries Ltd.	
Shimpo Exports Private Limited	
Shimpo Seafoods Private Limited	
Shiva Frozen Food Exp. Pvt. Ltd.	
Shree Datt Aquaculture Farms Pvt. Ltd.	
Shroff Processed Food & Cold Storage P Ltd.	
Sigma Seafoods	
Silver Seafood	
Sita Marine Exports	
Sonia Fisheries	
Sonia Marine Exports Private Limited	
Southern Tropical Foods Pvt. Ltd.	
Sprint Exports Pvt. Ltd	
Sreeragam Exports Private Limited	
Sri Sakkthi Cold Storage	
Srikanth International	
SSF Ltd.	
St. Peter & Paul Sea Food Exports Pvt. Ltd.	
Star Agro Marine Exports Private Limited	
Star Organic Foods Private Limited	
Stellar Marine Foods Private Limited	
Sterling Foods	
Summit Marine Exports Private Limited	
Sun Agro Exim	
Sunrise Seafoods India Private Limited	
Supran Exim Private Limited	
Suryamitra Exim Pvt. Ltd.	
Suvarna Rekha Exports Private Limited	
Suvarna Rekha Marines P Ltd.	
TBR Exports Private Limited	
Tej Aqua Feeds Private Limited	
Teekay Marines Private Limited; Teekay Marine P. Ltd.	
The Waterbase Limited	
Torry Harris Seafoods Ltd.	
Triveni Fisheries P Ltd.	
U & Company Marine Exports	
Ulka Sea Foods Private Limited	
Uniloids Biosciences Private Limited	
Uniroyal Marine Exports Ltd.	
Unitriveni Overseas Private Limited; Unitriveni Overseas	
V V Marine Products	
Vaisakhi Bio-Marine Private Limited	
Vasai Frozen Food Co.	
Vasista MarineVeerabhadra Exports Private Limited	
Veronica Marine Exports Private Ltd.	
Victoria Marine & Agro Exports Ltd.	
Varma Marine	
Vinner Marine	
Vitality Aquaculture Pvt. Ltd.	
VKM Foods Private Limited	
VRC Marine Foods LLP	
Wellcome Fisheries Limited	
West Coast Fine Foods (India) Private Limited	

	Period to be reviewed
West Coast Frozen Foods Private Limited	
Z.A. Sea Foods Pvt. Ltd.	
Zeal Aqua Limited	
INDIA: Stainless Steel Bar, A–533–810	2/1/22–1/31/23
Aamor Inox Limited	
Astrabite LLP	
Laxcon Steels Limited	
Ocean Steels Private Limited	
Metlax International Private Limited	
Parvati Private Limited	
Mega Steels Private Limited	
Venus Wire Industries Pvt. Ltd.; Precision Metals; Hindustan Inox Ltd.; Sieves Manufacturers (India) Pvt. Ltd.	
MALAYSIA: Stainless Steel Butt-Weld Pipe Fittings, A–557–809	2/1/22–1/31/23
Pantech Stainless & Alloy Industries Sdn. Bhd.	
Statewell Co., Ltd.	
MEXICO: Large Residential Washers, A–201–842	2/1/22–1/31/23
De C.V. Electrolux Home Products Inc.	
Electrolux Home Products De Mexico, S.A.	
Electrolux Home Products, Corp. NV	
REPUBLIC OF KOREA: Certain Cut-To-Length Carbon-Quality Steel Plate Products, A–580–836	2/1/22–1/31/23
BDP International	
Dongkuk Steel Mill Co., Ltd.	
Hyundai Steel Company	
Sung Jin Steel Co., Ltd.	
SOCIALIST REPUBLIC OF VIETNAM: Certain Frozen Warmwater Shrimp, A–552–802 [8]	2/1/22–1/31/23
AFoods	
Amanda Seafood Co., Ltd.	
An Nguyen Investment Production and Group	
Anh Khoa Seafood	
Anh Minh Quan Corp.	
APT Co.	
Au Vung One Seafood	
Bac Lieu Fis	
Bac Lieu Fisheries Joint Stock Company	
Bentre Forestry and Aquaproduct Import-Export Joint Stock Company	
Bentre Seafood Joint Stock Company	
Beseaco	
Bien Dong Seafood Co., Ltd.	
BIM Foods Joint Stock Company	
Binh Dong Fisheries Joint Stock Company	
Binh Thuan Import-Export Joint Stock Company	
Blue Bay Seafood Co., Ltd.	
C.P. Vietnam Corporation	
Ca Mau Seafood Joint Stock Company	
Cadovimex	
Cadovimex II Seafood Import Export and Processing Joint Stock Company	
Cadovimex Seafood Import-Export and Processing Joint Stock Company	
Cafatex Fishery Joint Stock Corporation	
CAFISH	
Camau Frozen Seafood Processing Import Export Corporation	
Camau Seafood Processing and Service Joint Stock Corporation	
Camimex	
Camimex Foods Joint Stock Company	
Camimex Group	
Camimex Group Joint Stock Company [9]	
Cantho Import Export Fishery Limited Company	
Cantho Import Export Seafood Joint Stock Company	
Caseamex	
CASES	
CJ Cau Tre Foods Joint Stock Company	
Coastal Fisheries Development Corporation	
COFIDEC	
Cuu Long Seapro	
Cuulong Seapro	
Cuulong Seaproducts Company	
Dai Phat Tien Seafood Co., Ltd.	
Danang Seafood Import Export	
Danang Seaproducts Import-Export Corporation	
Dong Hai Seafood Limited Company	
Dong Phuong Seafood Co., Ltd.	
Duc Cuong Seafood Trading Co., Ltd.	
Duong Hung Seafood	
FAQUIMEX	

	Period to be reviewed
FFC	
FIMEX VN; Sao Ta Seafood Factory	
Fine Foods Company	
Frozen Seafoods Factory No. 32	
Gallant Dachan Seafood Co., Ltd.	
Gallant Ocean (Vietnam) Co. Ltd.	
Gallant Ocean (Vietnam) Joint Stock Company	
Go Dang Joint Stock Company	
GODACO Seafood	
Green Farms Seafood Joint Stock Company	
Hai Viet Corporation	
Hanh An Trading Service Co., Ltd.	
HAVICO	
Hoang Anh Fisheries Trading Company Limited	
Hong Ngoc Seafood Co., Ltd.	
Hung Bang Company Limited	
Hung Dong Investment Service Trading Co., Ltd.	
HungHau Agricultural Joint Stock Company	
INCOMFISH	
Investment Commerce Fisheries Corporation	
JK Fish Co., Ltd.	
Khang An Foods Joint Stock Company	
Khanh Hoa Seafoods Exporting Company	
Khanh Sung Co., Ltd.	
KHASPEXCO	
Kim Anh	
Kim Anh Company Limited	
Long Toan Frozen Aquatic Products Joint Stock Company	
MC Seafood	
Minh Bach Seafood Company Limited	
Minh Cuong Seafood Import Export Processing Joint Stock Company	
Minh Hai Export Frozen Seafood Processing Joint-Stock Company	
Minh Hai Joint-Stock Seafoods Processing Company	
Minh Hai Jostoco	
Minh Phat Seafood Company Limited [10]	
Minh Phu Hau Giang Seafood [11]	
Minh Phu Seafood Corporation [12]	
Minh Qui Seafood Co., Ltd.[13]	
Nam Hai Foodstuff and Export Company Ltd.	
Nam Phuong Foods Import Export Company Limited	
Nam Viet Seafood Import Export Joint Stock Company	
Namcan Seaproducts Import Export Joint Stock Company	
NAVIMEXCO	
New Generation Seafood Joint Stock Company	
New Wind Seafood Company Limited	
Ngoc Tri	
Ngoc Tri Seafood Joint Stock Company	
Ngoc Trinh Bac Lieu Seafood Co., Ltd.	
Nguyen Chi Aquatic Product Trading Company Limited	
Nha Trang Seafoods—F.89 Joint Stock Company	
Nha Trang Seaproduct Company	
Nhat Duc Co., Ltd.	
Nigico Co., Ltd.	
NT Seafoods Corporation	
NTSF Seafoods Joint Stock Company	
Phuong Nam Foodstuff Corp.	
QAIMEXCO	
QNL Company Limited	
QNL One Member Company	
Quang Minh Seafood Co., Ltd	
Quoc Ai Seafood Processing Import Export Co., Ltd.	
Quoc Toan PTE	
Quoc Toan Seafood Processing Factory	
Quoc Viet Seaproducts Processing Trade and Import-Export Co., Ltd.	
Quoc Viet Seaproducts Processing Trading and Import-Export Co., Ltd.	
Quy Nhon Frozen Seafoods Joint Stock Company	
Safe And Fresh Aquatic Products Joint Stock Company	
Saigon Aquatic Product Trading Joint Stock Company	
Saigon Food Joint Stock Company	
Sao Ta Foods Joint Stock Company	
Saota Seafood Factory	
Sea Minh Hai	
SEADANANG	

	Period to be reviewed
Seafood Direct 2012 One Member Limited	
Seafood Joint Stock Company No. 4	
Seafood Travel Construction Import-Export Joint Stock Company	
Seafoods and Foodstuff Factory	
Seanamico	
Seaprimexco Vietnam	
Seaprodex Minh Hai	
Seaprodex Minh Hai Factory No. 69	
Seaprodex Minh Hai Workshop 1	
Seaprodex Minh Hai-Factory No. 78	
Seaproducts Joint Stock Company	
Seaspimex Vietnam	
Seavina Joint Stock Company	
Simmy Seafood Company Limited	
Soc Trang Seafood Joint Stock Company	
South Ha Tinh Seaproducts Import-Export Joint Stock Company	
South Vina Shrimp—SVS	
Southern Shrimp Joint Stock Company	
Special Aquatic Products Joint Stock Company	
STAPIMEX	
T & P Seafood Company Limited	
T&T Cam Ranh	
Tacvan Frozen Seafood Processing Export Company	
Tacvan Seafoods Company	
Tai Kim Anh Seafood Joint Stock Corporation	
Tai Nguyen Seafood Co., Ltd.	
TAIKA Seafood Corporation	
Tan Phong Phu Seafood Co., Ltd.	
Tan Thanh Loi Frozen Food Co., Ltd.	
Tay Do Seafood Enterprise	
THADIMEXCO	
Thai Hoa Foods Joint Stock Company	
Thai Minh Long Seafood Company Limited	
Thaimex	
Thanh Doan Fisheries Import-Export Joint Stock Company	
Thanh Doan Sea Products Import & Export Processing Joint-Stock Company	
Thanh Doan Seafood Import Export Trading Joint-Stock Company	
The Light Seafood Company Limited	
Thien Phu Export Seafood	
Thinh Hung Co., Ltd.	
Thinh Phu Aquatic Products Trading Co., Ltd.	
Thong Thuan Cam Ranh Seafood Joint Stock Company	
Thong Thuan Company Limited	
Thuan Phuoc Seafoods and Trading Corporation	
Thuan Thien Producing Trading Ltd. Co.	
TPP Co. Ltd.	
Trang Corporation (Vietnam)	
Trang Khanh Seafood Co., Ltd.	
Trong Nhan Seafood Co., Ltd.	
Trung Son Corp.	
Trung Son Seafood Processing Joint Stock Company	
UTXI Aquatic Products Processing Corporation	
UTXICO	
Van Duc Food Company Limited	
Viet Asia Foods Company Limited	
Viet Foods Co. Ltd.	
Viet Hai Seafood Co., Ltd.	
Viet I-Mei Frozen Foods Co., Ltd.	
Viet Phu Foods and Fish Corp.	
Viet Shrimp Corporation	
Vietnam Clean Seafood Corporation	
Vietnam Fish One Co., Ltd.	
VIFAFOOD	
Vina Cleanfood	
Vinh Hoan Corp.	
Vinh Phat Food Joint Stock Company	
XNK Thinh Phat Processing Company	
TAIWAN: Crystalline Silicon Photovoltaic Products, A–583–853	2/1/22–1/31/23
Voyager Photovoltaic Co., Ltd.	
THAILAND: Certain Frozen Warmwater Shrimp, A–549–822	2/1/22–1/31/23
A. Wattanachai Frozen Products Co., Ltd.	
A.P. Frozen Foods Co., Ltd.	
A.S. Intermarine Foods Co., Ltd.	

	Period to be reviewed
Ampai Frozen Food Co., Ltd.	
Anglo-Siam Seafoods Co., Ltd.	
Apitoon Enterprise Industry Co., Ltd.	
Asian Alliance International Co., Ltd.	
Asian Sea Corporation Public Company Limited	
Asian Seafoods Coldstorage PLC	
Asian Seafoods Coldstorage Public Co., Ltd. (A.K.A. Asian Seafoods Coldstorage (Suratthani) Co.)	
Asian Seafoods Coldstorage Public Company Limited	
Asian Star Trading Co., Ltd.	
B.S.A. Food Products Co., Ltd.	
Bright Sea Co., Ltd.; The Union Frozen Products Co., Ltd.[14]	
C N Import Export Co., Ltd.	
C.K. Frozen Fish and Food Co., Ltd.	
C.P. Intertrade Co. Ltd.	
Chaivaree Marine Products Co., Ltd.	
Chanthaburi Frozen Food Co., Ltd.[15]	
Chanthaburi Seafoods Co., Ltd.[16]	
Charoen Pokphand Foods Public Co. Ltd.; CP Merchandising Co., Ltd.[17]	
Chonburi LC	
Commonwealth Trading Co., Ltd.	
CPF Food Products Co., Ltd.	
Crystal Frozen Foods Co., Ltd.	
Daedong (Thailand) Co., Ltd.	
Daiei Taigen (Thailand) Co., Ltd.	
Daiho (Thailand) Co., Ltd.	
Earth Food Manufacturing Co., Ltd.	
F.A.I.T. Corporation Limited	
Far East Cold Storage Co., Ltd.	
Findus (Thailand) Ltd.	
Fortune Frozen Foods (Thailand) Co., Ltd.	
Gallant Ocean (Thailand) Co., Ltd.	
Golden Sea Frozen Foods Co. Ltd.	
Golden Seafood International Co., Ltd.	
Good Fortune Cold Storage Co. Ltd.; Good Fortune Cold Storage Ltd.	
Good Luck Product Co., Ltd.	
Grobest Frozen Foods Co., Ltd.	
Haitai Seafood Co., Ltd.	
Handy International (Thailand) Co., Ltd.	
Heritrade; Heritrade Co., Ltd.	
HIC (Thailand) Co., Ltd.	
I.T. Foods Industries Co., Ltd.	
Inter-Oceanic Resources Co., Ltd.	
Inter-Pacific Marine Products Co., Ltd.	
K & U Enterprise Co., Ltd.	
Kiang Huat Sea Gull Trading Frozen Food Public Co., Ltd.	
KF Foods; KF Foods Limited; Kingfisher Holdings Limited[18]	
Kitchens of the Ocean (Thailand) Company Ltd.; Kitchens of the Ocean (Thailand) Ltd.	
Kongphop Frozen Foods Co., Ltd.	
Kyokuyo Global Seafoods Co., Ltd.	
Lee Heng Seafood Co., Ltd.	
Li-Thai Frozen Foods Co., Ltd.	
Lucky Union Foods Co., Ltd.	
Mahachai Food Processing Co., Ltd.	
Marine Gold Products Ltd.[19]	
May Ao Foods Co., Ltd.; A Foods 1991 Co., Limited[20]	
Merkur Co., Ltd.	
N&N Foods Co., Ltd.	
N.R. Instant Produce Co., Ltd.	
Narong Seafood Co., Ltd.	
Nongmon SMJ Products	
Pacific Fish Processing Co., Ltd.	
Penta Impex Co., Ltd.	
Phatthana Frozen Food Co., Ltd.[21]	
Phatthana Seafood Co., Ltd.[22]	
Premier Frozen Products Co., Ltd.	
Royal Andaman Seafood Co., Ltd.	
S&D Marine Products Co., Ltd.	
S. Chaivaree Cold Storage Co., Ltd.	
S. Khonkaen Food Ind Public; S. Khonkaen Food Industry Public Co., Ltd.	
S.K. Foods (Thailand) Public Co. Limited	
S2K Marine Product Co., Ltd.	
Sea Bonanza Food Co., Ltd.	
Sea Wealth Frozen Food Co., Ltd.[23]	

	Period to be reviewed
Seafresh Fisheries; Seafresh Industry Public Co., Ltd.[24]	
SEAPAC	
Sea-Tech Intertrade Co., Ltd.	
Sethachon Co., Ltd.	
Shianlin Bangkok Co., Ltd.	
Shing-Fu Seaproducts Development Co. Ltd.; Shing Fu Seaproducts Development Co.	
Siam Food Supply Co., Ltd.	
Siam Intersea Co., Ltd.	
Siam Marine Products Co., Ltd.	
Siam Ocean Frozen Foods Co., Ltd.	
The Siam Union Frozen Foods Co., Ltd.; Siam Union Frozen Foods	
Siamchai International Food Co., Ltd.	
Smile Heart Foods Co. Ltd.; Smile Heart Foods	
SMP Food Products Co., Ltd.; SMP Foods Products Co., Ltd.; SMP Products, Co., Ltd.; SMP Food Product Co., Ltd.	
Songkla Canning Public Co., Ltd.	
Southeast Asian Packaging and Canning Ltd.	
Southport Seafood Co., Ltd.; Southport Seafood	
Starfoods Industries Co., Ltd.	
STC Foodpak Ltd.	
Suntechthai Intertrading Co., Ltd.	
Surapon Seafood; Surapon Seafoods Public Co. Ltd; Surat Seafoods Public Co., Ltd.; Surapon Foods Public Co., Ltd.[25]	
Surapon Nichirei Foods Co., Ltd.	
Tep Kinsho Foods Co., Ltd.	
Chaiwarut Company Limited; Chaiwarut Co., Ltd.; Tey Seng Cold Storage Co., Ltd.[26]	
Thai Agri Foods Public Co., Ltd.	
Thai I-Mei Frozen Foods Co., Ltd.[27]	
Thai Ocean Venture Co., Ltd.	
Thai Royal Frozen Food Co., Ltd.	
Thai Spring Fish Co., Ltd.	
Thai Union Group Public Co., Ltd.; Thai Union Seafood Co., Ltd.; Pakfood Public Company Limited; Asia Pacific (Thailand) Co., Ltd.; Chaophraya Cold Storage Co., Ltd.; Okeanos Co., Ltd.; Okeanos Food Co., Ltd.; Takzin Samut Co., Ltd.[28]	
Thai Union Manufacturing Company Limited	
Top Product Food Co., Ltd.	
Trang Seafood Products Public Co., Ltd.	
Unicord Public Co., Ltd.	
Xian-Ning Seafood Co., Ltd.	
Yeenin Frozen Foods Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Certain Frozen Warmwater Shrimp, A–570–893	2/1/22–1/31/23
Allied Kinpacific Food (Dalian) Co.	
Allied Pacific Aquatic Products (Zhanjiang) Co., Ltd./Allied Pacific Food (Dalian) Co., Ltd.[29]	
Anhui Fuhuang Sungem Foodstuff Group Co., Ltd.	
Asian Seafoods (Zhanjiang) Co., Ltd.	
Beihai Anbang Seafood Co., Ltd.	
Beihai Boston Frozen Food Co., Ltd.	
Beihai Evergreen Aquatic Product Science and Technology Company Limited	
Beihai Tianwei Aquatic Food Co. Ltd.	
Changli Luquan Aquatic Products Co., Ltd.	
Chengda Development Co Ltd.	
Colorful Bright Trade Co., Ltd.	
Dalian Beauty Seafood Company Ltd.	
Dalian Changfeng Food Co., Ltd.	
Dalian Guofu Aquatic Products and Food Co., Ltd.	
Dalian Haiqing Food Co., Ltd.	
Dalian Hengtai Foods Co., Ltd.	
Dalian Home Sea International Trading Co., Ltd.	
Dalian Philica International Trade Co., Ltd.	
Dalian Rich Enterprise Group Co., Ltd.	
Dalian Shanhai Seafood Co., Ltd.	
Dalian Sunrise Foodstuffs Co., Ltd.	
Dalian Taiyang Aquatic Products Co., Ltd.	
Dandong Taihong Foodstuff Co., Ltd.	
Dongwei Aquatic Products (Zhangzhou) Co., Ltd.	
Ferrero Food	
Fujian Chaohui Group	
Fujian Chaowei International Trading	
Fujian Dongshan County Shunfa Aquatic Product Co., Ltd	
Fujian Dongwei Food Co., Ltd.	
Fujian Dongya Aquatic Products Co., Ltd.	
Fujian Fuding Seagull Fishing Food Co., Ltd.	
Fujian Haihun Aquatic Product Company	
Fujian Hainason Trading Co., Ltd.	

	Period to be reviewed
Fujian Hongao Trade Development Co.	
Fujian R & J Group Ltd.	
Fujian Rongjiang Import and Export Co., Ltd.	
Fujian Zhaoan Haili Aquatic Co., Ltd.	
Fuqing Chaohui Aquatic Food Co., Ltd.	
Fuqing Dongwei Aquatic Products Industry Co., Ltd.	
Fuqing Longhua Aquatic Food Co., Ltd.	
Fuqing Minhua Trade Co., Ltd.	
Fuqing Yihua Aquatic Food Co., Ltd.	
Gallant Ocean Group	
Guangdong Evergreen Aquatic Food Co., Ltd.	
Guangdong Foodstuffs Import & Export (Group) Corporation	
Guangdong Gourmet Aquatic Products Co., Ltd.	
Guangdong Jinhang Foods Co., Ltd.	
Guangdong Rainbow Aquatic Development	
Guangdong Savvy Seafood Inc.	
Guangdong Shunxin Marine Fishery Group Co., Ltd.	
Guangdong Taizhou Import & Export Trade Co., Ltd.	
Guangdong Universal Aquatic Food Co. Ltd.	
Guangdong Wanshida Holding Corp.	
Guangdong Wanya Foods Fty. Co., Ltd.	
HaiLi Aquatic Product Co., Ltd	
Hainan Brich Aquatic Products Co., Ltd.	
Hainan Golden Spring Foods Co., Ltd.	
Hainan Qinfu Foods Co., Ltd.	
Hainan Xintaisheng Industry Co., Ltd.	
Huazhou Xinhai Aquatic Products Co. Ltd.	
Kuehne Nagel Ltd. Xiamen Branch	
Leizhou Bei Bu Wan Sea Products Co., Ltd.	
Longhai Gelin Foods Co., Ltd.	
Maoming Xinzhou Seafood Co., Ltd.	
New Continent Foods Co., Ltd.	
Ningbo Prolar Global Co., Ltd.	
North Seafood Group Co.	
Pacific Andes Food Ltd.	
Penglai Huiyang Foodstuff Co., Ltd.	
Penglai Yuming Foodstuff Co., Ltd.	
Qingdao Fusheng Foodstuffs Co., Ltd.	
Qingdao Yihexing Foods Co., Ltd.	
Qingdao Yize Food Co., Ltd.	
Qingdao Zhongfu International	
Qinhuangdao Gangwan Aquatic Products Co., Ltd.	
Rizhao Meijia Aquatic Foodstuff Co., Ltd.	
Rizhao Meijia Keyuan Foods Co. Ltd.	
Rizhao Rongjin Aquatic	
Rizhao Rongxing Co. Ltd.	
Rizhao Smart Foods Company Limited	
Rongcheng Sanyue Foodstuff Co., Ltd.	
Rongcheng Yinhai Aquatic Product Co., Ltd.	
Ruian Huasheng Aquatic Products	
Rushan Chunjiangyuan Foodstuffs Co., Ltd.	
Rushan Hengbo Aquatic Products Co., Ltd.	
Savvy Seafood Inc.	
Sea Trade International Inc.	
Shanghai Finigate Integrated	
Shanghai Zhoulian Foods Co., Ltd.	
Shantou Freezing Aquatic Product Foodstuffs Co.	
Shantou Haili Aquatic Product Co. Ltd.	
Shantou Haimao Foodstuff Factory Co., Ltd.	
Shantou Jiazhou Food Industrial Co., Ltd.	
Shantou Jinping Oceanstar Business Co., Ltd.	
Shantou Jintai Aquatic Product Industrial Co., Ltd.	
Shantou Longsheng Aquatic Product Foodstuff Co., Ltd.	
Shantou Ocean Best Seafood Corporation	
Shantou Red Garden Food Processing Co., Ltd./Shantou Red Garden Foodstuff Co., Ltd.[30]	
Shantou Ruiyuan Industry Co., Ltd.	
Shantou Wanya Foods Fty. Co., Ltd.	
Shantou Yuexing Enterprise Company	
Shengyuan Aquatic Food Co., Ltd.	
Suizhong Tieshan Food Co., Ltd.	
Thai Royal Frozen Food Zhanjiang Co., Ltd.	
Tongwei Hainan Aquatic Products Co., Ltd.	
Time Seafood (Dalian) Company Limited	

	Period to be reviewed
Xiamen East Ocean Foods Co., Ltd.	
Xiamen Granda Import and Export Co., Ltd.	
Yangjiang Dawu Aquatic Products Co., Ltd.	
Yangjiang Guolian Seafood Co., Ltd.	
Yangjiang Haina Datong Trading Co.	
Yantai Longda Foodstuffs Co., Ltd.	
Yantai Tedfoods Co., Ltd.	
Yantai Wei-Cheng Food Co., Ltd.	
Yixing Magnolia Garment Co., Ltd.	
Zhangzhou Donghao Seafoods Co., Ltd.	
Zhangzhou Fuzhiyuan Food Co., Ltd.	
Zhangzhou Hongwei Foods Co., Ltd.	
Zhangzhou Tai Yi Import & Export Trading Co., Ltd.	
Zhangzhou Xinhui Foods Co., Ltd.	
Zhangzhou Xinwanya Aquatic Product Co., Ltd.	
Zhangzhou Yanfeng Aquatic Product & Foodstuff Co., Ltd.	
Zhanjiang Evergreen Aquatic Product Science and Technology Co., Ltd.	
Zhanjiang Fuchang Aquatic Products Co., Ltd.	
Zhanjiang Fuchang Aquatic Products Freezing Plant	
Zhanjiang Go-Harvest Aquatic Products Co., Ltd.	
Zhanjiang Guolian Aquatic Products Co., Ltd.[31]	
Zhanjiang Longwei Aquatic Products Industry Co., Ltd.	
Zhanjiang Regal Integrated Marine Resources Co., Ltd.[32]	
Zhanjiang Universal Seafood Corp.	
Zhaoan Yangli Aquatic Co., Ltd.	
Zhejiang Evernew Seafood Co.	
Zhejiang Tianhe Aquatic Products	
Zhejiang Xinwang Foodstuffs Co., Ltd.	
Zhenye Aquatic (Huilong) Ltd.	
Zhoushan Genho Food Co., Ltd.	
Zhoushan Green Food Co., Ltd.	
Zhoushan Haizhou Aquatic Products	
Zhuanghe Yongchun Marine Products	
THE PEOPLE'S REPUBLIC OF CHINA: Common Alloy Aluminum Sheet, A–570–073	2/1/22–1/31/23
Alcha International Holdings Limited	
Baotou Alcha Aluminum Co., Ltd.[33]	
Henan Mingsheng New Material Technology	
Henan Mingtai Al. Industrial Co., Ltd.	
Jiangsu Alcha Aluminum Group Co., Ltd.[34]	
Mingtai Aluminum	
Yinbang Clad Material Co., Ltd	
Zhengzhou Mingtai Industry, Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Crystalline Silicon Photovoltaic Products, A–570–010	2/1/22–1/31/23
Anji Dasol Solar Energy Science & Technology Co., Ltd.	
Baoding Jiasheng Photovoltaic Technology Co., Ltd.	
Baoding Tianwei Yingli New Energy Resources Co., Ltd.	
Beijing Tianneng Yingli New Energy Resources Co., Ltd.	
BYD (Shangluo) Industrial Co., Ltd.	
Canadian Solar International Limited	
Canadian Solar Manufacturing (Changshu) Inc.	
Canadian Solar Manufacturing (Luoyang) Inc.	
Changzhou Trina Hezhong Photoelectric Co., Ltd.	
Changzhou Trina Solar Energy Co., Ltd.	
Changzhou Trina Solar Yabang Energy Co., Ltd.	
Chint Energy (Haining) Co., Ltd.	
Chint New Energy Technology (Haining) Co. Ltd.	
Chint Solar (Hong Kong) Company Limited	
Chint Solar (Jiuquan) Co., Ltd.	
Chint Solar (Zhejiang) Co., Ltd.	
CSI Cells Co., Ltd.	
CSI Solar Power (China) Inc.	
CSI–GCL Solar Manufacturing (Yancheng) Co., Ltd.	
De-Tech Trading Limited HK	
Hainan Yingli New Energy Resources Co., Ltd.	
Hefei JA Solar Technology Co., Ltd.	
Hengdian Group DMEGC Magnetics Co. Ltd.	
Hengshui Yingli New Energy Resources Co., Ltd.	
Hubei Trina Solar Energy Co., Ltd.	
JA Solar Co., Ltd.	
JA Solar Technology Yangzhou Co., Ltd.	
Jiangsu Jinko Tiansheng Solar Co., Ltd.	
Jiawei Solarchina (Shenzhen) Co., Ltd.	
Jiawei Solarchina Co., Ltd.	

	Period to be reviewed
JingAo Solar Co., Ltd.	
Jinko Solar Co. Ltd.	
Jinko Solar Import and Export Co., Ltd.	
Jinko Solar International Limited	
JinkoSolar Technology (Haining) Co., Ltd.	
Jiujiang Shengchao Xinye Technology Co., Ltd.	
Jiujiang Shengzhao Xinye Trade Co., Ltd.	
Lerri Solar Technology Co., Ltd.	
Lightway Green New Energy Co., Ltd.	
Lixian Yingli New Energy Resources Co., Ltd.	
Longi (HK) Trading Ltd.	
Longi Solar Technology Co. Ltd.	
Luoyang Suntech Power Co., Ltd.	
Ningbo ETDZ Holdings, Ltd.	
Ningbo Qixin Solar Electrical Appliance Co., Ltd.	
Perlight Solar Co., Ltd.	
Renesola Jiangsu Ltd.	
ReneSola Zhejiang Ltd.	
Risen (Luoyang) New Energy Co., Ltd.	
Risen (Wuhai) New Energy Co., Ltd.	
Risen Energy (Changzhou) Co., Ltd.	
Risen Energy Co. Ltd.	
Ruichang Branch, Risen Energy (HongKong) Co., Ltd.	
Shanghai BYD Co., Ltd.	
Shenzhen Sungold Solar Co., Ltd.	
Shenzhen Topray Solar Co., Ltd.	
Shenzhen Yingli New Energy Resources Co., Ltd.	
Sumec Hardware & Tools Co., Ltd.	
Sunny Apex Development Ltd.	
Suntech Power Co., Ltd.	
Taizhou BD Trade Co., Ltd.	
tenKsolar (Shanghai) Co., Ltd.	
Tianjin Yingli New Energy Resources Co., Ltd.	
Trina Solar (Changzhou) Science & Technology Co., Ltd.	
Trina Solar (Changzhou) Science and Technology Co., Ltd.	
Trina Solar (Hefei) Science and Technology Co., Ltd.	
Trina Solar Co., Ltd.	
Turpan Trina Solar Energy Co., Ltd.	
Wuxi Suntech Power Co., Ltd.	
Wuxi Tianran Photovoltaic Co., Ltd.	
Xiamen Yiyusheng Solar Co., Ltd.	
Yancheng Trina Guoneng Photovoltaic Technology Co., Ltd.	
Yingli Energy (China) Company Limited	
Yingli Green Energy International Trading Company Limited	
Yuhuan Jinko Solar Co., Ltd.	
Zhejiang Aiko Solar Energy Technology Co., Ltd.	
Zhejiang Jinko Solar Co., Ltd.	
Zhejiang Twinsel Electronic Technology Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Small Diameter Graphite Electrodes, A–570–929	2/1/22–1/31/23
Beijing Fangda Carbon Tech Co., Ltd./Chengdu Rongguang Carbon Co., Ltd./Fangda Carbon New Material Co., Ltd./Fushun Carbon Co., Ltd.; Hefei Carbon Co., Ltd.	
Fushun Jinly Petrochemical Carbon Co., Ltd.	
Jilin Carbon Import and Export Company	
Xinghe County Muzi Carbon Co., Ltd.; Xinghe County Muzi Carbon Plant	
Xuzhou Jianglong Carbon Products Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Truck and Bus Tires, A–570–040	2/1/22–1/31/23
Qingdao Fullrun Tyre Corp. Ltd.	
Shandong Haohua Tire Co., Ltd.	
Shandong Kaixuan Rubber Co., Ltd.	
Shandong Transtone Tyre Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Utility Scale Wind Towers, A–570–981	2/1/22–1/31/23
AUSKY (Shandong) Machinery Manufacturing Co., Ltd.	
AVIC International Renewable Energy Co., Ltd.	
Baotou Titan Wind Power Equipment Co., Ltd.	
Baicheng Tianqi Equipment Manufacturing Engineering Co. Ltd.	
Chengxi Shipyard Co., Ltd.	
China WindPower Group	
CleanTech Innovations Inc.	
CRRC Wind Power (Shandong) Co., Ltd.	
CS Wind China Co., Ltd.	
Dajin Heavy Industry Corporation	
Guangdong No. 2 Hydropower Engineering Co., Ltd.	
Guodian United Power Technology Baoding Co., Ltd.	

	Period to be reviewed
Harbin Hongguang Boiler Group Co., Ltd.	
Hebei Ningqiang Group	
Hebei Qiangsheng Wind Equipment Co., Ltd.	
Jiangsu Baolong Electromechanical Mfg. Co., Ltd.	
Jiangsu Baolong Tower Tube Manufacture Co., Ltd.	
Jiangyin Hengrun Ring Forging Co., Ltd.	
Jilin Miracle Equipment Manufacturing Engineering Co., Ltd.	
Jilin Tianhe Wind Power Equipment Co., Ltd.	
Nanjing Jiangbiao Group Co., Ltd.	
Nantong Dongtai New Energy Equipment Co., Ltd.	
Nantong Hongbo Windpower Equipment Co., Ltd.	
Ningxia Electric Power Group	
Ningxia Yinyi Wind Power Generation Co., Ltd.	
Nordex Dongying Wind Power Equipment Manufacturing Co. Ltd.	
Renewable Energy Asia Group Ltd.	
Shandong Zhongkai Wind Power Equipment Manufacturers, Ltd.	
Shandong Endless Wind Turbine Technical Equipment Co., Ltd.	
Shandong Iraeta Heavy Industry	
Shanghai Aerotech Trading International	
Shanghai GE Guangdian Co., Ltd.	
Shanghai Taisheng Wind Power Equipment Co., Ltd.	
Shenyang Titan Metal Co., Ltd.	
Siemens Gamesa Renewable Energy, S.A.	
Sinovel Wind Group Co., Ltd.	
Suihua Wuxiao Electric Power Equipment Co., Ltd.	
Titan Wind Energy (Suzhou) Co., Ltd.	
Titan (Lianyungang) Metal Product Co., Ltd.	
Qingdao GeLinTe Environmental Protection Equipment Co., Ltd.	
Qingdao Ocean Group	
Qingdao Tianneng Electric Power Engineering Machinery Co., Ltd.	
Qingdao Wuxiao Group Co., Ltd.	
Vestas Wind Technology (China) Co., Ltd.	
Wuxiao Steel Tower Co., Ltd.	
Xinjiang Huitong (Group) Co., Ltd.	
Xinjiang Goldwind Science & Technology Co., Ltd.	
Zhejiang Guoxing Steel Structure Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Wood Mouldings and Millwork Products, A–570–117	2/1/22–1/31/23
Anji Huaxin Bamboo & Wood Products Co., Ltd.	
Aventra Inc.	
Baixing Import and Export Trading Co., Ltd Youxi Fujian	
Bel Trade Wood Industrial Co.	
Bel Trade Wood Industrial Co., Ltd. Youxi Fujian	
China Cornici Co. Ltd.	
Composite Technology International, Limited	
Fotiou Frames Limited	
Fujian Hongjia Craft Products Co., Ltd.	
Fujian Jinquan Trade Co., Ltd.	
Fujian Province Youxi County Baiyuan Wood Machining Co., Ltd.	
Fujian Sanming City Donglai Wood Co., Ltd.	
Fujian Shunchang Shengsheng Wood Industry Limited Company	
Fujian Wangbin Decorative Material Co., Ltd.	
Fujian Yinfeng Imp & Exp Trading Co., Ltd.; Fujian Province Youxi City Mangrove Wood Machining Co., Ltd.	
Fujian Youxi Best Arts & Crafts Co. Ltd.	
Fujian Zhangping Kimura Forestry Products Co., Ltd.	
Gaomi Hongtai Home Furniture Co., Ltd.	
Homebuild Industries Co., Ltd.	
Huaan Longda Wood Industry Co., Ltd.	
Jiangsu Chensheng Forestry Development Co., Ltd.	
Jiangsu Wenfeng Wood Co., Ltd.	
Jim Fine Wooden Products Co., Ltd.	
Longquan Jiefeng Trade Co., Ltd.	
Nanping Huatai Wood & Bamboo Co., Ltd.	
Nicer Window Fashions Co., Ltd.	
Omni One Co., Limited	
Putian Yihong Wood Industry Co., Ltd.	
Quimen Jianxing Bamboo and Wood Goods Co., Ltd.	
Raoping HongRong Handicrafts Co., Ltd. (d.b.a. Chen Chui Global Corp.)	
Rui Xing Wooden Products Co., Ltd.	
Sanming Lintong Trading Co., Ltd.	
Shandong Miting Household Co., Ltd.	
Shaxian Hengtong Wood Industry Co., Ltd.	
Shaxian Shiyiwood, Ltd.	
Shenzhen Xinjintai Industrial Co., Ltd.	

	Period to be reviewed
Shuyang Kevin International Co., Ltd.	
Shuyang Zhongding Decoration Materials Co., Ltd.	
Sun Valley Shade Co., Ltd.	
Suqian Sulu Import & Export Trading Co., Ltd.	
Tim Feng Manufacturing Co., Ltd.	
TL Wood Products Inc.	
Wuxi Boda Bamboo & Wood Industrial Co., Ltd.	
Xiamen Jinxi Building Material Co., Ltd.	
Xuzhou Goodwill Resource Co., Ltd.	
Zhangzhou Green Wood Industry and Trade Co., Ltd.	
Zhangzhou Wangjiamei Industry & Trade Co., Ltd.	
Zhangzhou Yihong Industrial Co., Ltd.	
Zhejiang Senya Board Industry Co., Ltd.	
CVD Proceedings	
INDIA: Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel, C–533–874	1/1/22–12/31/22
Global Seamless Tubes & Pipes Pvt. Ltd	
Goodluck India Limited (formerly Good Luck Steel Tubes Limited); Good Luck Steel Tubes Limited Good Luck House; Good Luck Industries	
Lal Baba Seamless Tubes Pvt. Ltd.	
Metamorphosis Engitech India Pvt. Ltd.	
Pennar Industries Limited India	
REPUBLIC OF KOREA: Certain Cut-To-Length Carbon-Quality Steel Plate, C–580–837	1/1/22–12/31/22
BDP International	
Dongkuk Steel Mill Co., Ltd.	
Hyundai Steel Company	
Sung Jin Steel Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Certain Hardwood Plywood Products, C–570–052	1/1/22–12/31/22
Thang Long Wood Panel Company Ltd.[35]	
THE PEOPLE'S REPUBLIC OF CHINA: Common Alloy Aluminum Sheet, C–570–074	1/1/22–12/31/22
Alcha International Holdings Limited; Baotou Alcha Aluminium Co., Ltd.; Jiangsu Alcha Aluminium Co., Ltd.; Jiangsu Alcha New Energy Materials Co., Ltd.[36]	
Henan Gongdian Thermal Co., Ltd.; Henan Mingtai Industrial Co., Ltd.; Zhengzhou Mingtai Industry, Co., Ltd.[37]	
Henan Mingsheng New Material Technology	
Jiangsu Alcha Aluminum Co., Ltd.[38]	
Jiangsu Alcha Aluminium Group Co., Ltd.[39]	
Jiangsu Alcha Aluminum Group Co., Ltd.[40]	
Mingtai Aluminum[41]	
Yinbang Clad Material Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Truck and Bus Tires, C–570–041	1/1/22–12/31/22
Bridgestone Tire Co., Ltd.	
Bridgestone (Shenyang) Tire Co., Ltd.	
Qingdao Ge Rui Da Rubber Co., Ltd.; Cooper Tire (China) Investment Co. Ltd.; Qingdao Yiyuan Investment Co., Ltd.; and Cooper Tire Asia-Pacific (Shanghai) Trading Co., Ltd.[42]	
Goodyear (Dalian) Tire Company Limited	
Sailun Group Co., Ltd.	
Sailun Group (Hong Kong) Co., Limited	
Shandong Linglong Tyre Co., Ltd.	
Qingdao Fullrun Tyre Corp. Ltd.	
Shandong Haohua Tire Co., Ltd.	
Shandong Kaixuan Rubber Co., Ltd.	
Shandong Transtone Tyre Co., Ltd.	
Jiangsu Hankook Tire Co., Ltd.	
Chongqing Hankook Tire Co., Ltd.	
Jiangsu General Science Technology Co., Ltd.	
Prinx Chengshan (Shandong) Tire Co., Ltd.; Chengshan Group Co., Ltd.; Shanghai Chengzhan Information and Technology Center; Prinx Chengshan (Qingdao) Industrial Research & Design Co., Ltd.; and Shandong Prinx Chengshan Tire Technology Research Co., Ltd.[43] Sinotyre International Group Co., Ltd.	
Triangle Tyre Co., Ltd.	
Weifang Shunfuchang Rubber and Plastic Products Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Mobile Access Equipment and Subassemblies Thereof,[44] C–570–140	12/9/21–12/31/21
Linyi Lingong Machinery Group Co., Ltd.	
Zhejiang Green Power Machinery Co., Ltd.	
Shengda Fenghe Automotive Equipment Co., Ltd.	
THE PEOPLE'S REPUBLIC OF CHINA: Utility Scale Wind Towers, C–570–982	1/1/22–12/31/22
AUSKY (Shandong) Machinery Manufacturing Co., Ltd.	
AVIC International Renewable Energy Co., Ltd.	
Baotou Titan Wind Power Equipment Co., Ltd. (aka Baotou Titan Wind Energy Equipment Co. Ltd.)	
Baicheng Tianqi Equipment Manufacturing Engineering Co. Ltd.	
Chengxi Shipyard Co., Ltd.	
China WindPower Group	
CleanTech Innovations Inc.	

	Period to be reviewed
CRRC Wind Power (Shandong) Co., Ltd.	
CS Wind China Co., Ltd.	
Dajin Heavy Industry Corporation	
Guangdong No. 2 Hydropower Engineering Co., Ltd.	
Guodian United Power Technology Baoding Co., Ltd.	
Harbin Hongguang Boiler Group Co., Ltd.	
Hebei Ningqiang Group	
Hebei Qiangsheng Wind Equipment Co., Ltd.	
Jiangsu Baolong Electromechanical Mfg. Co., Ltd.	
Jiangsu Baolong Tower Tube Manufacture Co., Ltd.	
Jiangyin Hengrun Ring Forging Co., Ltd.	
Jilin Miracle Equipment Manufacturing Engineering Co., Ltd.	
Jilin Tianhe Wind Power Equipment Co., Ltd.	
Nanjing Jiangbiao Group Co., Ltd.	
Nantong Dongtai New Energy Equipment Co., Ltd.	
Nantong Hongbo Windpower Equipment Co., Ltd.	
Ningxia Electric Power Group	
Ningxia Yinyi Wind Power Generation Co., Ltd.	
Nordex Dongying Wind Power Equipment Manufacturing Co. Ltd.	
Renewable Energy Asia Group Ltd.	
Shandong Zhongkai Wind Power Equipment Manufacturers, Ltd.	
Shandong Endless Wind Turbine Technical Equipment Co., Ltd.	
Shandong Iraeta Heavy Industry	
Shanghai Aerotech Trading International	
Shanghai GE Guangdian Co., Ltd.	
Shanghai Taisheng Wind Power Equipment Co., Ltd.	
Shenyang Titan Metal Co., Ltd.	
Siemens Gamesa Renewable Energy, S.A.	
Sinovel Wind Group Co., Ltd.	
Suihua Wuxiao Electric Power Equipment Co., Ltd.	
Titan Wind Energy (Suzhou) Co., Ltd. (aka Titan Wind (Suzhou) Co. Ltd.)	
Titan (Lianyungang) Metal Product Co., Ltd. (aka Titan Lianyungang Metal Products Co., Ltd.)	
Qingdao GeLinTe Environmental Protection Equipment Co., Ltd.	
Qingdao Ocean Group	
Qingdao Tianneng Electric Power Engineering Machinery Co., Ltd.	
Qingdao Wuxiao Group Co., Ltd.	
Vestas Wind Technology (China) Co., Ltd.	
Wuxiao Steel Tower Co., Ltd.	
Xinjiang Huitong (Group) Co., Ltd.	
Xinjiang Goldwind Science & Technology Co., Ltd.	
Zhejiang Guoxing Steel Structure Co., Ltd	
THE PEOPLE'S REPUBLIC OF CHINA: Wood Mouldings and Millwork Products, C–570–118	1/1/22–12/31/22
Anji Huaxin Bamboo & Wood Products Co., Ltd.	
Aventra Inc.	
Baixing Import and Export Trading Co., Ltd Youxi Fujian	
Bel Trade Wood Industrial Co.	
Bel Trade Wood Industrial Co., Ltd Youxi Fujian	
Cao County Hengda Wood Products Co., Ltd.	
China Cornici Co. Ltd.	
Composite Technology International, Limited	
Fotiou Frames Limited	
Fujian Hongjia Craft Products Co., Ltd.	
Fujian Jinquan Trade Co., Ltd.	
Fujian Province Youxi County Baiyuan Wood Machining Co., Ltd.	
Fujian Sanming City Donglai Wood Co., Ltd.	
Fujian Shunchang Shengsheng Wood Industry Limited Company	
Fujian Wangbin Decorative Material Co., Ltd.	
Fujian Yinfeng Imp & Exp Trading Co., Ltd.; Fujian Province Youxi City Mangrove Wood Machining Co., Ltd.; Fujian Province Youxi City Mangrove Wood Machining Co., Ltd., Xicheng Branch	
Fujian Youxi Best Arts & Crafts Co. Ltd.	
Fujian Zhangping Kimura Forestry Products Co., Ltd.	
Homebuild Industries Co., Ltd.	
Huaan Longda Wood Industry Co., Ltd.	
Jiangsu Chensheng Forestry Development Co., Ltd.	
Jiangsu Wenfeng Wood Co., Ltd.	
Longquan Jiefeng Trade Co., Ltd.	
Nanping Huatai Wood & Bamboo Co., Ltd.	
Nanping Huatai Wood and Bamboo Co., Ltd.	
Omni One Co., Limited	
Putian Yihong Wood Industry Co., Ltd.	
Raoping HongRong Handicrafts Co., Ltd. (d.b.a. Chen Chui Global Corp.)	
Shandong Miting Household Co., Ltd.	
Shaxian Hengtong Wood Industry Co., Ltd.	

	Period to be reviewed
Shaxian Shiyiwood, Ltd. Shenzhen Xinjintai Industrial Co., Ltd. Shuyang Kevin International Co., Ltd. Shuyang Zhongding Decoration Materials Co., Ltd. Suqian Sulu Import & Export Trading Co., Ltd. Wuxi Boda Bamboo & Wood Industrial Co., Ltd. Xiamen Jinxi Building Material Co., Ltd. Zhangzhou Green Wood Industry and Trade Co., Ltd. Zhangzhou Wangjiamei Industry & Trade Co., Ltd. Zhangzhou Yihong Industrial Co., Ltd. Zhejiang Senya Board Industry Co., Ltd.	
Suspension Agreements	
None	

Duty Absorption Reviews

During any administrative review covering all or part of a period falling

[6] On December 23, 2022, Commerce determined that Kader Exports Private Limited is the successor-in-interest to the Liberty Group, which is comprised of the companies listed above. *See Certain Frozen Warmwater Shrimp from India: Notice of Final Results of Antidumping Duty Changed Circumstances Review,* 87 FR 78941 (December 23, 2022). Therefore, at the conclusion of this review, Commerce will assign a cash deposit rate to Kader Exports Private Limited, not to the Liberty Group.

[7] Shrimp produced and exported by Devi Sea Foods Limited (Devi) was excluded from the order effective February 1, 2009. *See Certain Frozen Warmwater Shrimp from India: Final Results of the Antidumping Duty Administrative Review, Partial Rescission of Review, and Notice of Revocation of Order in Part,* 75 FR 41813, 41814 (July 19, 2010). Accordingly, we are initiating this administrative review with respect to Devi only for shrimp produced in India where Devi acted as either the manufacturer or exporter (but not both).

[8] Where interested parties requested review of a company name combined with an abbreviation of the company name or alternative (*i.e.,* doing-business-as) name, Commerce treated the company names separately from those abbreviations/alternatives for review initiation purposes.

[9] Interested parties requested a review of Camau Frozen Seafood Processing Import Export Corporation, but Commerce has previously determined that Camimex Group Joint Stock Company is the successor-in-interest to Camau Frozen Seafood Processing Import Export Corporation, so has only listed Camimex Group Joint Stock Company in this notice. *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Notice of Final Results of Antidumping Duty Changed Circumstances Review,* 86 FR 47617, August 26, 2021.

[10] Shrimp produced and exported by Minh Phat Seafood Company Limited were excluded from the antidumping duty order on certain frozen warmwater shrimp from Vietnam, effective July 18, 2016. *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Notice of Implementation of Determination Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Order,* 81 FR 47756, 47757–47758 (July 22, 2016). Accordingly, we are initiating this administrative review for this exporter only with respect to subject merchandise produced by another entity.

[11] Shrimp produced and exported by Minh Phu Hau Giang Seafood were excluded from the antidumping duty order on certain frozen warmwater shrimp from Vietnam, effective July 18, 2016. *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Notice of Implementation of Determination Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Order,* 81 FR 47756, 47757–47758 (July 22, 2016). Accordingly, we are initiating this administrative review for this exporter only with respect to subject merchandise produced by another entity.

[12] Shrimp produced and exported by Minh Phu Seafood Corporation were excluded from the antidumping duty order on certain frozen warmwater shrimp from Vietnam, effective July 18, 2016. *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Notice of Implementation of Determination Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Order,* 81 FR 47756, 47757–47758 (July 22, 2016). Accordingly, we are initiating this administrative review for this exporter only with respect to subject merchandise produced by another entity.

[13] Shrimp produced and exported by Minh Qui Seafood Co., Ltd. were excluded from the antidumping duty order on certain frozen warmwater shrimp from Vietnam, effective July 18, 2016. *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Notice of Implementation of Determination Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Order,* 81 FR 47756, 47757–47758 (July 22, 2016). Accordingly, we are initiating this administrative review for this exporter only with respect to subject merchandise produced by another entity.

[14] In past reviews, Commerce has treated these companies as a single entity. *See, e.g., Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review; Final Determination of No Shipments; 2015–2016,* 82 FR 30836 (July 3, 2017) (*2015–2016 AR Final*). Absent information to the contrary, we intend to continue to treat these companies as a single entity for the purpose of this administrative review.

[15] Shrimp produced and exported by Chanthaburi Frozen Food Co., Ltd. (Chanthaburi Frozen) were excluded from the order effective January 16, 2009. *See Implementation of the Findings of the WTO Panel in United States-Antidumping Measure on Shrimp from Thailand: Notice of Determination Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Order on Frozen Warmwater Shrimp from Thailand,* 74 FR 5638 (January 30, 2009) (*Section 129 Determination*). Accordingly, we are initiating this administrative review with respect to Chanthaburi Frozen only for shrimp produced in Thailand where Chanthaburi Frozen acted as either the manufacturer or exporter (but not both).

[16] Shrimp produced and exported by Chanthaburi Seafoods Co., Ltd. (Chanthaburi Seafoods) were excluded from the order effective January 16, 2009. *See Section 129 Determination.* Accordingly, we are initiating this administrative review with respect to Chanthaburi Seafoods only for shrimp produced in Thailand where Chanthaburi Seafoods acted as either the manufacturer or exporter (but not both).

[17] In past reviews, Commerce has treated these companies as a single entity. *See, e.g., 2015–2016 AR Final.* Absent information to the contrary, we intend to continue to treat these companies as a single entity for the purpose of this administrative review.

[18] In past reviews, Commerce has treated these companies as a single entity. *See, e.g., Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review; 2006–2007,* 73 FR 50933 (August 29, 2008) (*2006–2007 AR Final*). Absent information to the contrary, we intend to continue to treat these companies as a single entity for the purpose of this administrative review.

[19] Shrimp produced and exported by Marine Gold Products Ltd. (Marine Gold) were excluded from the order effective February 1, 2012. *See Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review, Partial Rescission of Review, and Revocation of the Order (in Part); 2011–2012,* 78 FR 42497 (July 16, 2013). Accordingly, we are initiating this administrative review with respect to Marine Gold only for shrimp produced in Thailand where Marine Gold acted as either the manufacturer or exporter (but not both).

[20] In past reviews, Commerce has treated these companies as a single entity. *See, e.g., 2015–2016 AR Final.* Absent information to the contrary, we intend to continue to treat these companies as a single entity for the purpose of this administrative review.

[21] Shrimp produced and exported by Phatthana Frozen Food Co., Ltd. (Phatthana Frozen) were excluded from the order effective January 16, 2009. *See Certain Frozen Warm Water Shrimp from Thailand: Final Results of Antidumping Duty Changed Circumstances Review and Notice of Revocation in Part,* 74 FR 52452 (October 13, 2009) (*CCR Final and Partial Revocation*). Accordingly, we are initiating this administrative review with respect to Phatthana Frozen only for shrimp produced in Thailand where Phatthana Frozen acted as either the manufacturer or exporter (but not both).

[22] Shrimp produced and exported by Phatthana Seafood Co., Ltd. (Phatthana Seafood) were excluded from the order effective January 16, 2009. *See Section 129 Determination.* Accordingly, we are initiating this administrative review with respect to

between the first and second or third and fourth anniversary of the publication of an AD order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), Commerce, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether AD duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Phatthana Seafood only for shrimp produced in Thailand where Phatthana Seafood acted as either the manufacturer or exporter (but not both).

[23] Shrimp produced and exported by Sea Wealth Frozen Food Co., Ltd. (Sea Wealth) were excluded from the order effective January 16, 2009. *See CCR Final and Partial Revocation.* Accordingly, we are initiating this administrative review with respect to Sea Wealth only for shrimp produced in Thailand where Sea Wealth acted as either the manufacturer or exporter (but not both).

[24] In past reviews, Commerce has treated these companies as a single entity. *See, e.g., 2015–2016 AR Final.* Absent information to the contrary, we intend to continue to treat these companies as a single entity for the purpose of this administrative review.

[25] In past reviews, Commerce has treated these companies as a single entity. *See, e.g., 2015–2016 AR Final.* Absent information to the contrary, we intend to continue to treat these companies as a single entity for the purposes of this administrative review.

[26] In past reviews, Commerce has treated these companies as a single entity. *See, e.g., 2006–2007 AR Final.* Absent information to the contrary, we intend to continue to treat these companies as a single entity for the purpose of this administrative review.

[27] Shrimp produced and exported by Thai I-Mei Frozen Foods Co., Ltd. (Thai I-Mei) were excluded from the order effective January 16, 2009. *See Section 129 Determination.* Accordingly, we are initiating this administrative review with respect to Thai I-Mei only for shrimp produced in Thailand where Thai I-Mei acted as either the manufacturer or exporter (but not both).

[28] In past reviews, Commerce has treated these companies as a single entity. *See, e.g., 2015–2016 AR Final.* Absent information to the contrary, we intend to continue to treat these companies as a single entity for the purpose of this administrative review.

[29] Allied Pacific Food (Dalian) Co., Ltd., Allied Pacific (HK) Co., Ltd., Allied Pacific Aquatic Products (Zhanjiang) Co., Ltd; and Allied Pacific Aquatic Products (Zhongshan) Co., Ltd. comprise the single entity Allied Pacific. *See Certain Frozen Warmwater Shrimp from the People's Republic of China and Diamond Sawblades and Parts Thereof from the People's Republic of China: Notice of Implementation of Determinations Under Section 129 of the Uruguay Round Agreements Act and Partial Revocation of the Antidumping Duty Orders,* 78 FR 18958, 18959 (March 28, 2013) (*China Shrimp Exclusion*). Additionally, this *Order* was revoked with respect to merchandise exported by Allied Pacific (HK) Co., Ltd., or Allied Pacific Food (Dalian) Co., Ltd., and manufactured by Allied Pacific Aquatic Products (Zhanjiang) Co., Ltd., or Allied Pacific Aquatic Products (Zhongshan) Co., Ltd., or Allied Pacific Food (Dalian) Co., Ltd. *See China Shrimp Exclusion,* 78 FR at 18959. Accordingly, we are initiating this review for these exporters only with respect to subject merchandise produced by entities other than the aforementioned producers.

[30] Shantou Red Garden Food Processing Co., Ltd. and Shantou Red Garden Foodstuff Co., Ltd. comprise the single entity Shantou Red Garden Foods. *See Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2018–2019,* 85 FR 83891 (December 23, 2020).

[31] This *Order* was revoked with respect to subject merchandise produced and exported by Zhanjiang Guolian Aquatic Products Co., Ltd. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from the People's Republic of China,* 70 FR 5149, 5152 (February 1, 2005). Accordingly, we are initiating this review for this exporter only with respect to subject merchandise produced by another entity.

[32] This *Order* was revoked with respect to subject merchandise produced and exported by Zhanjiang Regal Integrated Marine Resources Co., Ltd. *See Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Results of Administrative Review; 2011–2012,* 78 FR 56209, 56210 (September 12, 2013). Accordingly, we are initiating this review for this exporter only with respect to subject merchandise produced by another entity.

[33] Commerce previously determined that the following companies should be treated as a single entity: Alcha International Holdings Limited; Jiangsu Alcha Aluminum Group Co., Ltd.; and Baotou Alcha Aluminum Co., Ltd. *See Common Alloy Aluminum Sheet from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, Final Successor-in-Interest Determination, and Final Determination of No Shipments; 2018–2020,* 86 FR 74066 (December 29, 2021). Therefore, we are initiating this administrative review on all three companies within the collapsed entity.

[34] Commerce received a request for review of Jiangsu Alcha Aluminum Co., Ltd.; however, Commerce previously determined that Jiangsu Alcha Aluminum Group Co., Ltd. is the successor-in-interest to Jiangsu Alcha Aluminum Co., Ltd. *See Common Alloy Aluminum Sheet from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, Final Successor-in-Interest Determination, and Final Determination of No Shipments; 2018–2020,* 86 FR 74066 (December 29, 2021). Accordingly, we are initiating this administrative review on Jiangsu Alcha Aluminum Group Co., Ltd.

[35] This company was inadvertently omitted from the initiation notice that published on March 14, 2023 (88 FR 15642). Commerce hereby clarifies that it received a request to conduct an administrative review of this company, and, in accordance with Commerce's regulations, has initiated this administrative review.

[36] Commerce previously found ''Jiangsu Alcha Aluminium Co., Ltd.'' to be cross-owned with ''Baotou Alcha Aluminium Co., Ltd.'' and ''Jiangsu Alcha New Energy Materials Co., Ltd.'' Commerce also cumulated the benefits from subsidies received by ''Alcha International Holdings Limited'' with the benefits from subsidies received by ''Jiangsu Alcha Aluminium Co., Ltd.'' in the previous administrative review in accordance with 19 CFR 351.525(c). *See Common Alloy Aluminum Sheet from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2020,* 87 FR 54462 (September 6, 2022), and accompanying Issues and Decision Memorandum (IDM) at 4.

[37] Commerce previously found ''Henan Gongdian Thermal Co., Ltd.'' to be cross-owned with ''Henan Mingtai Industrial Co., Ltd.'' and ''Zhengzhou Mingtai Industry, Co., Ltd.'' *See Common Alloy Aluminum Sheet from the People's Republic of China: Preliminary Affirmative Countervailing Duty (CVD) Determination, Alignment of Final CVD Determination with Final Antidumping Duty Determination, and Preliminary CVD Determination of Critical Circumstances,* 83 FR 17651 (April 23, 2018), and accompanying Preliminary Decision Memorandum at 10–11, unchanged in *Countervailing Duty Investigation of Common Alloy Aluminum Sheet from the People's Republic of China: Final Affirmative Determination,* 83 FR 57427 (November 15, 2018), and accompanying IDM at 5. Additionally, the Aluminum Association Common Alloy Aluminum Sheet Trade Enforcement Working Group (Aluminum Working Group) clarified that it intended to request a review for ''Henan Mingtai Industrial Co., Ltd.,'' not ''Henan Mingtai Al. Industrial Co., Ltd.'' *See* Memorandum, ''Phone Conversation with { }{*sic*} Interested Parties,'' dated March 16, 2023 (Name Clarification Memo) at 1; and Aluminum Working Group's Letter, ''Domestic Industry's Request for Administrative Review,'' dated February 28, 2023 at 3.

[38] Valeo North America, Inc. (Valeo), an interested party, clarified that, in addition to requesting a review for ''Jiangsu Alcha Aluminium Co., Ltd.,'' it intended to request a review for the three following company names: (1) ''Jiangsu Alcha Aluminum Co., Ltd.''; (2) ''Jiangsu Alcha Aluminium Group Co., Ltd.''; and (3) ''Jiangsu Alcha Aluminum Group Co., Ltd.'' *See* Name Clarification Memo at 1–2.

[39] *Id.*

[40] *Id.*

[41] Mid-South Holdings LLC (Mid-South), an interested party, clarified that it intended to request a review for two separate company names, (1) ''Mingtai Aluminum'' and (2) ''Zhengzhou Mingtai Industry Co., Ltd.'' *Id.* at 2. *See also* Mid-South's Letter, ''Additional Request for Administrative Review,'' dated February 28, 2023.

[42] Commerce previously found Qingdao Ge Rui Da Rubber Co., Ltd.; Cooper Tire (China) Investment Co. Ltd..; Qingdao Yiyuan Investment Co., Ltd.; and Cooper Tire Asia-Pacific (Shanghai) Trading Co., Ltd. to be cross-owned. *See Truck and Bus Tires from the People's Republic of China: Preliminary Results of the Countervailing Duty Administrative Review, Rescission in Part, and Intent to Rescind in Part; 2020,* 87 FR 12929 (March 8, 2022), and accompanying Preliminary Decision Memorandum at 27, unchanged in *Truck and Bus tires from the People's Republic of China: Final Results of the Countervailing Duty Administrative Review; 2020,* 87 FR 39063 (June 30, 2022).

[43] Commerce previously found Prinx Chengshan (Shandong) Tire Co., Ltd.; Chengshan Group Co., Ltd.; Shanghai Chengzhan Information and Technology Center; Prinx Chengshan (Qingdao) Industrial Research & Design Co., Ltd.; Shandong Prinx Chengshan Tire Technology Research Co., Ltd. to be cross-owned. *See Truck and Bus Tires from the People's Republic of China: Preliminary Results of the Countervailing Duty Administrative Review, Rescission in Part, and Intent to Rescind in Part; 2020,* 87 FR 12929 (March 8, 2022), and accompanying Preliminary Decision Memorandum at 27, unchanged in *Truck and Bus tires from the People's Republic of China: Final Results of the Countervailing Duty Administrative Review; 2020,* 87 FR 39063 (June 30, 2022).

[44] The companies listed below (*i.e.,* Linyi Lingong Machinery Group Co., Ltd., Zhejiang Green Power Machinery Co., Ltd., and Shengda Fenghe Automotive Equipment Co., Ltd.) were inadvertently omitted in the notice of initiation that published in the **Federal Register** on February 2, 2023 (88 FR 7060).

Gap Period Liquidation

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant ''gap'' period of the order (*i.e.,* the period following the expiry of provisional measures and before definitive measures were put into place), if such a gap period is applicable to the POR.

Administrative Protective Orders and Letters of Appearance

Interested parties must submit applications for disclosure under administrative protective orders in accordance with the procedures outlined in Commerce's regulations at 19 CFR 351.305. Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that they meet the requirements of these procedures (*e.g.,* the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

Factual Information Requirements

Commerce's regulations identify five categories of factual information in 19 CFR 351.102(b)(21), which are summarized as follows: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). These regulations require any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. The regulations, at 19 CFR 351.301, also provide specific time limits for such factual submissions based on the type of factual information being submitted. Please review the *Final Rule,*[45] available at *www.govinfo.gov/content/pkg/FR-2013-07-17/pdf/2013-17045.pdf,* prior to submitting factual information in this segment. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[46]

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information using the formats provided at the end of the *Final Rule.*[47] Commerce intends to reject factual submissions in any proceeding segments if the submitting party does not comply with applicable certification requirements.

Extension of Time Limits Regulation

Parties may request an extension of time limits before a time limit established under Part 351 expires, or as otherwise specified by Commerce.[48] In general, an extension request will be considered untimely if it is filed after the time limit established under Part 351 expires. For submissions which are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. on the due date. Examples include, but are not limited to: (1) case and rebuttal briefs, filed pursuant to 19 CFR 351.309; (2) factual information to value factors under 19 CFR 351.408(c), or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2), filed pursuant to 19 CFR 351.301(c)(3) and rebuttal, clarification and correction filed pursuant to 19 CFR 351.301(c)(3)(iv); (3) comments concerning the selection of a surrogate country and surrogate values and rebuttal; (4) comments concerning CBP data; and (5) Q&V questionnaires. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, Commerce will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. This policy also requires that an extension request must be made in a separate, stand-alone submission, and clarifies the circumstances under which Commerce will grant untimely-filed requests for the extension of time limits. Please review the *Final Rule,* available at *https://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in these segments.

These initiations and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: April 5, 2023.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2023–07536 Filed 4–10–23; 8:45 am]

BILLING CODE 3510–DS–P

[45] *See Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* the frequently asked questions regarding the *Final Rule,* available at *https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[46] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[47] *See* section 782(b) of the Act; *see also Final Rule;* and the frequently asked questions regarding the *Final Rule,* available at *https://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

[48] *See* 19 CFR 351.302.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Marine Recreational Information Program Fishing Effort Survey

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before June 12, 2023.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *Adrienne.thomas@noaa.gov.* Please reference OMB Control Number 0648–0652 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Rob

Andrews, Fishery Biologist, Fisheries Statistics Division, 1315 East-West Hwy, Silver Spring MD 20910, 301–427–8105, or *rob.andrews@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for revision of a currently approved collection. Marine recreational anglers are surveyed to collect catch and effort data, fish biology data, and angler socioeconomic characteristics. These data are required to carry out provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), as amended, regarding conservation and management of fishery resources.

Marine recreational fishing catch and effort data are collected through a combination of mail surveys, telephone surveys and on-site intercept surveys with recreational anglers. The Marine Recreational Information Program (MRIP) Fishing Effort Survey (FES) is a self-administered, household mail survey that samples from a residential address frame to collect data on the number of recreational anglers and the number of recreational fishing trips. The survey estimates marine recreational fishing activity for all coastal states from Maine through Mississippi, as well as Hawaii.

FES estimates are combined with estimates derived from complementary surveys of fishing trips, the Access-Point Angler Intercept Survey, to estimate total, state-level fishing catch, by species. These estimates are used in the development, implementation, and monitoring of fishery management programs by NOAA Fisheries, regional fishery management councils, interstate marine fisheries commissions, and state fishery agencies.

Currently, MRIP produces estimates for two-month reference waves. The proposed collection will include experimental work to evaluate shorter reference periods that would more fully support fisheries management and stock assessment needs. Specifically, the collection will include a pilot study testing a revised version of the FES that will collect data for one-month waves using an improved questionnaire while retaining all other features of the current FES design.

II. Method of Collection

Information will be collected through self-administered mail surveys.

III. Data

OMB Control Number: 0648–0652.

Form Number(s): None.

Type of Review: Regular submission (revision of a current information collection).

Affected Public: Individuals or households.

Estimated Number of Respondents: 183,333.

Estimated Time Per Response: 5 minutes.

Estimated Total Annual Burden Hours: 15,278 hours.

Estimated Total Annual Cost to Public: 0.

Respondent's Obligation: Voluntary.

Legal Authority: Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2023–07548 Filed 4–10–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC899]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) will hold a meeting of the Ecosystem and Ocean Planning (EOP) Committee. See **SUPPLEMENTARY INFORMATION** for agenda details.

DATES: The meeting will be held on Thursday, April 27, 2023, from 9:30 a.m. through 4 p.m.

ADDRESSES: The meeting will take place over webinar with a telephone-only connection option. Details on how to connect to the meeting will be available at: *www.mafmc.org.*

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; website: *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: During this meeting the EOP Committee will discuss development of a process/policy for reviewing exempted fishing permit applications for species designated as ecosystem components under the Council's Unmanaged Forage Omnibus Amendment. The Committee will provide guidance to staff on development of this draft policy/process. The EOP Committee will then meet jointly with the Advisory Panel (AP) to continue the comprehensive review of the Council's Ecosystem Approach to the Fisheries Management (EAFM) risk assessment. The Committee and AP will review and provide feedback on existing and potentially new risk elements and their definitions for inclusion in an updated risk assessment, Risk elements identify an aspect that may threaten achieving the biological, economic, or social objectives that the Council desires from a fishery. Both projects will continue to be developed with input from the EOP Committee and AP throughout the year with draft products for Council review and approval anticipated in the fall of

2023. A detailed agenda and background documents will be made available on the Council's website (*www.mafmc.org*) prior to the meeting.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Shelley Spedden, (302) 526–5251, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 6, 2023.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2023–07567 Filed 4–10–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC900]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) will hold a meeting of the Ecosystem and Ocean Planning (EOP) Advisory Panel (AP). See **SUPPLEMENTARY INFORMATION** for agenda details.

DATES: The meeting will be held on Thursday, April 27, 2023, from 1 p.m. through 4 p.m.

ADDRESSES: The meeting will take place over webinar with a telephone-only connection option. Details on how to connect to the meeting will be available at: *www.mafmc.org.*

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; website: *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The AP will be meeting jointly with the EOP Committee to continue the comprehensive review of the Council's Ecosystem Approach to the Fisheries Management (EAFM) risk assessment. The Committee and AP will review and provide feedback on existing and potentially new risk elements and their definitions for inclusion in an updated risk assessment. Risk elements identify an aspect that may threaten achieving the biological, economic, or social objectives that the Council desires from a fishery. The risk assessment review will continue throughout the year with revised draft risk assessment update for Council review and approval anticipated in the fall of 2023.

A detailed agenda and background documents will be made available on the Council's website (*www.mafmc.org*) prior to the meeting.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Shelley Spedden, (302) 526–5251, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 6, 2023.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2023–07564 Filed 4–10–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC824]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the U.S. Army Corps of Engineers Unalaska (Dutch Harbor) Channel Deepening Project

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received a request from the United States Army Corps of Engineers (Alaska District) (USACE) for authorization to take marine mammals incidental to Unalaska (Dutch Harbor) Channel Deepening in Iliuliuk Bay, Unalaska, Alaska. 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 at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than May 11, 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 *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: 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 October 31, 2022, NMFS received a request from the United States Army Corps of Engineers—Alaska District (USACE) for an IHA to take marine mammals incidental to deepening the entrance to Iliuliuk Bay, adjacent to Dutch Harbor, Alaska. Following NMFS' review of the application, USACE submitted supplemental information on November 28, 2022 and January 5, 2023. The application was deemed adequate and complete on March 2, 2023. USACE's request is for take of harbor seals (*Phoca vitulina richardsi*), Steller sea lions (*Eumetopias jubatus*), harbor porpoise (*Phocoena phocoena*) and humpback whales (*Megaptera novaengliae*) by Level A harassment and Level B Harassment. Neither USACE nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of Proposed Activity

Overview

The USACE is proposing to deepen the entrance channel of Iliuliuk Bay by means of dredging and (if necessary) confined blasting of a 42-foot (ft) (12.8 meter (m)) deep ''bar'' which currently restricts access to the port of Dutch Harbor, Alaska. Dutch Harbor is the only deep draft, year-round ice-free port along the 1,200-mile (1,931 km) Aleutian Island chain, providing vital services to vessels operating in both the North Pacific and the Bering Sea, and the depth of the bar currently restricts access for large vessels that may need to enter the port, particularly during extreme weather. The purpose of the project is to increase navigational safety and improve economic efficiencies into and out of Dutch Harbor via Iliuliuk Bay. As shown in Figure 1–1 of the IHA application, the depth of the bar and entrance is approximately 42 ft (12.8 m) below mean lower low water (MLLW), which is shallower than the surrounding bathymetry (approximately 100 ft (33.3 m) below MLLW). The bar is the only constraint preventing safe and efficient access for the delivery of fuel, durable goods, and exports to and from Dutch Harbor. Deeper draft vessels are unable to safely cross the bar to seek refuge in Dutch Harbor, and if they have to conduct personnel evacuations, it must be done outside the bar in open waters. This presents risks to rescuers and vessel personnel. The need for the project is to reduce inefficiencies in cargo transportation and provide safer options in protected waters for vessel repairs and medical evacuations than currently exist due to draft restrictions at the bar.

Sounds resulting from confined blasting may result in the incidental take of marine mammals by Level A and Level B harassment in the form of slight injury (auditory and non-auditory) and behavioral harassment. Dredging and disposal of dredged material are not expected to result in either Level A or Level B harassment due to the low source level and mid-channel location of the dredging activities. If dredging is sufficient to deepen the channel to the required depth, reduced or no blasting may be necessary. USACE proposes a conservative scenario requiring blasting approximately 50 percent of the bar area, resulting in approximately 1,800 drilled boreholes and up to 24 total blasting events.

Dates and Duration

The proposed IHA would be effective from November 1, 2023 to October 31, 2024. The in-water work period for the proposed action will occur over approximately 150 to 200 days over 12 months, including a maximum of 24 non-consecutive days with confined blasting events. Dredging could occur for up to 10 hours per day; dredge disposal could occur for up to 1 hour per day. USACE proposes to conduct all work during daylight hours.

Specific Geographic Region

This project is located at the entrance to Iliuliuk Bay on Amaknak Island in the Aleutian Islands of Alaska. Dutch Harbor is a port facility with the City of Unalaska, and is located on the northern side of Amaknak Island, some 800 air miles (1,288 km) from Anchorage. The port of Dutch Harbor opens onto Iliuliuk Bay, and from there into Unalaska Bay and the Pacific Ocean (Figure 1). This project would occur at the mouth of Iliuliuk Bay out to a distance of approximately 3.1 miles (5 kilometers (km)).

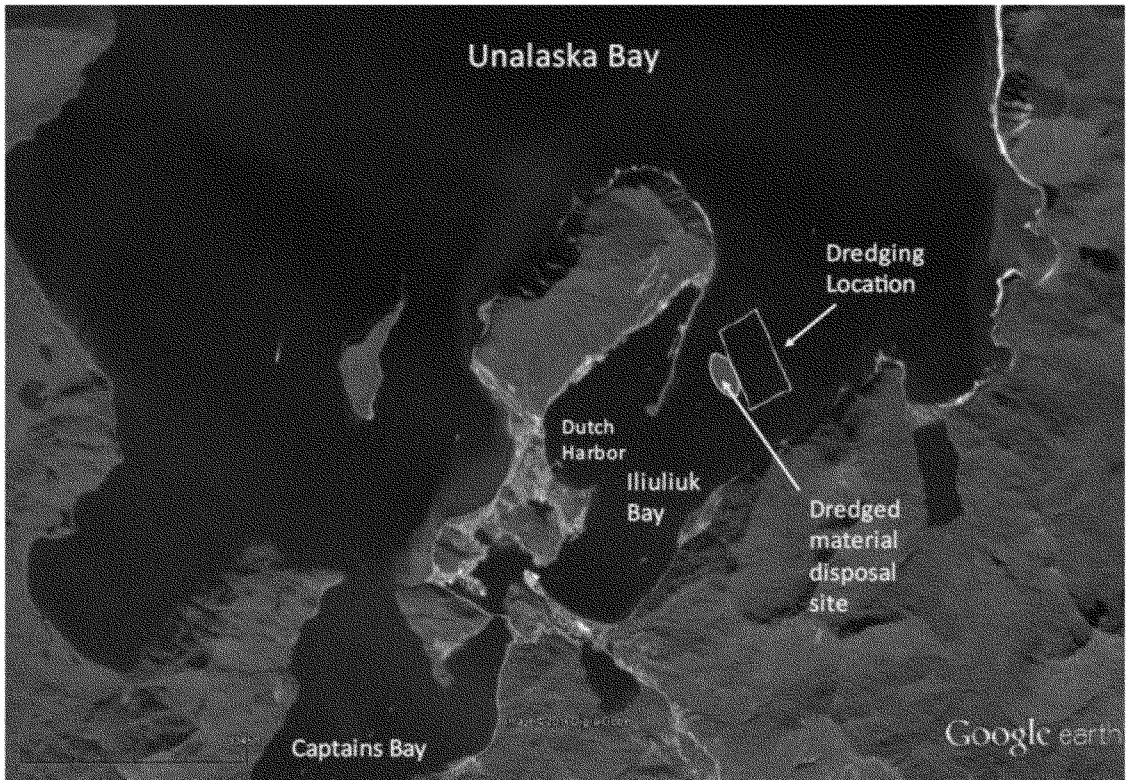

Figure 1—Map of Proposed Project Area Amaknack Island, Alaska

Detailed Description of the Specified Activity

The USACE is proposing to deepen the entrance channel of Iliuliuk Bay by means of dredging and (if necessary) confined blasting of a 42-foot (ft) (12.8 meter (m)) deep ''bar'' which currently restricts access to the port of Dutch Harbor, Alaska. The bar is likely a terminal moraine from when the area around Iliuliuk Bay was glaciated; such moraines are typically made up of a heterogeneous mixture of everything from sand to large boulders. Geophysical surveys of the site indicate that the sediment is highly compacted and may require the use of explosives to effectively remove the sediment down to the desired depth of 58 ft (17.7 m) below MLLW. Removal of the bar would involve dredging (via clamshell dredge or long-reach excavator) an area approximately 600 ft (182.9 m) by 600 ft (182.9 m), moving approximately 182,000 cubic yards (139,150 cubic meters) of sediment. Dredged material would be placed in the water immediately adjacent to the inside of the bar in approximately 100 ft (33.3 m) of water. If required to enable dredging, confined blasting (hereafter ''blasting'') involving drilled boreholes and multiple charges with microdelays between blasts will be used to break up the sediment. If dredging is sufficient to deepen the channel to the required depth, reduced or no blasting may be necessary. USACE proposes a conservative scenario requiring blasting approximately 50 percent of the bar area, resulting in approximately 1,800 drilled boreholes and up to 24 total blasting events.

The proposed project may result in take of marine mammals by Level A and Level B harassment caused by sounds produced from underwater blasting activities. No Level A or Level B harassment is expected from the proposed dredging, dredged material disposal, or borehole drilling due to the low source levels, similarity to sound from passing vessels, and mid-channel location of the activities, and therefore none is proposed for authorization. Acoustic impacts from dredging and borehole drilling are not addressed further in this document.

Blasting Plan—The blasting plan for this project would be based on initial dredging activity, but a reasonable scenario involves drilling boreholes for confined underwater blasting in a 10-ft (3 m) by 10-ft (3 m) grid pattern over the dredge prism. While it is possible that dredging would be accomplished without any blasting at all, it is conservative to assume that up to 50 percent of the dredged area would need to be blasted to break up the hard crust and possibly large boulders encountered in the dredge prism. This would result in up to 1,800 boreholes drilled up to 60 ft (18.3 m) below MLLW. Drilling to 60 ft (18.3 m) below MLLW would ensure that everything down to the design depth of 58 ft (17.7 m) below MLLW is completely fractured. However, if just the crust needs to be broken up by blasting it is possible that charges will not need to be placed as deep as 60 ft (18.3 m) below MLLW. Drilling would likely take place from a jack-up barge with a drilling template. It is expected that after 75 holes are drilled they would be shot in a single blasting event (with delays between charges). Shooting 75 holes per event would lead to a maximum total of 24 blasting events to blast all 1,800 holes. Each of these 24 blasting events, lasting just over 1 second, may induce take by Level A and Level B harassment.

Although the desired outcome is to avoid all or at least a large portion of the blasting, USACE conservatively assumes blasting would be necessary for up to 50 percent of the entire area. The 600 ft (182.9 m) by 600 ft (182.9 m) dredged area is 360,000 sq. ft (33,445 square meters (m^2)). Borehole spacing of 10 ft (3 m) would require a total of 3,600 boreholes, so 50 percent would be a maximum of 1,800 boreholes. Boreholes would likely be blasted in groups of 75 holes with delays between charges in each hole. It is estimated that there could be up to 24 days of blasting with

one blasting event lasting just over 1 second each of those 24 days. These blasting days will not occur every day, but will occur as needed and be separated by the time it takes to drill the necessary holes. It is possible that drilling might occur on the 1st and 2nd of a given month and then charges are placed and shot on the third day of that month and then dredging might proceed for a week or two before drilling and blasting are needed again. The proposed IHA would authorize a maximum of 24 blasting events.

All underwater blasting would incorporate stemmed charges (*i.e.,* crushed rock packed at the top of the hole above the explosive charge). Stemming helps to reduce the impact from blasting above the surface and maximizes the ability of the charge to fracture rock without wasting energy. Charge sizes would be limited to no more than 93.5 pounds (lbs) (42.4 kilograms (kg)) placed in lined boreholes that would be about 3.5–4.0 inches (in) (8.9–10.2 centimeters (cm)) in diameter. Smaller charge sizes could be used at the contractor's discretion. The charge detonation in subsequent boreholes would be separated by at least 15 milliseconds (ms) to reduce the overall charge at one time while still retaining the effectiveness of the charges in the borehole.

Safety restrictions impose some limits on blasting activity and potential mitigations available to protect marine mammals. The explosives cannot ''sleep'' after being placed for longer than 24 hours without becoming a risk to private property and human health, and they cannot be detonated in the dark. If a marine mammal enters the blast area following the emplacement of charges, detonation will be delayed as long as possible. All other legal measures to avoid injury will be utilized; however, the charges will be detonated when delay is no longer feasible. As discussed in the mitigation section, in order to minimize the chances the charges need to be detonated while animals are present in the vicinity, the IHA includes a mitigation measure requiring explosives to be set as early in the day as possible, and detonated as soon as the pre-clearance zone is clear for 30 minutes.

In summary, the project period includes up to 24 days of confined underwater blasting activities for which incidental take authorization is requested, and up to 180 days of dredging activity for which no take of any marine mammal species is expected or proposed for authorization.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions, incorporated here by reference, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species*).

Table 1 lists all species or stocks for which take is expected and proposed to be authorized for this 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 managed stocks in this region are assessed in NMFS' U.S. Alaska and Pacific Ocean SARs. All values presented in Table 1 are the most recent available at the time of publication (including from the draft 2022 SARs) and are available online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.*

On January 24, 2023, NMFS published the draft 2022 SARs (*https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region*). The Alaska and Pacific Ocean SARs include a proposed update to the humpback whale stock structure. The new structure, if finalized, would modify the MMPA-designated stocks to align more closely with the ESA-designated DPSs. Please refer to the draft 2022 Alaska and Pacific Ocean SARs for additional information.

NMFS Office of Protected Resources, Permits and Conservation Division has generally considered peer-reviewed data in draft SARs (relative to data provided in the most recent final SARs), when available, as the best available science, and has done so in this IHA for all species and stocks, with the exception of a new proposal to revise humpback whale stock structure. Given that the proposed changes to the humpback whale stock structure involve application of NMFS's Guidance for Assessing Marine Mammal Stocks and could be revised following consideration of public comments, it is more appropriate to conduct our analysis in this notice based on the status quo stock structure identified in the most recent final SARs (2021; Carretta *et al.,* 2022; Muto *et al.,* 2022).

TABLE 1—SPECIES LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES [1]

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [2]	Stock abundance (CV, N_{min}, most recent abundance survey) [3]	PBR	Annual M/SI [4]
Order Artiodactyla—Infraorder Cetacea—Mysticeti (baleen whales)						
Family Balaenopteridae (rorquals):						
Humpback Whale [5]	*Megaptera novaeangliae*	Central N Pacific	-, -, Y	10,103 (0.3, 7,890, 2006)	83	26
		Western N Pacific	E, D, Y	1,107 (0.3, 865, 2006)	3	2.8
		CA/OR/WA	-, -, Y	4,973 (0.05, 4,776, 2018)	28.7	≥48.6
Odontoceti (toothed whales, dolphins, and porpoises)						
Family Phocoenidae (porpoises):						
Harbor porpoise	*Phocoena phocoena*	Bering Sea [6]	-, -, Y	UNK (UNK, N/A, 2008)	UND	0.4
		Gulf of Alaska	-, -, Y	31,046 (0.21, N/A, 1998)	UND	72
Order Carnivora—Pinnipedia						
Family Otariidae (eared seals and sea lions):						
Steller Sea Lion	*Eumetopias jubatus*	Western	E, D, Y	52,932 (N/A, 52,932, 2019)	318	254
		Eastern	-, -, N	43,201 (N/A, 43,201, 2017)	2592	112
Family Phocidae (earless seals):						
Harbor Seal	*Phoca vitulina*	Aleutian Islands	-, -, N	5,588 (N/A, 5,366, 2018)	97	90

[1] 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)).

[2] 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.

[3] 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 due to lack of recent surveys allowing for accurate assessment of stock abundance.

[4] 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.

[5] The two humpback whale Distinct Population Segments (DPSs) making up the California, Oregon, and Washington (CA/OR/WA) stock present in Southern California are the Mexico DPS, listed under the ESA as Threatened, and the Central America DPS, which is listed under the ESA as Endangered.

[6] The best available abundance estimate and Nmin are likely an underestimate for the entire stock because it is based upon a survey that covered only a small portion of the stock's range. PBR for this stock is undetermined due to this estimate being older than 8 years.

As indicated above, all four species (with eight managed stocks) in Table 1 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 3–1 of the IHA application. While a biologically important area (BIA) for sperm whales (*Physeter physeter*) surrounds Amaknack Island (Brower *et al.,* 2022), and killer whales (*Orcinus orca*) 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. Previous monitoring for a construction project at Dutch Harbor, adjacent to Iliuliuk Bay, documented no sightings of any of these three species. Additionally, the shallow and confined nature of the bay makes it unsuitable habitat for sperm whales. Killer whales may occur within Iliuliuk Bay, but are infrequent and short-term visitors to the area and would be highly visible on approach.

In addition, the northern sea otter (*Enhydra lutris kenyoni*) may be found in Iliuliuk Bay. However, northern sea otters are managed by the U.S. Fish and Wildlife Service and are not considered further in this document.

Humpback Whale

The humpback whale is found worldwide in all oceans. Prior to 2016, humpback whales were listed under the ESA as an endangered species worldwide. Following a 2015 global status review (Bettridge *et al.,* 2015), NMFS established 14 Distinct Population Segments (DPS) with different listing statuses (81 FR 62259, September 8, 2016) pursuant to the ESA. Humpback whales found in the project area are predominantly from the three DPSs that are present in Alaska.

Whales from the Western North Pacific (WNP), Mexico, and Hawaii DPSs overlap on feeding grounds off Alaska and are not visually distinguishable. Members of different DPSs are known to intermix on feeding grounds; therefore, all waters off the coast of Alaska should be considered to have ESA-listed humpback whales. Based on an analysis of migration between winter mating/calving areas and summer feeding areas using photo-identification, Wade *et al.* (2016) concluded that the humpback whales in the Aleutian Islands, Bering, Chukchi, and Beaufort Seas summer feeding areas are primarily from the recovered Hawaii DPS (91 percent), followed by the Mexico DPS (7 percent), and Western North Pacific DPS (2 percent).

The DPSs of humpback whales that were identified through the ESA listing process do not equate to the existing MMPA stocks. The updated stock delineations for humpback whales under the MMPA are currently out for public review in the draft 2022 SARs, as mentioned above. Until this review is complete, NMFS considers humpback whales in the Aleutian Islands to be part of either the Central North Pacific stock or of the Western North Pacific stock (Muto *et al.,* 2021).

Humpback whales are found throughout the Aleutian Islands, Gulf of Alaska, and Bering Sea in a variety of marine environments, including open-ocean, near-shore waters, and areas within strong tidal currents (Dahlheim *et al.,* 2009). Satellite tracking indicates humpbacks frequently congregate in

shallow, highly productive coastal areas of the North Pacific Ocean and Bering Sea (Kennedy *et al.,* 2014). The waters surrounding the eastern Aleutian Islands are dominated by strong tidal currents, water-column mixing, and unique bathymetry. These factors are thought to concentrate the small fish and zooplankton that compose the typical humpback diet in Alaska, creating a reliable and abundant food source for whales. Unalaska Island is situated between Unimak and Umnak Passes, which are known to be important humpback whale migration routes and feeding areas (Kennedy *et al.,* 2014). Humpback whales are often present near the project area during summer and show up in the larger area of Unalaska Bay beginning in April and are present well into October most years (USACE, 2019). Presence in Unalaska Bay and Iliuliuk Bay appears to be largely prey-driven, so large variations in abundance between months and years is common.

The most common areas to see most humpback whales in Unalaska Bay is shown in the orange shading on Figure 4–3 of the IHA application. Up to 60 humpback whales at one time have been observed during USACE 2018 surveys and use of this general area is supported by casual observations over the past 23 years of working in the area. Humpback whales have been seen in Captains Bay, Iliuliuk Bay, and inside Dutch Harbor, but are always in smaller numbers than the overall Unalaska Bay area.

NMFS identified a portion of the area surrounding the Aleutian Islands as a Biologically Important Area (BIA) for humpback whales for feeding during the months of May through January (Brower *et al.* 2022). BIAs are spatial and temporal boundaries identified for certain marine mammal species where populations are known to concentrate for specific behaviors such as migration, feeding, or breeding. This BIA was identified based on tagging studies, visual observations, and acoustic detections of high numbers of humpback whales feeding in the area (Brower *et al.,* 2022). Initial designation of humpback whale BIAs helped to inform the critical habitat designation finalized by NMFS in 2021 (86 FR 21082, April 21, 2021).

Critical habitat became effective on May 21, 2021 (86 FR 21082) for the Central America, Mexico, and Western North Pacific DPS of humpback whales. The nearshore boundaries of the critical habitat for Mexico and Western North Pacific DPS humpback whales in Alaska are defined by the 1-meter isobath relative to MLLW. Additionally, on the north side of the Aleutian Islands, the seaward boundary is defined by a line extending from 55°41′ N, 162°41′ W to 55°41′ N, 169°30′ W, then southward through Samalga Pass to a boundary drawn along the 2,000-meter isobath on the south side of the islands.

The critical habitat does not include manmade structures (such as ferry docks or seaplane facilities) and the land on which they rest within the critical habitat boundaries. Sites owned or controlled by the Department of Defense (DoD) are also excluded from the critical habitat where they overlap. Essential features identified as essential to the conservation of the Mexico DPS and Western North Pacific DPS relevant to this IHA are the prey species of each (which are primarily euphausiids and small pelagic schooling fish) are of sufficient quality, abundance, and accessibility within humpback whale feeding areas to support feeding and population growth. Material and equipment barges' routes would transit through critical habitat on the way to the project site.

Harbor Porpoise

Harbor porpoise range throughout the coastal waters of the North Pacific Ocean from Point Barrow along the Alaska Coast and throughout the Gulf of Alaska (Muto *et al.,* 2021). While existing data suggests that the stock structure is likely more fine-scaled than current analyses have been able to describe, there are currently two defined stocks of harbor porpoise that may be present in the project area. These are the Bering Sea and Gulf of Alaska stocks. The Bering Sea stock occurs around the Aleutian Islands and northward, while the Gulf of Alaska Stock occurs south of the Aleutians and ranges throughout southcentral Alaskan coastal waters. There is likely some overlap in stocks around Unimak Pass (Muto *et al.,* 2021), potentially including the action area. Harbor porpoise typically occur in waters less than 100 m deep, tend to be solitary or occur in small groups, and can be difficult for observers to detect.

Harbor porpoise tend to be short-term, infrequent visitors to Iliuliuk Bay. While there were no detections of this species during monitoring and survey efforts in 2017 and 2018, a group of approximately eight porpoises was spotted by USACE biologists during 2017 project scoping efforts (USACE, 2019).

Steller Sea Lion

Steller sea lions were listed as threatened range-wide under the ESA on November 26, 1990 (55 FR 49204). Steller sea lions were subsequently partitioned into the western and eastern Distinct Population Segments (DPSs; western and eastern stocks) in 1997 (62 FR 24345, May 5, 1997). The eastern DPS remained classified as threatened until it was delisted in November 2013. The western DPS (those individuals west of the 144° W longitude or Cape Suckling, Alaska) was upgraded to endangered status following separation of the DPSs, and it remains endangered today. There is regular movement of both DPSs across this 144° W longitude boundary (Jemison *et al.,* 2013) however, due to the distance from this DPS boundary, it is likely that only western DPS Steller sea lions are present in the project area. Therefore, animals potentially affected by the project are assumed to be part of the western DPS. Sea lions from the eastern DPS, are not likely to be affected by the proposed activity and are not discussed further.

Steller sea lions do not follow traditional migration patterns, but will move from offshore rookeries in the summer to more protected haulouts closer to shore in the winter. They use rookeries and haulouts as resting spots as they follow prey movements and take foraging trips for days, usually within a few miles of their rookery or haulout. They are generalist marine predators and opportunistic feeders based on seasonal abundance and location of prey. Steller sea lions forage in nearshore as well as offshore areas, following prey resources. They are highly social and are often observed in large groups while hauled out, but alone or in small groups when at sea (NMFS, 2022).

Steller sea lions are distributed throughout the Aleutian Islands, occurring year-round in the proposed action area. Steller sea lions are drawn to fish processing plants and high forage value areas, such as anadromous streams. Dutch Harbor is one of the busiest commercial fishing ports in the United States, with consistent fishing vessel traffic in and out of Iliuliuk Bay. Steller sea lions were common during periodic USACE winter surveys in Dutch Harbor between 2000 and 2016, but they were not abundant near the proposed project area. Single marine mammals were observed on occasion outside the Dutch Harbor spit. In past years during winter surveys during 2000 to 2006, there were two areas outside of Iliuliuk Bay where large aggregations of 50 to 60 Steller sea lions were common (USACE, unpublished data; see Figure 4–5 of the IHA application for further detail).

Critical habitat for Steller sea lions was designated by NMFS in 1993 based on the following essential physical and

biological habitat features: terrestrial habitat (including rookeries and haulouts important for rest, reproduction, growth, social interactions) and aquatic habitat (including nearshore waters around rookeries and haulouts, free passage for migration, prey resources, and foraging habitats) (58 FR 45269).

There are three major haulouts and one major rookery within 20 nautical miles of the Proposed Project site (see Figure 4–6 in the IHA application). The major haulouts include Old Man Rocks and Unalaska/Cape Sedanka (approximately 15 nautical miles southeast straight-line distance from the project site) and Akutan/Lava Reef (approximately 19 nautical miles northeast straight-line distance from the project site). The closest rookery is Akutan/Cape Morgan (approximately 19 nautical miles east straight-line distance from the project site). Another major rookery is located approximately 19 nmi from the project location (straight line distance over mountains) at Akutan/Lava Reef. As of 2014, the number of adult Steller sea lions using these sites was: 1,129 (Akutan/Cape Morgran rookery); 182 (Akutan/Lava Reef haulout); 15 (Old Man Rocks haulout); and 0 (Unalaska/Cape Sedanka haulout) (NMFS, 2021).

In addition to major rookery and haulout locations, there are three special aquatic foraging areas in Alaska for the Steller sea lion (Shelikof Strait area, Bogoslof area, and Seguam Pass area). The project site is within the outer limits of the Bogoslof foraging area (Figure 4–7 in the IHA application).

Since the ensonified action area is within 20 nmi of major haulouts and a major rookery, it would intersect Steller sea lion designated critical habitat. Additionally, since Iliuliuk Bay is within Steller sea lion critical habitat, material and equipment barges' routes would transit through critical habitat on the way to the project site.

Harbor Seal

Harbor seals inhabit coastal and estuarine waters off Alaska and are one of the most common marine mammals in Alaska. They haul out on rocks, reefs, beaches, and drifting glacial ice. They are opportunistic feeders and often adjust their distribution to take advantage of locally and seasonally abundant prey, feeding in marine, estuarine, and occasionally fresh waters (Womble *et al.,* 2009, Allen and Angliss, 2015). Harbor seals are generally non-migratory, with local movements associated with such factors as tide, weather, season, food availability and reproduction. They deviate from other pinniped species in that pupping may occur on a wide variety of haulout sites rather than particular major rookeries (ADF&G, 2022).

There are 12 distinct stocks of harbor seals in Alaska. A 1996 to 2018 survey resulted in an estimated 243,938 harbor seals throughout Alaska. The Aleutian Island Stock is the only stock that occurs within the project area and is estimated to consist of 5,588 harbor seals. The ability to obtain data on the Aleutian Island Stock is limited due to the region's size and weather; in addition, it is difficult to acquire the logistics to conduct aerial surveys in the region.

In skiff-based surveys conducted in the western Aleutians from 1977 to 1982, 1,619 harbor seals were observed. Compared to an aerial survey conducted in 1999 resulting in 884 harbor seals being observed, there was a 45 percent decrease in harbor seal population (Small *et al.,* 2008). Figure 4–1 in the IHA applications shows the locations where these surveys were conducted in the Fox Islands. The Fox Islands includes Unalaska Island, which had a multitude of locations surveyed.

Harbor seals occur throughout Unalaska Bay. They are usually observed as single individuals in the water, but often in groups when hauled out. They occasionally haul out in three locations when in Iliuliuk Bay (Figure 4–2 in the IHA application). They typically haul out in groups of 1 to 10 individuals during calm conditions. Around 40 harbor seals can haul out near Ulakta Head when the tide is at lower levels in calm seas. Additionally, although they can be found anywhere along the shoreline, they are more commonly seen routinely foraging at the kelp beds along the shoreline.

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 2.

TABLE 2—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 *et al.,* 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 of Marine Mammals 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 of Marine Mammals 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

Sound-producing in-water construction activities associated with the project would include confined blasting. The sounds produced by confined blasting are considered impulsive (as compared to non-impulsive, defined below). The distinction between the two sound types is important because they have differing potential to cause physiological effects, particularly with regard to hearing (*e.g.,* Ward 1997 in Southall *et al.,* 2007). Please see Southall *et al.* (2007) for an in-depth discussion of these concepts.

Impulsive sound sources (*e.g.,* explosions, gunshots, sonic booms, impact pile driving) produce signals that are brief (typically considered to be less than 1 second), broadband, atonal transients (ANSI 1986; Harris 1998; NIOSH 1998; ISO 2003; ANSI 2005) and occur either as isolated events or repeated in some succession. Impulsive sounds are all characterized by a relatively rapid rise from ambient pressure to a maximal pressure value followed by a rapid decay period that may include a period of diminishing, oscillating maximal and minimal pressures, and generally have an increased capacity to induce physical injury as compared with sounds that lack these features.

Non-impulsive sounds can be tonal, narrowband, or broadband, brief or prolonged, and may be either continuous or non-continuous (ANSI 1995; NIOSH 1998). Some of these non-impulsive sounds can be transient signals of short duration but without the essential properties of impulses (*e.g.,* rapid rise time). Examples of non-impulsive sounds include those produced by vessels, aircraft, machinery operations such as drilling, vibratory pile driving, and active sonar systems. The duration of such sounds, as received at a distance, can be greatly extended in a highly reverberant environment.

Acoustic Impacts

Anthropogenic sounds cover a broad range of frequencies and sound levels and can have a range of highly variable impacts on marine life, from none or minor to potentially severe responses, depending on received levels, duration of exposure, behavioral context, and various other factors. The potential effects of underwater sound from active acoustic sources can potentially result in one or more of the following; temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, stress, and masking (Richardson *et al.,* 1995; Gordon *et al.,* 2004; Nowacek *et al.,* 2007; Southall *et al.,* 2007; Gotz *et al.,* 2009). The degree of effect is intrinsically related to the signal characteristics, received level, distance from the source, and duration of the sound exposure. In general, sudden, high level sounds can cause hearing loss, as can longer exposures to lower level sounds. Temporary or permanent loss of hearing will occur almost exclusively for noise within an animal's hearing range. Specific manifestations of acoustic effects are first described before providing discussion specific to the USACE's blasting activities.

Richardson *et al.* (1995) described zones of increasing intensity of effect that might be expected to occur, in relation to distance from a source and assuming that the signal is within an animal's hearing range. The first zone is the area within which the acoustic signal would be audible (potentially perceived) to the animal, but not strong enough to elicit any overt behavioral or physiological response. The next zone corresponds with the area where the signal is audible to the animal and of sufficient intensity to elicit behavioral or physiological responsiveness. Third is a zone within which, for signals of high intensity, the received level is sufficient to potentially cause discomfort or tissue damage to auditory or other systems. Overlaying these zones to a certain extent is the area within which masking (*i.e.,* when a sound interferes with or masks the ability of an animal to detect a signal of interest that is above the absolute hearing threshold) may occur; the masking zone may be highly variable in size.

Hearing Threshold Shift

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, 2019), 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.

Many studies have examined noise-induced hearing loss in marine mammals (see Finneran (2015) and Southall *et al.* (2019) for summaries). For cetaceans, published data on the onset of TTS are limited to the captive bottlenose dolphin (*Tursiops truncatus*), beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaeorientalis*) (Southall *et al.,* 2019). For pinnipeds in water, measurements of TTS are limited to harbor seals, elephant seals (*Mirounga angustirostris*), bearded seals (*Erignathus barbatus*) and California sea lions (*Zalophus californianus*) (Reichmuth *et al.,* 2019; Sills *et al.,* 2020; Kastak *et al.,* 1999, 2007; Kastelein *et al.,* 2019a,b, 2021, 2022). These studies examine hearing thresholds measured in marine mammals before and after exposure to intense sounds. The difference between the pre-exposure and post-exposure thresholds can be used to determine the amount of threshold shift at various post-exposure times. The amount and onset of TTS depends on the exposure frequency. Sounds at low frequencies, well below the region of best sensitivity, are less hazardous than those at higher frequencies, near the region of best sensitivity (Finneran and Schlundt, 2013). 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). 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. Nachtigall *et al.,* (2018) describe the measurements of hearing sensitivity of multiple odontocete species (bottlenose dolphin, harbor porpoise, beluga, and false killer whale (*Pseudorca crassidens*)) when a relatively loud sound was preceded by a warning sound. These captive animals were shown to reduce hearing sensitivity when warned of an impending intense sound. Based on these experimental observations of captive animals, the authors suggest that wild animals may dampen their hearing during prolonged exposures or if conditioned to anticipate intense sounds. Another study showed that echolocating animals (including odontocetes) might have anatomical specializations that might allow for conditioned hearing reduction and filtering of low-frequency ambient noise, including increased stiffness and control of middle ear structures and placement of inner ear structures (Ketten *et al.,* 2021). Data available on noise-induced hearing loss for mysticetes are currently lacking (NMFS, 2018).

Behavioral Effects

Behavioral disturbance may include a variety of effects, including subtle changes in behavior (*e.g.,* minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. 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). Please see Appendices B–C of Southall *et al.* (2007) for a review of studies involving marine mammal behavioral responses to sound.

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.,* 2003). Animals are most likely to habituate to sounds that are predictable and unvarying. It is important to note that habituation is appropriately considered as a ''progressive reduction in response to stimuli that are perceived as neither aversive nor beneficial,'' rather than as, more generally, moderation in response to human disturbance (Bejder *et al.,* 2009). The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure. As noted, behavioral state may affect the type of response. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.,* 1995; NRC, 2003; Wartzok *et al.,* 2003). Controlled experiments with captive marine mammals have showed pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.,* 1997; Finneran *et al.,* 2003). Observed responses of wild marine mammals to loud-impulsive sound sources (typically seismic airguns or acoustic harassment devices) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds, 2002; see also Richardson *et al.,* 1995; Nowacek *et al.,* 2007).

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). This highlights the importance of assessing the context of the acoustic effects alongside the received levels anticipated. Severity of effects from a response to an acoustic stimuli can likely vary based on the context in which the stimuli was received, particularly if it occurred during a biologically sensitive temporal or spatial point in the life history of the animal. There are broad categories of potential response, described in greater detail here, that include alteration of dive behavior, alteration of foraging behavior, effects to breathing, interference with or alteration of vocalization, avoidance, and flight.

Changes in dive behavior can vary widely, and may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive (*e.g.,* Frankel and Clark, 2000; Costa *et al.,* 2003; Ng and Leung, 2003; Nowacek *et al.,* 2004; Goldbogen *et al.,* 2013a,b). Variations in dive behavior may reflect interruptions in biologically significant activities (*e.g.,* foraging) or they may be of little biological significance. The impact of an alteration to dive behavior resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

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.

Variations in respiration naturally vary with different behaviors and alterations to breathing rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Various studies have shown that respiration rates may either be unaffected or could increase, depending on the species and signal characteristics, again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure (*e.g.,* Kastelein *et al.,* 2001, 2005b, 2006; Gailey *et al.,* 2007).

Marine mammals vocalize for different purposes and across multiple modes, such as whistling, echolocation click production, calling, and singing. Changes in vocalization behavior in response to anthropogenic noise can occur for any of these modes and may result from a need to compete with an increase in background noise or may reflect increased vigilance or a startle response. For example, in the presence of potentially masking signals, humpback whales and killer whales have been observed to increase the length of their songs (Miller *et al.,* 2000; Fristrup *et al.,* 2003; Foote *et al.,* 2004), while right whales (*Eubalaena glacialis*) have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.,* 2007b). In some cases, animals may cease sound production during production of aversive signals (Bowles *et al.,* 1994).

Avoidance is the displacement of an individual from an area or migration path because of the presence of a sound or other stressors, and is one of the most obvious manifestations of disturbance in marine mammals (Richardson *et al.,* 1995). For example, gray whales (*Eschrictius robustus*) are known to change direction—deflecting from customary migratory paths—in order to avoid noise from seismic surveys (Malme *et al.,* 1984). Avoidance may be short-term, with animals returning to the area once the noise has ceased (*e.g.,* Bowles *et al.,* 1994; Goold, 1996; Stone *et al.,* 2000; Morton and Symonds, 2002; Gailey *et al.,* 2007). Longer-term displacement is possible, however, which may lead to changes in abundance or distribution patterns of the affected species in the affected region if habituation to the presence of the sound does not occur (*e.g.,* Blackwell *et al.,* 2004; Bejder *et al.,* 2006; Teilmann *et al.,* 2006).

A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. The flight response differs from other avoidance responses in the intensity of the response (*e.g.,* directed movement, rate of travel). Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus, 1996). The result of a flight response could range from brief, temporary exertion and displacement from the area where the signal provokes flight to, in extreme cases, marine mammal strandings (Evans and England, 2001). However, it should be noted that response to a perceived predator does not necessarily invoke flight (Ford and Reeves, 2008), and whether individuals are solitary or in groups may influence the response.

Behavioral disturbance can also impact marine mammals in more subtle ways. Increased vigilance may result in costs related to diversion of focus and attention (*i.e.,* when a response consists of increased vigilance, it may come at the cost of decreased attention to other critical behaviors such as foraging or resting). These effects have generally not been demonstrated for marine mammals, but studies involving fish and terrestrial animals have shown that increased vigilance may substantially reduce feeding rates (*e.g.,* Beauchamp and Livoreil, 1997; Fritz *et al.,* 2002; Purser and Radford, 2011). In addition, chronic disturbance can cause population declines through reduction of fitness (*e.g.,* decline in body condition) and subsequent reduction in reproductive success, survival, or both (*e.g.,* Harrington and Veitch, 1992; Daan *et al.,* 1996; Bradshaw *et al.,* 1998). However, Ridgway *et al.* (2006) reported that increased vigilance in bottlenose dolphins exposed to sound over a 5-day period did not cause any sleep deprivation or stress effects.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Disruption of such functions resulting from reactions to stressors such as sound exposure are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than 1 day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007). Note that there is a difference between multi-day substantive behavioral reactions and multi-day anthropogenic activities. For example, just because an activity lasts

for multiple days does not necessarily mean that individual animals are either exposed to activity-related stressors for multiple days or, further, exposed in a manner resulting in sustained multi-day substantive behavioral responses.

With blasting activities, it is likely that the onset of sound sources could result in temporary, short-term changes in an animal's typical behavior and/or avoidance of the affected area. These behavioral changes may include (Richardson *et al.,* 1995): 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); avoidance of areas where sound sources are located; and/or flight responses (*e.g.,* pinnipeds flushing into water from haulouts or rookeries). Pinnipeds may increase their haulout time, possibly to avoid in-water disturbance (Thorson and Reyff, 2006). If a marine mammal responds to a stimulus by changing its behavior (*e.g.,* through relatively minor changes in locomotion direction/speed or vocalization behavior), the response may or may not constitute taking at the individual level, and is unlikely to affect the stock or the species as a whole. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on animals, and if so potentially on the stock or species, could potentially be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007). Given the nature of the proposed blasting activities (single, short-duration blasts on non-consecutive days), and the monitoring and mitigation measures described below, NMFS considers the most likely impact to marine mammals to be a short-term, temporary behavioral disturbance such as a startle or change in orientation. It is expected that animals would return to their normal behavioral patterns within a few minutes after the blasting event, and that no habitat abandonment is likely as a result of the proposed construction activities.

Stress Response

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).

Auditory 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.,* 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. Given the short duration (approximately 1 second each) and non-consecutive nature of the blasting events proposed, it is unlikely that masking would occur for any marine mammal species.

Non-Auditory Physiological Effects From Explosive Detonations

In addition to PTS and TTS, there is a potential for non-auditory physiological effects that could result from exposure to the detonation of explosives, which the USACE's activities include. Underwater explosions will send a shock wave and blast noise through the water, release gaseous by-products, create an oscillating bubble, and cause a plume of water to shoot up from the water surface. The shock wave and blast noise are of most concern to marine animals. The effects of an underwater explosion on a marine mammal depends on many factors, including the size, type, and depth of both the animal and the explosive charge; the depth of the water column; and the standoff distance between the charge and the animal, as well as the sound propagation properties of the environment. Potential impacts can range from brief effects

(such as behavioral disturbance), tactile perception, physical discomfort, slight injury of the internal organs and the auditory system, to death of the animal (Yelverton *et al.,* 1973; DoN, 2001). Non-lethal injury includes slight injury to internal organs and the auditory system; however, delayed lethality can be a result of individual or cumulative sublethal injuries (DoN, 2001). Immediate lethal injury would be a result of massive combined trauma to internal organs as a direct result of proximity to the point of detonation (DoN, 2001). Generally, the higher the level of impulse and pressure level exposure, the more severe the impact to an individual.

Injuries resulting from a shock wave take place at boundaries between tissues of different density. Different velocities are imparted to tissues of different densities, and this can lead to their physical disruption. Blast effects are greatest at the gas-liquid interface (Landsberg, 2000). Gas-containing organs, particularly the lungs and gastrointestinal (GI) tract, are especially susceptible (Goertner, 1982; Hill, 1978; Yelverton *et al.,* 1973). In addition, gas-containing organs including the nasal sacs, larynx, pharynx, trachea, and lungs may be damaged by compression/expansion caused by the oscillations of the blast gas bubble. Intestinal walls can bruise or rupture, with subsequent hemorrhage and escape of gut contents into the body cavity. Less severe GI tract injuries include contusions, petechiae (small red or purple spots caused by bleeding in the skin), and slight hemorrhaging (Yelverton *et al.,* 1973).

Because the ears are the most sensitive to pressure, they are the organs most sensitive to injury (Ketten, 2000). Sound-related damage associated with blast noise can be theoretically distinct from injury from the shock wave, particularly farther from the explosion. If an animal is able to hear a noise, at some level it can damage its hearing by causing decreased sensitivity (Ketten, 1995). Sound-related trauma can be lethal or sub-lethal. Lethal impacts are those that result in immediate death or serious debilitation in or near an intense source and are not, technically, pure acoustic trauma (Ketten, 1995). Sub-lethal impacts include hearing loss, which is caused by exposures to perceptible sounds. Severe damage (from the shock wave) to the ears includes tympanic membrane rupture, fracture of the ossicles, damage to the cochlea, hemorrhage, and cerebrospinal fluid leakage into the middle ear. Moderate injury implies partial hearing loss due to tympanic membrane rupture and blood in the middle ear. Permanent hearing loss also can occur when the hair cells are damaged by one very loud event, as well as by prolonged exposure to a loud noise or chronic exposure to noise. The level of impact from blasts depends on both an animal's location and, at outer zones, on its sensitivity to the residual noise (Ketten, 1995).

The above discussion concerning underwater explosions only pertains to open water detonations in a free field without mitigation. Given the proposed monitoring and mitigation measures discussed below, the size of the explosives used, and the environment, the USACE's blasting events are not likely to have non-auditory injury or mortality effects on marine mammals in the project vicinity. Instead, NMFS considers that the USACE's blasts are most likely to cause Level B harassment, including behavioral harassment and TTS, or in some cases PTS, in a few individual marine mammals. Neither NMFS nor the USACE anticipates non-auditory injuries of marine mammals as a result of the proposed construction activities.

Potential Effects on Marine Mammal Habitat

Water quality—Temporary and localized reduction in water quality will occur as a result of dredging, dredge disposal, and blasting when bottom sediments are disturbed. Effects to turbidity and sedimentation are expected to be short-term, minor, and localized. Currents are strong in the area and, therefore, suspended sediments in the water column should dissipate and quickly return to background levels. Following the completion of sediment-disturbing activities, the turbidity levels are expected to return to normal ambient levels following the end of construction. Turbidity within the water column has the potential to reduce the level of oxygen in the water and irritate the gills of prey fish species in the proposed project area. However, turbidity plumes associated with the project would be temporary and localized, and fish in the proposed project area would be able to move away from and avoid the areas where plumes may occur. It is expected that the impacts on prey fish species from turbidity and, therefore, on marine mammals, would be minimal and temporary. In general, the area likely impacted by the project is relatively small compared to the available habitat in Iliuliuk Bay and the greater Unalaska Bay. While the project area occurs within a humpback whale feeding BIA, the area impacted by the blasting activities is very small relative to the available foraging habitat, and blasting would occur for a single second on non-consecutive days in an area that is already highly trafficked by vessels. As a result, activity at the project site would be inconsequential in terms of its effects on marine mammal foraging.

Effects to Prey—Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.,* crustaceans, cephalopods, fish, zooplankton). Marine mammal prey varies by species, season, and location and, for some, is not well documented. Studies regarding the effects of noise on known marine mammal prey are described here.

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 that 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). More commonly, though, the impacts of noise on fish are temporary.

Regarding impacts from explosive detonations, SPLs of sufficient strength have been known to cause injury to fish and fish mortality (Dahl *et al.,* 2020). 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. Smith *et al.* (2022) found that damage to the inner ears of fishes at up to 400 m away from an open-water explosion, but noted that the damage present was not linearly related to the distance from the blast. They also did not examine the potential time to recovery from these injuries. Impacts would be most severe when the individual fish is close to the source. 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 explosions and impact pile driving, but the relationships between severity of injury and location of the fish relative to the sound source are not well understood (Halvorsen *et al.,* 2012b; Casper *et al.,* 2013; Dahl *et al.,* 2020). While physical impacts from blasting to fish are potentially severe, including barotrauma and mortality, the geographic range for these potential impacts from the explosion is likely to be limited. Given the other activity occurring within the blast zone (dredging and drilling), it is unlikely that many fishes would remain in a highly disturbed area with extensive construction operations occurring. NMFS therefore believes that the likelihood of injury and mortality to fishes from explosives will be minimized, and that any injurious effects would accrue only to individuals, with no overall impact to fish populations in and around the action area. With respect to non-injurious acoustic impacts, including TTS and behavioral disturbance, the blasting events will last less than 1 second each blast event, making the duration of potential acoustic impacts short term and temporary.

Construction activities would also produce continuous (*i.e.,* dredging and drilling) sounds. Sounds from dredging and drilling activities are unlikely to elicit behavioral reactions from fish due to their similarity to sounds from vessel passages, which are common in the area. These sounds are unlikely to cause injuries to fish or have persistent effects on local fish populations. The duration of possible fish avoidance of this area after dredging or drilling stops is unknown, but a return to normal recruitment, distribution and behavior is anticipated. In addition, it should be noted that the area in question experiences a high level of anthropogenic noise from normal port operations and other vessel traffic.

The most likely impacts to fishes from the proposed project are behavioral disturbances, with some potential for TTS or non-auditory injury (ranging from superficial to serious); in general, impacts to fishes are expected to be minor and temporary.

Construction may have temporary impacts on benthic invertebrate species, another possible marine mammal prey source. Direct benthic habitat loss would result with the permanent loss of 0.03 km^2 of benthic habitat from deepening of the bar. However, the shallow habitat in the middle of the channel is not of high value to marine mammals, which are typically observed foraging either at the shoreline or further into open water, and represents a minimal portion of the available habitat. Further, vessel activity during passages in and out of Iliuliuk Bay creates minor disturbances of benthic habitats (*e.g.,* vessel propeller wakes). The most likely impacts on marine mammal habitat for the project are from underwater noise, bedrock removal, and turbidity, all of which may have impacts on marine mammal prey species. However, as described in the analysis, any impacts to fish and invertebrates are expected to be relatively short term and localized, and would be inconsequential to the fish and invertebrate populations, as well as the marine mammals that use them as prey.

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 use of the explosive source (*i.e.,* confined blasting) has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury and tissue damage (Level A harassment) to result, primarily for cetaceans (humpback whale and harbor porpoise) and phocids because predicted auditory injury zones are larger than 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. While blasting has the potential to result in mortality, when the isopleths within which mortality could occur were calculated, the zones were sufficiently small that the risk of mortality is considered discountable. 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). Thresholds have also been developed to identify the pressure levels above which animals may incur different types of tissue damage (non-acoustic Level A harassment or mortality) from exposure

to pressure waves from explosive detonation.

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 (including explosives) or non-impulsive). These thresholds are provided in Table 3, 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.*

Explosive sources—Based on the best available science, NMFS uses the acoustic and pressure thresholds indicated in Tables 3 and 4 to predict the onset of behavioral harassment, PTS, TTS, tissue damage, and mortality.

For explosive activities using single detonations *(i.e.,* no more than one detonation within a day), such as those described in the proposed activity, NMFS uses TTS onset thresholds to assess the likelihood of behavioral harassment, rather than the Level B Harassment threshold for multiple detonations indicated in Table 3. While marine mammals may also respond behaviorally to single explosive detonations, these responses are expected to typically be in the form of startle reaction, rather than a more meaningful disruption of a behavioral pattern. On the rare occasion that a single detonation might result in a behavioral response that qualifies as Level B harassment, it would be expected to be in response to a comparatively higher received level. Accordingly, NMFS considers the potential for these responses to be quantitatively accounted for through the application of the TTS threshold, which, as noted above, is 5 dB higher than the behavioral harassment threshold for multiple explosives.

TABLE 3—EXPLOSIVE THRESHOLDS FOR MARINE MAMMALS FOR PTS, TTS, AND BEHAVIOR

[Multiple detonations]

Hearing group	PTS impulsive thresholds	TTS impulsive thresholds	Behavioral threshold (multiple detonations)
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{p,0\text{-pk,flat}}$: 219 dB; $L_{E,LF,24h}$: 183 dB.	*Cell 2:* $L_{p,0\text{-pk,flat}}$: 213 dB; $L_{E,LF,24h}$: 168 dB.	*Cell 3:* $L_{E,LF,24h}$: 163 dB.
Mid-Frequency (MF) Cetaceans	*Cell 4:* $L_{p,0\text{-pk,flat}}$: 230 dB; $L_{E,MF,24h}$: 185 dB.	*Cell 5:* $L_{p,0\text{-pk,flat}}$: 224 dB; $L_{E,MF,24h}$: 170 dB.	*Cell 6:* $L_{E,MF,24h}$: 165 dB.
High-Frequency (HF) Cetaceans	*Cell 7:* $L_{p,0\text{-pk,flat}}$: 202 dB; $L_{E,HF,24h}$: 155 dB.	*Cell 8:* $L_{p,0\text{-pk,flat}}$: 196 dB; $L_{E,HF,24h}$: 140 dB.	*Cell 9:* $L_{E,HF,24h}$: 135 dB.
Phocid Pinnipeds (PW) (Underwater).	*Cell 10:* $L_{p,0\text{-pk,flat}}$: 218 dB; $L_{E,PW,24h}$: 185 dB.	*Cell 11:* $L_{p,0\text{-pk,flat}}$: 212 dB; $L_{E,PW,24h}$: 170 dB.	*Cell 12:* $L_{E,PW,24h}$: 165 dB.
Otariid Pinnipeds (OW) (Underwater).	*Cell 13:* $L_{p,0\text{-pk,flat}}$: 232 dB; $L_{E,OW,24h}$: 203 dB.	*Cell 14:* $L_{p,0\text{-pk,flat}}$: 226 dB; $L_{E,OW,24h}$: 188 dB.	*Cell 15:* $L_{E,OW,24h}$: 183 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS/TTS onset. 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 1μPa²s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, ANSI defines peak sound pressure 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 overall marine mammal 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.

TABLE 4—LUNG AND GI TRACT INJURY THRESHOLDS FOR UNDERWATER EXPLOSIVES

Hearing group	Mortality (severe lung injury) *	Slight lung injury *	GI tract injury
All Marine Mammals	*Cell 1:* Modified Goertner model; Equation 1.	*Cell 2:* Modified Goertner model; Equation 2.	*Cell 3:* $L_{p,0\text{-pk,flat}}$: 237 dB.

* Lung injury (severe and slight) thresholds are dependent on animal mass (Recommendation: Table C.9 from DON 2017 based on adult and/or calf/pup mass by species).

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, ANSI defines peak sound pressure 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 overall marine mammal generalized hearing range.

Modified Goertner Equations for severe and slight lung injury (pascal-second)

Equation 1: $103M^{1/3}(1 + D/10.1)^{1/6}$ Pa-s

Equation 2: $47.5M^{1/3}(1 + D/10.1)^{1/6}$ Pa-s

M animal (adult and/or calf/pup) mass (kg) (Table C.9 in DoN 2017)

D animal depth (meters)

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.

NMFS computed cumulative sound exposure impact zones from the blasting information provided by the USACE. Peak source levels of the confined blasts were calculated based on Hempen *et al.* (2007), and scaled using a distance of 10 ft (3 m) and a weight of 95 lbs (43.1 kg) for a single charge. The total charge weight is defined as the product of the single charge weight and the number of charges. In this case, the number of charges is 75. Explosive energy was then

computed from peak pressure of the single maximum charge, using the pressure and time relationship of a shock wave (Urick, 1983). Due to time and spatial separation of each single charge by a distance of 10 ft (3m), the accumulation of acoustic energy is added sequentially, assuming the transmission loss follows cylindrical spreading within the matrix of charges. The sound exposure level (SEL) from each charge at its source can then be calculated, followed by the received SEL from each charge. Since the charges will be deployed in a grid of 10 ft (3 m) by 10 ft (3 m) apart, the received SELs from different charges to a given point will vary depending on the distance of the charges from the receiver. Without specific information regarding the layout of the charges, the modeling assumes a grid of 8 by 9 charges with an additional three charges located in three peripheral locations. Among the various total SELs calculated (one at a receiver location corresponding to each perimeter charge), the largest value, SELtotal (max) is selected to calculate the impact range. Using the pressure versus time relationship above, the frequency spectrum of the explosion can be computed by taking the Fourier transform of the pressure (Weston, 1960), and subsequently be used to produce hearing range weighted metrics.

Frequency specific transmission loss of acoustic energy due to absorption is computed using the absorption coefficient, α (dB/km), summarized by François and Garrison (1982a, b). Seawater properties for computing sound speed and absorption coefficient were based on NMFS Alaska Fisheries Science Center report of mean measurements in Auke Bay (Sturdevant and Landingham, 1993) and the 2022 average seawater temperature from Unalaska (NOAA, 2023). Transmission loss was calculated using the sonar equation:

$$TL = SEL_{total(m)} - SEL_{threshold}$$

where $SEL_{threshold}$ is the Level A harassment threshold. The distances, R, where such transmission loss is achieved were computed numerically by combining both geometric transmission loss, and transmission loss due to frequency-specific absorption. A spreading coefficient of 20 is assumed to account for acoustic energy loss from the sediment into the water column. The outputs from this model are summarized in Table 5, below.

TABLE 5—MODEL RESULTS OF IMPACT ZONES FOR BLASTING IN METERS (m)

Species	Mortality	Slight lung injury	GI tract	PTS: SELcum	PTS: SPLpk	TTS: SELcum	TTS: SPLpk
Low frequency cetacean	4.0	9.2	25.8	*344.66	205.29	*1,918	409.62
High frequency cetacean	20.3	47.5	25.8	1,213.79	*1,453.37	*4,435.57	2,899.86
Otariid	13.8	32.3	25.8	40.00	*91.92	*249.76	183.40
Phocid	18.2	42.5	25.8	164.84	*230.34	*909.10	459.60

*For the dual criteria of SELcum and SPLpk, the largest of the two calculated distances for each species group was used in our analysis. The PTS and TTS distances for Steller sea lions resulting from the model seemed uncharacteristically small when compared to the other thresholds resulting from the model and were doubled to 92 m and 230 m respectively for take estimation, mitigation, and monitoring.

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. Reliable densities are not available for Iliuliuk Bay, and generalized densities for the North Pacific are not applicable given the high variability in occurrence and density at specific areas around the Aleutian Island chain. Therefore, the USACE consulted previous survey data in and around Iliuliuk Bay and Dutch Harbor to arrive at a number of animals expected to occur within the project area per day. Figure 4–8 and Table 4–3 in the IHA application provide further detail on observations of humpback whales, Steller sea lions, and harbor seals in and around Iliuliuk Bay. Harbor porpoise were not addressed in the IHA application; however, NMFS proposes authorization of harbor porpoise take out of an abundance of caution, based on the 2017 sighting of porpoises in the action area by USACE biologists.

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.

Since reliable densities are not available, the USACE has requested take based on the maximum number of animals that may occur in the blasting area per day multiplied by the number of days of the activity. The applicant varied these calculations based on certain factors. Because of the nature of the proposed blasting (*i.e.,* no more than one blasting event per day), the behavioral thresholds associated with the activity are the same as for the onset of TTS for all species. Both behavioral disturbance and TTS may occur.

Humpback whale—Humpback whales are commonly sighted outside the mouth of Iliuliuk Bay, and were most common in August and September between 2 and 8 km from the survey site outside the mouth of the bay. Humpbacks were also spotted within Iliuliuk Bay in much lower numbers (maximum daily sightings within the bay: 4; outside the bay: 47) (USACE 2022). Based on the previous monitoring efforts in and around Iliuliuk Bay, USACE and NMFS estimate that a maximum of two animals may be present within the Level B harassment threshold for each blasting event. While NMFS expects that the monitoring and mitigation described later in this document will be effective at preventing injurious take of marine mammals, we recognize that humpback whales are common in the area, that animals may enter the blasting area after charges have been set, and that there is a limit on the amount of time detonation may be safely delayed. Humpback whales are highly visible, and their presence would likely be known before charges are laid on a blasting day. We therefore conservatively estimate up to 10 percent of the blasting events may include a humpback whale within the Level A harassment isopleth. With a maximum take of 2 animals per day, multiplied by a maximum of 24 days of blasting, we propose authorization of 48 takes by Level B harassment and up to 3 takes by Level A harassment of humpback whales.

Harbor porpoise—Harbor porpoise were not included in the IHA application. This species typically travels alone or in pairs, but may occasionally be sighted in larger groups. Based on the USACE's observation of a

group of eight individuals in the project area in 2017, and other infrequent sightings of harbor porpoise in and around Iliulliuk Bay, NMFS conservatively proposes an estimate of two animals within the Level B harassment threshold on up to 25 percent of blasting days. Out of an abundance of caution, and because this species is both very sensitive to noise (meaning the Level A harassment zone is comparatively larger), including explosions (von Benda-Beckmann *et al.,* 2015), and difficult to see in the field, NMFS also proposes that up to two harbor porpoise could be within the Level A harassment threshold for up to 10 percent of the blasting events. Given 24 days of blasting, we propose authorization of up to 12 harbor porpoise takes by Level B harassment, and up to 5 harbor porpoise takes by Level A harassment over the course of the activity.

Steller sea lion—During previous monitoring efforts, Steller sea lions were sighted most frequently inside of Iliuliuk Bay, within 4 km of the proposed project area. The maximum number of sightings in a single day was 32, though it is unclear whether this includes multiple sightings of the same large group of 10 to 12 individuals (USACE 2022). Steller sea lions in this area are known to congregate around and follow fishing vessels that regularly transit into and out of Dutch Harbor. Given the previous monitoring data, USACE and NMFS conservatively estimate that a maximum of two animals may be within the Level B harassment threshold for each blast. While NMFS expects that the monitoring and mitigation described later in this document will be effective at preventing injurious take of marine mammals, we recognize that Steller sea lions are common in the area, that animals may enter the blasting area after charges have been set, and that there is a limit on the amount of time detonation may be safely delayed. Steller sea lions may be difficult for observers to detect before charges are laid on a blasting day, and we therefore conservatively estimate up to two Steller sea lions may be within the Level A harassment isopleth for up to 20 percent of the blasting events. With a maximum take of 2 animals per day, multiplied by a maximum of 24 days of blasting, the applicant requests authorization of 48 takes by Level B harassment and up to 5 takes by Level A harassment of Steller sea lions.

Harbor seal—Previous monitoring efforts documented harbor seals close to the shoreline Ulatka Head, on the northeastern side of Iliuliuk Bay between 1 and 4 km from the proposed project area, but were sighted throughout Iliuliuk Bay in all survey months (April–October) (USACE 2022). They were most frequently sighted in the summer months, with up to 43 sightings on a single day. Based on the high rate of sightings within a few hundred meters of the Level B harassment isopleth in the previous data, USACE and NMFS conservatively assume a maximum of 10 seals within the Level B harassment threshold for each blast. While NMFS expects that the monitoring and mitigation described later in this document will be effective at preventing injurious take of marine mammals, we recognize that harbor seals are common in the area, that animals may enter the blasting area after charges have been set, and that there is a limit on the amount of time detonation may be safely delayed. Harbor seals were frequently sighted close to the Level B threshold distance and may be difficult for observers to detect before charges are laid on a blasting day. We therefore conservatively estimate up to two harbor seals may be within the Level A harassment isopleth for up to 20 percent of the blasting events. With a maximum take of 10 animals per day, multiplied by a maximum of 24 days of blasting, the applicant requests authorization of 240 takes by Level B harassment and up to 5 takes by Level A harassment of harbor seals.

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. NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat, as well as subsistence uses. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost and impact on operations.

In addition to the measures described later in this section, the USACE will employ the following standard mitigation measures:

- Conduct a briefing between construction supervisors and crews and the marine mammal monitoring team prior to the start of construction, and when new personnel join the work, to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures;
- For in-water and over-water heavy machinery work, if a marine mammal comes within 10 m, operations must cease and vessels must reduce speed to the minimum level required to maintain steerage and safe working conditions;
- Work may only occur during daylight hours, when visual monitoring of marine mammals can be conducted; and
- If take reaches the authorized limit for an authorized species, the blasting activity will be stopped as these species approach the Monitoring zones (Table 6) to avoid additional take of them.

TABLE 6—MONITORING AND PRE-CLEARANCE ZONES FOR BLASTING ACTIVITIES FOR SPECIES WITH TAKE PROPOSED FOR AUTHORIZATION

	Pre-Clearance zones (m)		Monitoring zones (m)
	Level A harassment thresholds (PTS)	Level B harassment thresholds (TTS)	
Humpback whale	345	1,918	2,500
Harbor Porpoise	1,214	4,500	5,000
Steller sea lion	92	250	2,500
Harbor seal	231	910	2,500

The USACE would be required to implement the following mitigation requirements:

Establishment of Pre-Clearance and Monitoring Zones—The USACE and NMFS have identified pre-clearance zones associated with the distances within which Level A harassment and Level B harassment are expected to occur. Additionally, monitoring zones that extend beyond the pre-clearance zones have been established. Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the pre-clearance zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project area outside the Level B harassment pre-clearance zone and thus prepare for a potential cessation of activity should the animal enter the Level A harassment zone (Table 6).

Pre-monitoring and Delay of Activities—Prior to the start of daily in-water activity, or whenever a break in activity of 30 minutes or longer occurs, the observers will observe the pre-clearance and monitoring zones for a period of 30 minutes. Pre-clearance zones will be considered cleared when a marine mammal has not been observed within the zone for that 30-minute period. If any marine mammal is observed within the Level A pre-clearance zone, activity cannot proceed until the animal has left the zone or has not been observed for 15 minutes. If marine mammals are observed within the Level B pre-clearance or monitoring zones but outside of the Level A pre-clearance zones, work may proceed in good visibility conditions. If work ceases for more than 30 minutes, the pre-activity monitoring of both the monitoring zone and shutdown zone will commence.

In the event that a large whale for which take is not authorized is sighted within either the monitoring or the Level A or Level B pre-clearance zones during monitoring prior to placement of charges on a planned blast day, USACE will evaluate whether environmental conditions allow for blasting to be delayed to the following day. If charges have already been laid before the whale is sighted, blasting would not commence until the whale has been positively observed outside of the monitoring zone, subject to the safety restrictions discussed below.

Charges for blasting will not be laid if marine mammals are within the Level A pre-clearance zone or appear likely to enter the Level A pre-clearance zone. However, once charges are placed, they cannot be safely left undetonated for more than 24 hours. For blasting, the monitoring and pre-clearance zones will be monitored for a minimum of 30 minutes prior to detonating the blasts. If a marine mammal is sighted within the Level A or Level B pre-clearance zones following the emplacement of charges, detonation will be delayed until the zones are clear of marine mammals for 30 minutes. This will continue as long as practicable within the constraints of the blasting design but not beyond sunset on the same day as the charges cannot lay dormant for more than 24 hours, which may force the detonation of the blast in the presence of marine mammals. All other legal measures to avoid injury will be utilized; however, the charges will be detonated when delay is no longer feasible.

Charges will be laid as early as possible in the morning and stemming procedures will be used to fill the blasting holes to potentially reduce the noise from the blasts. Blasting will only be planned to occur in good visibility conditions, and at least 30 minutes after sunrise and at least one hour prior to sunset. The zones will also be monitored for 1 hour post-blasting.

If a detonation occurs when a marine mammal is known to be within the Level A or Level B pre-clearance zones, USACE will observe the blast area for two hours after the blasting event, or until visibility or safety conditions decline to the point that monitoring is no longer feasible, to determine as much as possible about the behavior and physical status of the marine mammal affected by the blasting event.

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, and on the availability of such species or stock for subsistence uses.

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

Monitoring will be conducted 30 minutes before, during, and 30 minutes after construction activities. In addition, observers must record all incidents of marine mammal occurrence, regardless of distance from activity, and must document any behavioral reactions in concert with distance from construction activities.

Protected Species Observers (PSOs) will be land- and boat-based. For blasting, three PSOs will be required (two land-based and one boat-based). Observers will be stationed at locations that provide adequate visual coverage for shutdown and monitoring zones. Potential observation locations are depicted in Figure 3–1 of the applicant's Marine Mammal Monitoring and Mitigation Plan. During blasting, pre-blast monitoring, and post-blast monitoring, three observers will be on duty. Optimal observation locations will be selected based on visibility and the type of work occurring. All PSOs will be trained in marine mammal identification and behaviors and are required to have no other project-related tasks while conducting monitoring. In addition, monitoring will be conducted by qualified observers, who will be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown/delay procedures when applicable. Monitoring of construction activities must be conducted by qualified PSOs (see below), who must have no other assigned tasks during monitoring periods. The applicant must adhere to the following conditions when selecting observers:

- Independent PSOs must be used (*i.e.,* not construction personnel);
- At least one PSO must have prior experience working as a marine mammal observer during construction activities;
- Other PSOs may substitute education (degree in biological science or related field) or training for experience;
- Where a team of three or more PSOs are required, a lead observer or monitoring coordinator must be designated. The lead observer must have prior experience working as a marine mammal observer during construction; and
- The applicant must submit PSO curriculum vitaes for approval by NMFS.

The applicant must ensure that observers 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.

At least 24 hours prior to blasting, the USACE will notify the Office of Protected Resources, NMFS Alaska Regional Office, and the Alaska Regional Stranding Coordinator that blasting is planned to occur, as well as notify these parties within 24 hours after blasting that blasting actually occurred. If a marine mammals is known to be within the Level A or Level B pre-clearance zones during a detonation, USACE will report the following information within 24 hours of the blasting event:

- Description of the blasting event;
- PSO positions and monitoring effort for the 24 hours preceding the blast;
- Environmental conditions (*e.g.,* Beaufort sea state, visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

A draft marine mammal monitoring report will be submitted to NMFS within 90 days after the completion of construction activities. It will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report must include:

- Date and time that monitored activity begins or ends;
- Construction activities occurring during each observation period;
- Weather parameters (*e.g.,* percent cover, visibility);
- Water conditions (*e.g.,* sea state, tide state);
- Species, numbers, and, if possible, sex and age class of marine mammals;
- Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from construction activity;
- Distance from construction activities to marine mammals and distance from the marine mammals to the observation point;
- Locations of all marine mammal observations; and
- Other human activity in the area.

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.

In the unanticipated event that the specified activity likely causes the take of a marine mammal in a manner prohibited by the IHA (if issued), such as a serious injury or mortality, the USACE will immediately cease the specified activities and report the incident to the Office of Protected Resources, NMFS Alaska Regional Office, and the Alaska Regional Stranding Coordinator. The report will include the following information:

- Description of the incident;
- Environmental conditions (*e.g.,* Beaufort sea state, visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities will not resume until NMFS is able to review the circumstances of

the prohibited take. NMFS will work with the USACE to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. The USACE will not be able to resume their activities until notified by NMFS via letter, email, or telephone.

In the event that the USACE discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition as described in the next paragraph), the USACE will immediately report the incident to the Office of Protected Resources, NMFS Alaska Regional Office, and the Alaska Regional Stranding Coordinator. The report will include the same information identified in the paragraph above. Activities will be able to continue while NMFS reviews the circumstances of the incident. NMFS will work with the USACE to determine whether modifications in the activities are appropriate.

In the event that the USACE discovers an injured or dead marine mammal and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), the USACE will report the incident to the Office of Protected Resources, NMFS Alaska Regional Office, and the NMFS Alaska Stranding Hotline and/or by email to the Alaska Regional Stranding Coordinator, within 24 hours of the discovery. The USACE will provide photographs, video footage (if available), or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Coordinator.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.,* intensity, duration), the context of any impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the discussion of our analysis applies to all the species listed in Table 1, 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.

As stated in the mitigation section, pre-clearance zones equal to or exceeding Level A isopleths shown in Table 6 for blasting will be implemented for all species. Serious injury or mortality is not anticipated nor authorized.

Behavioral disturbances of marine mammals to blasting, if any, are expected to be mild and temporary due to the short-term duration of the noise produced by the source and the fact that only a single blasting event will occur on a given day. Additionally, blasting events will not occur on consecutive days. Given the short duration of noise-generating activities per day and that blasting events would occur on a maximum of 24 days, any harassment would be temporary. For all species except humpbacks, there are no known biologically important areas near the project zone that would be impacted by the construction activities. The proposed project area occupies a small percentage of the humpback whale feeding BIA and Critical Habitat areas, and there is sufficient similar habitat nearby. Acoustic impacts will be short-term and temporary in duration. The region of Iliuliuk Bay where the project will take place is located in a highly trafficked commercial port area with regular marine vessel traffic.

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;
- Authorized Level A harassment will be very small amounts and of low degree;
- The intensity of anticipated takes by Level B harassment is relatively low for all stocks. Level B harassment will be primarily in the form of behavioral disturbance, resulting in avoidance of the project areas around where blasting is occurring, with some TTS that may limit the detection of acoustic cues for relatively brief amounts of time;
- While a feeding BIA and Critical Habitat for humpback whales exist in the action area, the proposed activity occupies a small percentage of the total BIA and of the Critical Habitat, and would occur on a short term, temporary basis.
- The USACE will implement mitigation measures, such as pre-clearance zones, for all in-water and over-water activities; and
- Monitoring reports from similar work in Alaska have documented little to no effect on individuals of the same species impacted by the specified activities (USACE, 2020).

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 take of small numbers of marine mammals 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.

Table 7 below shows take as a percent of population for each of the species listed above.

TABLE 7—SUMMARY OF AUTHORIZED INSTANCES OF LEVEL A AND LEVEL B HARASSMENT

Species	DPS/stock	Number of takes by level B harassment by stock	Number of takes by level A harassment by stock	Stock abundance	Percent of population
Humpback whale	Western North Pacific DPS	0.96	0	1,107	0.1
	Mexico DPS	3.36	0	4,973	0.1
	Hawaii DPS	43.68	3	10,103	0.5
Harbor seal	Aleutian Island Stock	240	5	5,588	4.4
Harbor porpoise [1]	Bering Sea	12	5	31,046	0.05
	Gulf of Alaska.				
Steller sea lion	Western DPS	48	5	52,932	0.1

[1] There is not enough information available to determine takes for separate stocks for harbor porpoise. Calculations have been based on the best available stock abundance for the Gulf of Alaska stock, as there are no available data for the Bering Sea stock. This number is conservative, because it represents a minimum value of both stocks.

Table 7 presents the number of animals that could be exposed to received noise levels that may result in take by Level A or Level B harassment for the construction at Iliuliuk Bay, Unalaska. Our analysis shows that less than one-third of the best available population estimate of each affected stock could be taken. Therefore, the numbers of animals authorized to be taken for all species would be considered small relative to the relevant stocks or populations even if each estimated taking occurred to a new individual—an extremely unlikely scenario. For harbor seals and Steller sea lions occurring in the vicinity of the project site, there will almost certainly be some overlap in individuals present day-to-day, and these takes are likely to occur only within some small portion of the overall regional stock.

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

In order to issue an IHA, NMFS must find that the specified activity will not have an ''unmitigable adverse impact'' on the subsistence uses of the affected marine mammal species or stocks by Alaskan Natives. NMFS has defined ''unmitigable adverse impact'' in 50 CFR 216.103 as an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) Causing the marine mammals to abandon or avoid hunting areas; (ii) Directly displacing subsistence users; or (iii) Placing physical barriers between the marine mammals and the subsistence hunters; and (2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

Subsistence activities in Unalaska have historically included the harvest of pinnipeds and sea otters. However, subsistence harvests of marine mammals declined between 1994 and 2008 (the last year for which data are available) (ADF&G 2022b). Additionally, a ban on firearm discharge within the city limits of the City of Unalaska means that current subsistence harvesting typically occurs from skiffs in areas outside of Dutch Harbor and Iliuliuk Bay, including Wide Bay, Kalekta Bay, Bishop Point, Wislow Island, and Beaver Inlet. The proposed activity would not impact these areas.

Any impacts to marine mammals from the proposed activity are likely to be short-term and temporary, and limited to the area around the proposed blasting site. While a limited number of individuals may experience PTS, there are no expected impacts to the availability of marine mammals for subsistence uses due to the proposed activity.

Based on the description of the specified activity, and the proposed mitigation and monitoring measures, NMFS has preliminarily determined that there will not be an unmitigable adverse impact on subsistence uses from USACE's proposed activities.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species, in this case with NMFS Alaska Regional Office.

NMFS is proposing to authorize take of the Mexico and Western North Pacific DPSs of humpback whales, and the western DPS of Steller sea lion, which are listed under the ESA. The Permits and Conservation Division has requested initiation of section 7 consultation with the NMFS Alaska Regional Office for the issuance of this IHA. NMFS will conclude the ESA consultation prior to reaching a determination regarding the proposed issuance of the authorization.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to the USACE for conducting confined blasting in Iliuliuk Bay, Unalaska between November 1, 2023 and October 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 Unalaska (Dutch Harbor) Channel Deepening 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, 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 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 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: April 6, 2023.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–07561 Filed 4–10–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC898]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Highly Migratory Species Management Team (HMSMT) will hold an online meeting, which is open to the public.

DATES: The online meeting will be held Monday, May 1, 2023, from 1 p.m. to 4:30 p.m. and Tuesday, May 2, 2023, from 9:30 a.m. to 4:30 p.m.

ADDRESSES: This meeting will be held online. Specific meeting information, including directions on how to join the meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see *www.pcouncil.org*). You may send an email to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or contact him at (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Kit Dahl, Staff Officer, Pacific Council; telephone: (503) 820–2422.

SUPPLEMENTARY INFORMATION: The two main topics the HMSMT will discuss in this meeting are the development of a proposed agenda for a workshop the Pacific Council is considering to address issues related to the management of West Coast swordfish fisheries and to review material related to HMS essential fish habitat (EFH). The Pacific Council will discuss the workshop at its June 2023 meeting and will begin a review of the current EFH definitions in the HMS Fishery Management Plan at its September 2023 meeting. The HMSMT also may discuss other topics related to Pacific Council agenda items and related workload.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 6, 2023.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2023–07565 Filed 4–10–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: PTO–C–2022–0039]

Trademarks for Humanity Awards Competition Program

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice.

SUMMARY: Pursuant to its statutory authority to conduct intellectual property programs, the United States Patent and Trademark Office (USPTO or Office) is launching a pilot program to promote and incentivize brand owners who offer products and services that help address humanitarian issues utilizing a federally registered trademark. The pilot program will be conducted as an awards competition. For the inaugural program, the humanitarian theme will be the environment. Participating trademark owners will submit program applications describing how the provision of their goods or services, in connection with a trademark registered by the USPTO, has addressed a humanitarian environmental problem impacting people or the planet.

DATES: Applications will be accepted from April 11, 2023 through July 14, 2023, or until 200 applications are received, whichever occurs first.

ADDRESSES: Applications must be submitted electronically via an online application portal, which can be accessed from the USPTO's Trademarks for Humanity web page at *https://www.uspto.gov/ip-policy/trademarks-humanity-awards-program.*

FOR FURTHER INFORMATION CONTACT: Anna Manville, Attorney-Advisor, USPTO, *anna.manville@uspto.gov,* 571–272–9300; or Branden Ritchie, Senior Level Attorney, USPTO, *branden.ritchie@uspto.gov,* 571–272–9300.

SUPPLEMENTARY INFORMATION: In 2012, the USPTO announced a pilot program to recognize humanitarian uses of patented and patent-pending technology. *See Humanitarian Awards Pilot Program,* 77 FR 6544 (February 8, 2012). Based on the success of that program, the USPTO is announcing a pilot awards program to promote and incentivize the use of trademarks in connection with the provision of goods and services that address humanitarian issues. The USPTO will review the results of this pilot program to determine whether to continue or modify the program.

Eligibility: The competition is open to any entity or person who:

- owns a mark that is the subject of a live federal trademark registration issued by the USPTO; and
- is using the mark in U.S. commerce on or in connection with the goods and/or services specified in the federal registration.

Eligible U.S. registrations may be for trademarks, service marks, certification marks, collective marks, or collective membership marks.

Competition Criteria: Applications must describe how applicants have addressed a ''humanitarian, environmental problem,'' which is an environmental challenge that impacts the welfare of people or the planet. Examples of humanitarian, environmental problems include: air, land, and water pollution; greenhouse gas emissions; climate change; deforestation; water shortages; industrial and household waste; and the need for renewable energy solutions, among others.

Applicants must describe how the provision of their goods and/or services in connection with their registered trademark(s) helps to address a humanitarian, environmental problem or problems. For example, an applicant may be providing products and/or services that use environmentally-friendly materials/practices or that relate to renewable energy, green technology, water purification, reforestation, capturing carbon emissions, or pollution reduction solutions.

Applicants are encouraged to think broadly regarding the connection between the environment and their efforts. For example, an applicant may: utilize repurposed or recycled materials to produce or package their products; license renewable energy solutions to others; or donate its profits toward efforts to address humanitarian, environmental problems. Other examples could include a certification mark owner's efforts to promote the authorized use of its mark by businesses that contribute toward resolving a humanitarian, environmental problem, or a non-profit organization's educational and training services to encourage best practices surrounding a humanitarian, environmental problem. The focus of the applicant's description should be on demonstrable, real-world contributions toward a cleaner and healthier environment.

Judges will evaluate submitted applications based on whether and to what extent they meet the following four criteria:

(i) Subject Matter—the provision of the applicant's goods and/or services in connection with a mark registered by the USPTO addresses a humanitarian, environmental problem;

(ii) Impact—the provision of the applicant's goods and/or services in connection with a mark registered by the USPTO has made a meaningful impact in addressing a humanitarian, environmental problem;

(iii) Creative Solution—the manner by which the applicant addresses a humanitarian, environmental problem through the provision of its goods and/or services in connection with a mark registered by the USPTO represents a creative, new, or improved approach or solution; and

(iv) Character of the Mark—the applicant's registered mark used on or in connection with its goods and/or services:

- Creatively conveys the importance of the environment; the need to address a humanitarian, environmental problem, or the manner in which the applicant's particular goods and/or services, or the provision thereof, address a humanitarian, environmental problem; or
- Has become recognized through its use as being associated with addressing a humanitarian, environmental problem.

Selection Factors: In addition to the competition criteria, a number of selection factors will be considered in choosing award recipients. Unlike judging criteria, selection factors are not items that applicants address in their applications. Rather, they are guiding principles for administering the competition.

While a live U.S. trademark registration is required to be eligible for the program, the program will be geographically neutral, meaning the impact resulting from applicant's efforts can be anywhere in the world.

Diversity with respect to contribution toward addressing humanitarian environmental problems will also factor into selections. Part of the program's mission is to showcase the numerous ways in which trademark owners contribute to humanitarian efforts. No single contribution model can address every humanitarian, environmental problem. Selected awardees should reflect a diverse range of: products and services; organizational structures; sizes (small, medium, and large entities); methods of contribution; and specific areas of focus within the broad humanitarian, environmental theme.

Application Process: Applications for the 2023 Trademarks for Humanity awards competition will be accepted from April 11, 2023 to July 14, 2023, or until 200 applications are received, whichever occurs first. Applications must be submitted electronically via an online application portal, which can be accessed from the USPTO's Trademarks for Humanity web page at *https://www.uspto.gov/ip-policy/trademarks-humanity-awards-program.* The application portal will feature an interactive electronic application form that applicants will use to enter application information and upload any supporting materials they wish to submit. Submitted applications will be publicly available on the application portal after being screened for inappropriate material. Submissions containing incomplete or inappropriate material will not be considered.

Applications will contain a required core section and an optional supplementary section. In the core section, applicants must describe how their efforts meet the defined competition criteria, within a strict seven thousand-character limit.

In the optional supplementary section, applicants may provide additional supporting materials (*e.g.,* product/service brochures, advertising materials, published articles, third-party testimonials). Judges will review the core section of every application, and, time permitting, will also review materials submitted in the supplementary section.

This program involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collection of information involved in this program has been reviewed and approved by OMB under control number 0651–0066.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information has a currently valid OMB control number.

Judging Process: After the application period ends, independent judges from outside the USPTO will review, score, and return the applications and their evaluations to the USPTO. Judges will evaluate applications based on the judging criteria and selection factors described above. Each application will be reviewed by multiple judges separately, and each judge will review multiple applications. To encourage fair, open, and impartial evaluations, judges will perform their reviews independently, and the reviews will not be released to the public unless release is required by law. After awards have been made, however, applicants may request from the USPTO a copy of the judges' evaluations for their application with the judges' names redacted. Such copies will be sent to either the address on file with the application or another address verified as belonging to the applicant.

After the USPTO receives the scored applications from the judges, the USPTO will then forward top-scoring applications to separate judges from participating federal agencies to recommend award recipients. The goal is to complete this recommendation process within 90 days of the close of the application period.

After receiving recommendations from these judges, final decisions regarding award recipients will be made at the discretion of the Director of the USPTO. Final results may not be challenged for relief before the USPTO.

The actual number of selected award recipients will depend on the number and quality of submissions. Once final decisions regarding award recipients have been made, the USPTO will notify the awardees and schedule a public awards ceremony. The USPTO will attempt to notify awardees four weeks before the ceremony date if circumstances permit.

Selection of Judges: Judges will be selected by the USPTO. Candidates with the following qualifications will be preferred:

- Recognized subject matter expertise in trademarks, economics, business, law, public policy, or a related field;
- Demonstrated understanding of trademark commercialization, branding, and/or marketing;
- Demonstrated knowledge of humanitarian issues (specifically of humanitarian, environmental issues for the 2023 cycle), including the challenges presented by such issues; and
- Experience analyzing the effectiveness of efforts to address humanitarian issues.

Judges will be chosen to minimize conflicts of interest. A conflict of interest occurs when a judge: (a) has significant personal or financial interests in, or is an employee, officer, director, or agent of, any applicant participating in the competition; or (b) has a significant familial or financial relationship with an applicant who is participating. When conflicts of interest arise, conflicted judges must recuse themselves from evaluating the affected applications.

Awards: Winners of the 2023 competition will receive recognition for their humanitarian efforts at a public awards ceremony with the Director of the USPTO and/or other executive branch official(s) and will be featured on the USPTO's website.

Katherine K. Vidal,

Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2023–07125 Filed 4–10–23; 8:45 am]

BILLING CODE 3510–16–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11:00 a.m. EDT, Wednesday, April 19, 2023.

PLACE: Virtual meeting.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement matters. 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.cftc.gov/.*

CONTACT PERSON FOR MORE INFORMATION: Christopher Kirkpatrick, 202–418–5964.

Authority: 5 U.S.C. 552b.

Dated: April 7, 2023.

Christopher Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2023–07655 Filed 4–7–23; 11:15 am]

BILLING CODE 6351–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 2023–0004]

Agency Information Collection Activities; Proposed Collection; Comment Request; Testing and Labeling of Non-Children's Products Containing or Designed To Use Button Cell or Coin Batteries and Labeling of Button Cell or Coin Battery Packaging

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: On February 9, 2023, the Consumer Product Safety Commission (CPSC or Commission) published a notice of proposed rulemaking (NPR) to establish testing and labeling requirements for consumer products that contain or are designed to use button cell or coin batteries, and for the labeling of button cell or coin battery packaging. The NPR estimated the burden associated with these requirements for children's products, but did not include an estimated burden for testing and labeling of non-children's products or for labeling button cell or coin battery packaging. As required by the Paperwork Reduction Act of 1995, the CPSC requests comments on a proposed collection of information for Testing and Labeling of Non-Children's Products Containing or Designed to Use Button Cell or Coin Batteries and Labeling of Button Cell or Battery Packaging. CPSC will consider all comments received in response to this notice before requesting a control number for this collection of information from the Office of Management and Budget (OMB).

DATES: Submit written or electronic comments on the collection of information by June 12, 2023.

ADDRESSES: You can submit comments, identified by Docket No. CPSC–2023–0004, by any of the following methods:

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

Mail/Hand Delivery/Courier/Confidential Written Submissions: Submit comments by mail, hand delivery, or courier to: Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504–7479. If you wish to submit

confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public, you may submit such comments by mail, hand delivery, or courier, or you may email them to: *cpsc-os@cpsc.gov.*

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

Docket: For access to the docket to read background documents or comments received, go to: *https://www.regulations.gov*; insert the docket number, CPSC–2023–0004, into the ''Search'' box; and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Cynthia Gillham, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; (301) 504–7791, or by email to: *cgillham@cpsc.gov.*

SUPPLEMENTARY INFORMATION: The proposed rule to establish a Safety Standard and Notification Requirements for Button Cell or Coin Batteries and Consumer Products Containing Such Batteries (88 FR 8692 (Feb. 9, 2023)), to be codified at 16 CFR part 1263, contains information collection requirements that are subject to public comment and review by OMB under the Paperwork Reduction Act of 1995 (PRA; 44 U.S.C. 3501–3521). The NPR proposed to expand the collection of information for Testing and Certification of Children's Products (OMB Control No. 3041–0159) to include testing and labeling of children's products containing button cell or coin batteries (88 FR at 8717–19), but did not include burden estimates for a new collection of information for non-children's products. In this notice we provide the estimated burden associated with the testing and labeling of non-children's products, and for labeling of button cell and coin battery packaging.[1] Under the PRA, an agency must publish the following information:

- A title for the collection of information;
- A summary of the collection of information;
- A brief description of the need for the information and the proposed use of the information;
- A description of the likely respondents and proposed frequency of response to the collection of information;
- An estimate of the burden that will result from the collection of information; and
- Notice that comments may be submitted to OMB.

44 U.S.C. 3507(a)(1)(D). In accordance with this requirement, the Commission provides the following information:

Title: Testing and Labeling of Non-Children's Products Containing or Designed to Use Button Cell or Coin Batteries and Labeling of Button Cell or Coin Battery Packaging.

Type of Review: New collection of information for testing and labeling of non-children's products containing or designed to use button cell or coin batteries and labeling of button cell or coin battery packaging, as provided in the NPR to establish 16 CFR part 1263, which includes: (1) testing of non-children's products containing or designed to use button cell or coin batteries, including creating a general certificate of conformity (GCC); (2) labeling requirements for non-children's products and for button cell or coin battery packaging, including, as applicable, warnings on battery compartments, product packaging, accompanying written materials (*i.e.,* instructions, manuals, hangtags, or inserts)) and websites; and (3) recordkeeping requirements.

General Description of Collection

Summary, Need, and Use of Information: Based on the requirements in Reese's Law, 15 U.S.C. 2056e(a) and (b), and section 27(e) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2076(e), the proposed rule prescribes performance requirements for child-resistant battery compartments on children's and non-children's consumer products that contain or are designed to use button cell or coin batteries, and warning requirements for button cell and coin battery packaging, consumer product packaging, consumer products, accompanying written materials such as instructions, manuals, inserts, or hangtags, and sales websites. These performance and labeling requirements are intended to reduce or eliminate injuries and deaths associated with children 6 years old and younger ingesting button cell or coin batteries. This collection of information is solely for non-children's consumer products, meaning (1) products that contain or are designed to use button cell or coin batteries and *are not* designed or intended primarily for children 12 years old or younger, and (2) labeling of packages of button cell or coin batteries. 15 U.S.C. 2052(a)(2); 16 CFR part 1200.

In addition to the testing and labeling requirements in the proposed rule, section 14(a) of the CPSA requires that manufacturers (including importers) of non-children's products subject to a rule issue a general certificate of conformity. GCCs certify the products as being compliant with applicable regulations and must be based on a test of each product or a reasonable testing program. Unlike children's products, products that have GCCs are not required to undergo third party testing. Section 14(g) and 16 CFR part 1110 state the requirements for GCCs. Among other requirements, each certificate must identify the manufacturer issuing the certificate, any laboratory conducting testing on which the certificate depends, the date and place of manufacture, the date and place where the product was tested, each party's name, full mailing address, and telephone number, and contact information for the individual responsible for maintaining records of test results. The certificates must be in English. The certificates must be furnished to each distributor or retailer of the product and to the CPSC, if requested.

Respondents and Frequency: Respondents include manufacturers and importers of non-children's products that contain or are designed to use button cell or coin batteries, and manufacturers and importers of packages of button cell or coin batteries. Manufacturers and importers must comply with the information collection requirements when non-children's products that contain or use button cell or coin batteries, and packages of button cell or coin batteries, are manufactured or imported after the effective date of the proposed 16 CFR part 1263.

Estimated Burden: CPSC has estimated the respondents' burden in hours, and the estimated labor costs to the respondents.

Estimate of Respondent Burden: The hourly reporting burden imposed on firms that manufacture or import non-children's products that contain button cell or coin batteries, and firms that manufacture or import button cell or coin batteries, includes the time and cost to create and maintain records related to testing of consumer products (including issuing a GCC); product labeling, including required warning labels on, as applicable: consumer product battery compartments, product

[1] On April 4, 2023, the Commission voted (4–0) to publish this notice.

packaging, accompanying written materials (*i.e.,* instructions, manuals, inserts, or hangtags), and point of sale notices including for websites offering the sale of button cell or coin batteries.

TABLE 1—ESTIMATED ANNUAL RESPONDENT BURDEN

Burden type	Respondents	Frequency of response	Hours per response	Annual burden (hours)	Annual burden (costs)
Labeling	15,363	2	1	30,726	$1,332,586.62
Testing	15,363	2	3	92,178	3,997,759.86
Recordkeeping	15,363	2	1	30,726	1,332,586.62
Total Burden				153,630	6,662,933.10

Based on available data from the U.S. Census Bureau, CPSC estimates that there are 15,363 firms supplying non-children's consumer products to the United States that contain or are designed to use button cell or coin batteries, or that manufacture or import button cell or coin batteries.[2] Staff assumes that, on average, each manufacturer or importer has two product models that must be tested, labeled, and certified, annually. We estimate 3 hours per product to conduct required testing of battery compartments and to issue a GCC, and 1 hour to create and maintain records. Note that for button cell or battery packaging that requires only labeling pursuant to the NPR, and not product testing, this is an over-estimate.[3] We estimate that the burden to update required product labeling is about 1 hour per product. Accordingly, as shown in Table 1, the total annual burden is 153,630 hours. Using the total compensation for all sales and office workers in goods-producing private industries of $43.37 per hour,[4] the total estimated annual burden on firms supplying non-children's products to comply with the rule is $6.67 million annually (153,630 hours × $43.37 = $6,662,933.10).

The product labeling burden estimate is the largest reasonably possible, assuming every manufacturer (including importer) of consumer products containing or designed to use button cell or coin batteries, and every manufacturer (including importer) of button cell or coin batteries, has to modify four product labels (battery compartment, packaging, accompanying written materials, and websites) per product. This is likely an over-estimate. Based on staff's review of non-children's products that contain or are designed to use button cell or coin batteries, and battery packaging, many of these products already contain some type of warning on the product labels. Accordingly, CPSC staff believes it possible that the burden to modify product labels could be very low.

Under the OMB's regulations (5 CFR 1320.3(b)(2)), the time, effort, and financial resources necessary to comply with a collection of information that would be incurred by persons in the ''normal course of their activities'' are excluded from the burden estimate where the disclosure activities required to comply are ''usual and customary.'' If warning statements on battery compartments, product packaging, and instructions/manuals is usual and customary for non-children's products that contain or are designed to use button cell or coin batteries, then any burden associated with warning labels would be ''usual and customary'' and not within the definition of ''burden'' under the OMB's regulations. We request comments on this potential estimate of no burden for product labeling, including the preliminary analysis that the largest possible burden estimate for the proposed standard to require product labeling is 30,726 hours at a cost of $1,332,586.62 annually.

Labor Cost of Respondent Burden. According to the U.S. Bureau of Labor Statistics (BLS), Employer Costs for Employee Compensation, the total compensation cost per hour worked for all private industry workers was $43.37 (September 2022, *https://www.bls.gov/news.release/archives/ecec_12152022.pdf*). Based on this analysis, CPSC estimates that the labor required to respond would impose a cost to industry of approximately $6,662,933.10 annually (153,630 hours × $43.37 = $6,662,933.10).

Cost to the Federal Government. The estimated annual cost of the information collection requirements to the Federal Government is approximately $4,448, which includes 60 staff hours to examine and evaluate the information, as needed, for CPSC's compliance activities. This is based on a GS–12, step 5 level salaried employee. The average hourly wage rate for a mid-level salaried GS–12 employee in the Washington, DC metropolitan area (effective as of January 2023) is $51.15 (GS–12, step 5). This represents 69.0 percent of total compensation (U.S. Bureau of Labor Statistics, ''Employer Costs for Employee Compensation,'' September 2022, Table 2., percentage of wages and salaries for all civilian management, professional, and related employees: *https://www.bls.gov/news.release/archives/ecec_12152022.pdf*). Adding an additional 31.0 percent for benefits brings average annual compensation for a mid-level salaried GS–12 employee to $74.13 per hour. Assuming that approximately 60 hours will be required annually, this results in an annual cost of $4,448 ($74.13 per hour × 60 hours = $4,447.8).

Comments. CPSC requests that interested parties submit comments regarding this proposed information collection (see the **ADDRESSES** section at the beginning of this notice). Pursuant to 44 U.S.C. 3506(c)(2)(A), the Commission specifically invites comments on:

- whether the proposed collection of information is necessary for the proper performance of CPSC's functions, including whether the information will have practical utility;
- the accuracy of CPSC's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- ways to enhance the quality, utility, and clarity of the information the Commission proposes to collect;
- ways to reduce the burden of the collection of information on

[2] These estimates include data available for NAICS subsector 335912—primary battery manufacturing, though not all battery manufacturers would be impacted by the proposed rule.

[3] Testing of button cell or coin battery packaging is not required by the proposed rule, but is required by section 3 of Reese's Law. Notes to 15 U.S.C. 2056e. This burden estimate is an over-estimate likely large enough to also encompass testing of battery packaging, but such testing is a statutory requirement not included in the rulemaking.

[4] U.S. Bureau of Labor Statistics, ''Employer Costs for Employee Compensation,'' total compensation for private industry workers in goods producing industries, Sept. 2022: *https://www.bls.gov/news.release/archives/ecec_12152022.pdf.*

respondents, including the use of automated collection techniques when appropriate, and other forms of information technology;

- the estimated burden hours associated with labels and hang tags, including any alternative estimates; and
- the estimated respondent cost other than burden hour cost.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2023–07487 Filed 4–10–23; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2022–HQ–0007]

Submission for OMB Review; Comment Request

AGENCY: U.S. Army Corps of Engineers, Department of the Army, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (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 May 11, 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: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Gulf Intracoastal Waterway Shipper Interview Survey; OMB Control Number 0710–GIWW.

Type of Request: New.

Number of Respondents: 50.

Responses per Respondent: 1.

Annual Responses: 50.

Average Burden per Response: 60 minutes.

Annual Burden Hours: 50.

Needs and Uses: The U.S. Army Corps of Engineers (USACE) Galveston District, (SWG) seeks to conduct a survey of commercial shipping companies that use the Gulf Intracoastal Waterway (GIWW) to transport commodities along the Texas Coast. The area includes the crossings of the Brazos River and Colorado River in Texas. SWG will incorporate survey information into a General Investigation Feasibility Study Update of long-term solutions to shoaling and allisions near the intersections of the GIWW and the Brazos and Colorado rivers that could result in a potential loss of the navigation pool at the flood gates and locks. As part of the study, we are surveying shippers that use the GIWW to help us better understand the potential economic effects of a long-term disruption in navigation through the area. Part of the study requires an examination of how shippers would respond if navigation crossing the Brazos River and Colorado River was restricted for an extended period, or if the flood gates and locks are widened. The survey will provide information to determine if tentative project costs would be justified by reducing risks of losing the navigation pool along the GIWW.

Affected Public: Business or other for-profit.

Frequency: Once.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Matthew Oreska.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

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.*

Dated: April 5, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–07488 Filed 4–10–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2023–OS–0005]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (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 May 11, 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: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Application for DEERS Enrollment/ID Card Issuance; DD Form 1172–2; OMB Control Number 0704–0415.

Type of Request: Extension.

Number of Respondents: 2,288,877.

Responses per Respondent: 1.

Annual Responses: 2,288,877.

Average Burden per Response: 3 minutes.

Annual Burden Hours: 114,444.

Needs and Uses: The information collected is used to determine an individual's eligibility for benefits and privileges, to provide a proper identification card reflecting those benefits and privileges, and to maintain a centralized database of the eligible population. This information shall be used to establish an individual's affiliation with DoD, in support of DoD ID card issuance and benefits access. Once this information has been collected and proofed to the standard requisite in Federal Information Processing Standards 201–3, ''Personal Identity Verification (PIV) of Federal Employees and Contractors'' (for CAC applicants), and according to the DoD

Instruction (DoDI) 1000.13, ''Identification (ID) Cards for Members of the Uniformed Services, Their Dependents, and Other Eligible Individuals'' (for all other DoD ID card applicants), a record will be established in the Defense Enrollment Eligibility Reporting System (DEERS) that will allow for the issuance of the appropriate ID card.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://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.*

Dated: April 5, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–07484 Filed 4–10–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2023–OS–0002]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (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 May 11, 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: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Application for DoD Impact Aid for Children With Severe Disabilities; SD Form 816 and SD 816c; OMB Control Number 0704–0425.

Type of Request: Extension.

Number of Respondents: 50.

Responses per Respondent: 1.

Annual Responses: 50.

Average Burden per Response: 8 hours.

Annual Burden Hours: 400.

Needs and Uses: The information collection requirement is necessary to authorize DoD funds for local educational agencies (LEAs) that educate military dependent students with severe disabilities that meet certain criteria. This application will be requested of military-impacted LEAs to determine if they meet the DoD criteria to receive compensation for the cost of educating military dependent students with severe disabilities.

Affected Public: State, Local, or Tribal Governments.

Frequency: On occasion.

Respondent's Obligation: Required to Obtain to Retain Benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Mr. Samuel Gotti at *HQ-Forms@DoDEA.EDU.*

Dated: April 5, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–07486 Filed 4–10–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2023–OS–0028]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the DoD announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by June 12, 2023.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Defense Human Resources Activity, 4800 Mark Center

Drive, Suite 08F05, Alexandria, VA 22350, LaTarsha Yeargins, 571–372–2089.

SUPPLEMENTARY INFORMATION: The Status of Forces Reserve Survey (SOFS–R) is a DoD-wide annual survey of Reserve Component members that is used to evaluate existing policies and programs, establishing baseline measures before implementing new policies and programs, and monitoring the progress of established policies/programs. The survey assesses topics such as financial well-being, satisfaction, readiness, stress, retention intention, food security, and suicide awareness.

Title; Associated Form; and OMB Number: Status of the Forces Survey of Reserve Members; OMB Control Number 0704–0616.

Needs and Uses: The Status of Forces Reserve Survey (SOFS–R) is an annual DoD-wide large-scale survey of Reserve Component members that is used in evaluating existing policies and programs, establishing baseline measures before implementing new policies and programs, and monitoring the progress of existing policies/programs. The survey assesses topics such as financial well-being, retention intention, stress, tempo, readiness, food security and suicide awareness. In 2023, the survey will also include a section on the Yellow Ribbon Reintegration Program. Data are aggregated by appropriate demographics, including Service, paygrade, gender, race/ethnicity, and other indicators. In order to be able to meet reporting requirements for DoD leadership, the Military Services, and Congress, the survey needs to be completed in 2023. The legal requirements for the SOFS–R can be found in the FY2016 NDAA, Title VI, Subtitle F, Subpart 661. This legal requirement mandates that the SOFS–R solicit information on financial literacy and preparedness. Results will be used by the Service Secretaries to evaluate and update financial literacy training and will be submitted in a report to the Committees on Armed Services of the Senate and the House of Representatives.

Affected Public: Individuals or households.

Annual Burden Hours: 4,125.

Number of Respondents: 16,500.

Responses per Respondent: 1.

Annual Responses: 16,500.

Average Burden per Response: 15 minutes.

Frequency: Annually.

Dated: April 5, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–07494 Filed 4–10–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2023–OS–0003]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (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 May 11, 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: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Department of Defense Education Activity (DoDEA) Student Registration and Sure Start Registration; DoDEA Form 600, DoDEA Form 1307; OMB Control Number 0704–0495.

Type of Request: Extension.

Number of Respondents:
DoDEA Form 600: 72,000.
DoDEA Form 1307: 950.

Responses per Respondent: 1.

Annual Responses:
DoDEA Form 600: 72,000.
DoDEA Form 1307: 950.

Average Burden per Response:
DoDEA Form 600: 30 minutes.
DoDEA Form 1307: 15 minutes.

Annual Burden Hours:
DoDEA Form 600: 36,000.
DoDEA Form 1307: 238.
Total: 36,238.

Needs and Uses: This information collection requirement is necessary to obtain information on Department of Defense military and civilian sponsors and their dependents. The information obtained from sponsors is used to determine their dependents' enrollment eligibility to attend the Department of Defense Education Activity (DoDEA) schools. This includes determination of enrollment categories, whether tuition-free or tuition-paying, space-required or space-available. Information gathered for students is used for age verification, class and transportation schedules, record attendance, absence and withdrawal, record and monitor student progress, grades, course and grade credits, educational services and placement, activities, student awards, special interest, and accomplishments.

Affected Public: Individuals or households.

Frequency: Annual.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Mr. Samuel Gotti at *hq-forms@dodea.edu.*

Dated: April 5, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–07485 Filed 4–10–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2023–OS–0004]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness

(OUSD(P&R)), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (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 May 11, 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: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Military Spouse Employment Partnership (MSEP) Partner Portal; OMB Control Number 0704–0563.

Type of Request: Extension.

Number of Respondents:

MSEP Partners: 450.

Businesses/Companies: 150.

Total Respondents: 600.

Responses per Respondent: 1.

Annual Responses:

MSEP Partners: 450.

Businesses/Companies: 150.

Total Responses: 600.

Average Burden per Response:

MSEP Partners: 10 minutes.

Businesses/Companies: 15 minutes.

Annual Burden Hours:

MSEP Partners: 75.

Businesses/Companies: 38.

Total: 113.

Needs and Uses: The information collection requirement is necessary to allow MSEP Partners to apply to be part of the partnership, report spouse hires, and access spouse employment data. The Military Spouse Employment Partnership (MSEP) Partner Portal is the sole web platform utilized to connect the program office with MSEP employer partners and potential partners. Participating companies, called MSEP Partners, are vetted and approved participants in the MSEP Program and have pledged to recruit, hire, promote and retain military spouses in portable careers. MSEP is a targeted recruitment and employment partnership that connects American businesses with military spouses who possess essential 21st-century workforce skills and attributes and are seeking portable, fulfilling careers. The MSEP program is part of the overall Spouse Education and Career Opportunities (SECO) program which falls under the auspices of the office of the Deputy Assistant Secretary of Defense for Military Community & Family Policy.

Affected Public: Individuals or households; Business or Other For-Profit.

Frequency:

MSEP Partners: Bi-Monthly.

Businesses/Companies: Once.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

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.*

Dated: April 5, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–07481 Filed 4–10–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2023–OS–0027]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Policy (OUSD(P)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the OUSD(P) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by June 12, 2023.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please contact Pauline Kusiak at *osd.pentagon.ousd-policy.list.policy-lod-office@mail.mil,* 703–695–7386 or write to OUSD(P) Leadership and Organizational Development, 2000 Defense Pentagon, Washington, DC 20301.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Policy Pulse Survey; OMB Control Number 0704–0570.

Needs and Uses: The Office of the Secretary of Defense for Policy (OSD–P) Pulse Survey, is necessary to obtain and record responses from government and contractor personnel employed within the Office of the Under Secretary of Defense for Policy and its components. The survey is used to assess the progress of the current human capital strategy

and to capture emerging human capital and training issues per instructions of the Undersecretary of Defense for Policy. Primary authority to conduct this survey is the OUSD–P Charter USDP 5111.01 June 23, 2020, Section 4, Paragraph (i) 2: ''Obtain reports, information, advice, and assistance, consistent with DoD Directive 8910.01 (reference (g)), as necessary to carry out assigned functions.'' The DoD Directive 8910.01 was reissued as DoDI 8910.1. In Chapter 2, Section 3 of DoDI 8910.01, the instruction states that it applies to, ''the collection of information to satisfy statutory and interagency requirements and those in support of all management functions''.

Affected Public: Individuals or households.

Annual Burden Hours: 274.89.

Number of Respondents: 833.

Responses per Respondent: 1.

Annual Responses: 833.

Average Burden per Response: 0.33 hours.

Frequency: Annually.

The Leadership and Organizational Development Office (LOD) administers the Pulse Survey to OSD-Policy employees exclusively via an anonymous, web-based questionnaire. The survey is available to the entire OSD-Policy workforce, including civilians, military, detailees, and contractors. OSD–P employee participation will provide insight into OSD–P organizational culture and climate, and identify areas of improvement for human capital initiatives.

This questionnaire is hosted on the intranet SharePoint site used by OSD–P and is only accessible to OSD–P employees. Employees are notified by email when the survey is accessible. Each respondent is asked 33 questions covering training, leadership behavior, professional development, and working environment. The responses are anonymous. The only identifying information supplied by the respondents is their affiliation: what office they belong to, how long they have worked for Policy, and what category of employee they are (*e.g.* GS civilian, military, detailee, etc.).

Dated: April 5, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–07493 Filed 4–10–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2023–HQ–0011]

Proposed Collection; Comment Request

AGENCY: Department of the Navy, Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Navy Fleet Readiness Center Southeast announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by June 12, 2023.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Fleet Readiness Center, NAS Jacksonville, 101 Wasp St., Jacksonville, FL 32212; ATTN: Mr. Jason Raymond, or call 904–790–6251.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Fleet Readiness Center Southeast Access Badge Application; OMB Control Number 0703–CURE.

Needs and Uses: The Sensormatic Electronic (SE) Computer Coordinated Universal Retrieval Entry (CCURE) 9000 application is used as part of the process for issuing access badges to Fleet Readiness Center Southeast (FRCSE) command facilities. The information collected from command employees for this application is per the prescribing policy regulations in OPNAVINST 5530.14E, ''Navy Physical Security and Law Enforcement Program,'' which provides guidance for the protection of people and assets throughout the Navy. FRCSE Security collects information from contractor personnel verbally and in-person to obtain the necessary information required to in the CCURE application for command badge issuance. Once FRCSE security personnel enters all necessary information into the SE CCURE 9000 application, a command badge is issued, allowing the contractor employee access to command facilities. In addition to using information to process personnel access to controlled areas, information may be used for investigative purposes and communications in the event of an emergency or security event.

Affected Public: Individuals or households.

Annual Burden Hours: 186.67.

Number of Respondents: 1,600.

Responses per Respondent: 1.

Annual Responses: 1,600.

Average Burden per Response: 7 minutes.

Frequency: On occasion.

Dated: April 5, 2023.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2023–07490 Filed 4–10–23; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Regional Advisory Committees

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Request for nominations to serve on the Regional Advisory Committees.

SUMMARY: The Secretary of Education (Secretary) invites interested parties to submit nominations for individuals for appointment to serve on the Regional Advisory Committees (RACs).

DATES: Nominations for appointment of individuals to serve on the RACs must be submitted by May 11, 2023.

ADDRESSES: You may submit nominations, including attachments, to the Secretary by the following method:

• Electronically via electronic mail to *OESE.RAC@ed.gov* (please indicate ''Regional Advisory Committee Nomination'' in the email subject line and specify the specific Region to which you are nominating, *e.g.,* ''Regional Advisory Committee Nomination: Appalachia'').

FOR FURTHER INFORMATION CONTACT: Michelle Daley, Group Leader, Comprehensive Centers Group, Office of Program and Grantee Support Services, U.S. Department of Education. Telephone: 202–987–1057. Email: *OESE.RAC@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

Privacy Act Statement

Purpose: The purpose of collecting nomination information is for the Secretary to consult with and seek nomination recommendations from the chief executive officers of States, chief State school officers, and education stakeholders within the Regional Advisory Committee's region on individuals for appointment for membership on a RAC. The nomination information will be used to evaluate, select, and appoint individuals for membership on RACs and to conduct necessary ethics vetting and ethics training for nominees who are appointed to the RAC. Finally, the nomination information will be used to communicate with nominees and, if appointed, with appointees to conduct the business of the RACs.

Authorities: The collection of the nomination information is authorized by the Educational Technical Assistance Act of 2002 (ETAA) (Pub. L. 107–279; 20 U.S.C. 9605); 5 U.S.C. 301; Public Law 95–521, Ethics in Government Act of 1978; Public Law 101–194, Ethics Reform Act of 1989, as amended; and Executive Orders 12674, 12565, and 11222, as amended. The (RACs) are also governed by the provisions of 5 U.S.C. chapter 10 (Federal Advisory Committees).

Routine Use Disclosures: Although the Department does not otherwise anticipate nonconsensually disclosing the information you provide outside of the Department, the Department may nonconsensually disclose such information pursuant to the published routine uses described in the following System of Records Notices: ''Secretary's Communications Control System'' (18–01–01), ''Employee Conduct—Government Ethics'' (18–09–03), and ''Executive Branch Confidential Financial Disclosure Reports'' (OGE/GOVT–2), the most recent versions of which are located on the Department's ''Privacy Act System of Record Notice Issuances (SORN)'' web page at *www2.ed.gov/notices/ed-pia.html.*

Consequences of Failure to Provide Information: Submitting nominations with the requested information in response to this notice is voluntary. You are not required to provide the personally identifiable information requested; however, if you do not, then the Department may not be able to consider the nominee for membership on a RAC.

SUPPLEMENTARY INFORMATION: The Secretary is establishing the RACs, one for each region served by the Regional Educational Laboratories, in order to collect information on the education needs of each region and how those needs may be addressed through technical assistance activities provided by comprehensive centers described in section 203 of the Educational Technical Assistance Act (ETAA). Comprehensive centers provide training, professional development, and technical assistance to State educational agencies (SEAs), local educational agencies (LEAs), regional educational agencies, and schools in the region where the center is located for assistance with school improvement activities and to disseminate and provide information, reports, and publications that can be used for improving academic achievement, closing achievement gaps, and encouraging and sustaining school improvement (as described in section 1111(d) of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 6311(d))), to schools, educators, parents, and policymakers within the region in which the center is located.

In choosing individuals for membership on the RACs, the Secretary is also seeking recommendations from the chief executive officers of States, chief State school officers, and education stakeholders within each region served by the Regional Educational Laboratories.

The RACs will seek input regarding the need for the technical assistance activities described in section 203 of the ETAA and how those needs would be most effectively addressed. In order to achieve this purpose, the RACs will seek input from chief executive officers of States; chief State school officers; and, through processes which may include open hearings to solicit the views and needs of schools (including public charter schools), educators, parents, teachers, administrators, members of the Regional Educational Laboratory Governing Board, LEAs, librarians, businesses, SEAs, and other customers (such as adult education programs) within the region regarding the need for the activities described in 20 U.S.C. 9564 and 9602 and how those needs would be most effectively addressed.

Not later than 6 months after each RAC is first convened, it will submit a report to the Secretary based on the assessment of education needs within each region to be served. Each report will contain an analysis of the needs of the region and technical advice to the Secretary regarding how those needs would be most effectively addressed. Under section 207 of the ETAA, the Secretary shall establish priorities for the comprehensive centers to address, taking into account these regional assessments and other relevant regional surveys of education needs to the extent the Secretary deems appropriate.

Section 206(b) of the ETAA requires that the membership of each RAC contain a balanced representation of States in the region and include not more than one representative of each SEA geographically located in the region. The membership of each RAC may include the following: representatives of LEAs, both rural and urban; representatives of institutions of higher education, including those that represent university-based research on education and subjects other than education; parents; practicing educators, including classroom teachers, principals, administrators, school board members, and other local school officials; representatives of business; and researchers. Each RAC will be comprised of not more than 25 members.

Nomination Process

Any interested person or organization may nominate one or more qualified individuals for membership. Please be sure to use the information noted in the **ADDRESSES** section of this notice and include the name of the RAC to which the nomination applies in the subject line. If you would like to nominate an individual or yourself for appointment to one of the RACs listed below, please submit the following information:

(a) A cover letter addressed to Honorable Miguel Cardona, Secretary of Education. Please provide in the cover letter, the reason(s) the nominated

individual is interested in being selected as a nominee for appointment by the Secretary to serve on a RAC.

Attachments:

(b) A copy of the nominee's resume/curriculum vitae;

(c) Contact information for the nominee (name, title, mailing address, phone number, and email address); and

(d) The group(s) the nominee may qualify to represent from the following categories (list all that apply):

(1) SEA.

(2) LEA, including:

(i) Rural LEA.

(ii) Urban LEA.

(3) Practicing educator.

(i) Classroom teacher.

(ii) School principal.

(iii) Other school administrator.

(iv) School board member.

(v) Other local school official.

(4) Parent.

(5) Institution of higher education.

(i) University-based education research.

(ii) University-based research on subjects other than education.

(6) Business.

(7) Researcher.

In addition, the cover letter must state that the nominee (if you are nominating someone other than yourself) has agreed to be nominated and is willing to serve, if appointed, on one of the RACs.

Nominees will be appointed based on technical qualifications, professional experience, demonstrated knowledge of issues, demonstrated experience, integrity, impartiality, and good judgment.

The RAC regions are:

1. Appalachia (Kentucky, Tennessee, Virginia, and West Virginia);

2. Central (Colorado, Kansas, Missouri, Nebraska, North Dakota, South Dakota, and Wyoming);

3. Mid-Atlantic (Delaware, District of Columbia, Maryland, New Jersey, and Pennsylvania);

4. Midwest (Illinois, Indiana, Iowa, Michigan, Minnesota, Ohio, and Wisconsin);

5. Northeast and Islands (Connecticut, Massachusetts, Maine, New Hampshire, New York, Puerto Rico, Rhode Island, Vermont, and the Virgin Islands);

6. Northwest (Alaska, Idaho, Montana, Oregon, and Washington);

7. Pacific (American Samoa, Commonwealth of the Northern Mariana Islands, Federated States of Micronesia, Guam, Hawaii, Palau, and Republic of the Marshall Islands);

8. Southeast (Alabama, Florida, Georgia, Mississippi, North Carolina, and South Carolina);

9. Southwest (Arkansas, Bureau of Indian Education, Louisiana, New Mexico, Oklahoma, and Texas); and

10. West (Arizona, California, Nevada, and Utah).

Appointment

The Secretary will appoint members for the life of the committee, which will span not more than 6 months. The committee will meet at least two times during this period. In the event an individual is appointed by the Secretary to fill a vacancy occurring prior to the expiration of the full term, the RAC member will be appointed to complete the remaining term of service of the former RAC member. All appointed RAC members will serve without compensation.

Each RAC may be comprised of both representatives of organizations or recognizable groups of persons and Special Government Employees (SGEs). Representative members will not provide their own personal or independent advice based on their own individual expertise and experience, but rather, gather and synthesize information and the views of stakeholders they represent. SGE members will be chosen for their individual expertise, qualifications, and experiences; they will provide technical advice and recommendations based on their independent judgment and will not be speaking for, or representing the views of, any nongovernmental organization or recognizable group of persons.

Accessible Format: Upon request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site, you can view this document, as well as other documents of this Department published in the **Federal Register**, in text or PDF. To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Miguel A. Cardona,

Secretary of Education.

[FR Doc. 2023–07480 Filed 4–10–23; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Meetings

AGENCY: U.S. Election Assistance Commission.

ACTION: Sunshine Act notice; notice of public meeting agenda.

SUMMARY: Public meeting: U.S. Election Assistance Commission.

DATES: Wednesday, April 26, 2023, 1:00 p.m.–2:30 p.m. EST.

ADDRESSES: The Election Assistance Commission hearing room at 633 3rd St. NW, Washington, DC 20001. The meeting is open to the public and will be livestreamed on the U.S. Election Assistance Commission YouTube Channel: *https://www.youtube.com/channel/UCpN6i0g2rlF4ITWhwvBwwZw.*

FOR FURTHER INFORMATION CONTACT: Kristen Muthig, Telephone: (202) 897–9285, Email: *kmuthig@eac.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: In accordance with the Government in the Sunshine Act (Sunshine Act), Public Law 94–409, as amended (5 U.S.C. 552b), the U.S. Election Assistance Commission (EAC) will hold a public meeting to discuss supporting military and Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) voters.

Agenda: The U.S. Election Assistance Commission (EAC) will host a public meeting to discuss how federal state and local offices support and communicate with military and overseas voters.

The agenda includes panel discussions with representatives from federal agencies, election officials, and subject matter experts. Panelists will give remarks and respond to questions from the EAC Commissioners.

Also included in this event will be a review of a new EAC resource for election officials as they serve military and overseas voters in their jurisdictions.

The full agenda will be posted in advance on the EAC website: *www.eac.gov/events/2023/04/26/us-election-assistance-commission-public-meeting-april-26-2023.*

Background: The Help America Vote Act of 2002 (HAVA) charged the EAC to serve as a national clearinghouse and

resource for the compilation of information and review of procedures with respect to the administration of federal elections. The EAC's Clearinghouse Division is made up of former election officials and subject matter experts who work with EAC staff to provide materials that address the needs of election officials.

Status: This meeting will be open to the public.

Camden Kelliher,

Associate Counsel, U.S. Election Assistance Commission.

[FR Doc. 2023–07643 Filed 4–7–23; 4:15 pm]

BILLING CODE P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Meetings

AGENCY: U.S. Election Assistance Commission.

ACTION: Sunshine Act notice; notice of public meeting agenda.

SUMMARY: Public meeting: U.S. Election Assistance Commission Board of Advisors 2023 annual meeting.

DATES: Tuesday, April 25, 2023, 09:00 a.m.–5:00 p.m. Eastern and Wednesday, April 26, 2023, 8:30 a.m.–11:00 a.m. Eastern.

ADDRESSES: Fairmont Washington, DC Georgetown, 2401 M Street NW, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Kristen Muthig, Telephone: (202) 897–9285, Email: *kmuthig@eac.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: In accordance with the Government in the Sunshine Act (Sunshine Act), Public Law 94–409, as amended (5 U.S.C. 552b), the U.S. Election Assistance Commission (EAC) will conduct an annual meeting of the EAC Board of Advisors to conduct regular business, discuss EAC updates and upcoming programs, and discuss the Voluntary Voting System Guidelines (VVSG) 2.0 and electronic poll book pilot program.

Agenda: The U.S. Election Assistance Commission (EAC) Board of Advisors will hold their 2023 Annual Meeting primarily to conduct an annual review the VVSG 2.0 Requirements and implementation, review the status of the EAC's e-poll book pilot program, discuss ongoing EAC programs, discuss threats to election officials and working with local law enforcement, election audits, public records requests, and the impacts of NVRA and HAVA. This meeting will include question and answer discussions between board members and EAC staff.

The Board will also vote to elect three members to Executive Officer positions and consider amendments to the governing Bylaws.

Background: HAVA designates the Board of Advisors to assist EAC in carrying out its mandates under the law. The board consists of 35 members composed of representatives from specified associations, organizations, federal departments, and members of Congress.

The full agenda will be posted in advance on the EAC website: *https://www.eac.gov.*

Status: This meeting will be open to the public.

Camden Kelliher,

Associate Counsel, U.S. Election Assistance Commission.

[FR Doc. 2023–07449 Filed 4–7–23; 11:15 am]

BILLING CODE P

DEPARTMENT OF ENERGY

[GDO Docket No. EA–336–C]

Application for Renewal of Authorization To Export Electric Energy; ConocoPhillips Company

AGENCY: Grid Deployment Office, Department of Energy.

ACTION: Notice of application.

SUMMARY: ConocoPhillips Company (the Applicant or COP) has applied for renewed authorization to transmit electric energy from the United States to Mexico pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before May 11, 2023.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed by electronic mail to *Electricity.Exports@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Christina Gomer, (240) 474–2403, *electricity.exports@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The U. S. Department of Energy (DOE) regulates electricity exports from the United States to foreign countries in accordance with section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)) and regulations thereunder (10 CFR 205.300 *et seq.*). Sections 301(b) and 402(f) of the DOE Organization Act (42 U.S.C. 7151(b) and 7172(f)) transferred this regulatory authority, previously exercised by the now-defunct Federal Power Commission, to DOE.

Section 202(e) of the FPA provides that an entity which seeks to export electricity must obtain an order from DOE authorizing that export. (16 U.S.C. 824a(e)). On June 13, 2022, the authority to issue such orders was delegated to the DOE's Grid Deployment Office (GDO) under Delegation Order No. S1–DEL–S3–2022–2 and Redelegation Order No. S3–DEL–GD1–2022.

On April 16, 2013, DOE issued Order No. EA–336–A authorizing COP to transmit electric energy from the United States to Mexico as a power marketer. On May 31, 2018, DOE issued Order No. EA–336–B, renewing COP's authority to transmit electric energy for an additional five-year term. On January 30, 2023, COP filed an application with DOE (Application or App) for renewal of their export authority for an additional five-year term. App. at 1.

In its Application, COP states that it ''does not own or operate electric a [*sic*] transmission or distribution system, and does not have a franchised service area'' and is ''engaged in, among other things, the marketing of electric power at wholesale in various markets throughout the United States.'' *Id.* at 2. COP represents that ''the electric power that COP will export, on either a firm or interruptible basis, will be purchased from others voluntarily and will therefore be surplus to the needs of the selling entities'' and thus, ''will not impair the sufficiency of the electric power supply within the United States.'' *Id.* at 6.

The existing international transmission facilities to be utilized by the Applicant have been previously authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties. *See* App at Exhibit C.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the Application at the address provided previously. Protests should be filed in accordance with Rule 211 of FERC's Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at the previous address in accordance with FERC Rule 214 (18 CFR 385.214).

Comments and other filings concerning COP's Application should be clearly marked with GDO Docket No. EA–336–C. Additional copies are to be provided directly to Mark R. Haskell and Lamiya Rahman, Blank Rome LLP, 1825 Eye Street NW, Washington, DC 20006, *mark.haskell@blankrome.com* and *lamiya.rahman@blankrome.com* and Casey P. McFaden, Senior Counsel—ConocoPhillips Company and Robert F. Bonner, Director, Commercial

Compliance, Reporting & Policy—ConocoPhillips Company, 925 N Eldridge Parkway, Houston, TX 77079, *casey.p.mdfaden@conocophillips.com* and *Robert.f.bonner@conocophillips.com.*

A final decision will be made on the requested authorization after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE evaluates whether the proposed action will have an adverse impact on the sufficiency of supply or reliability of the United States electric power supply system.

Copies of this Application will be made available on the program website at *https://www.energy.gov/gdo/pending-applications* or, upon request, by emailing *Electricity.Exports@hq.doe.gov.*

Signing Authority: This document of the Department of Energy was signed on April 5, 2023, by Maria Robinson, Director, Grid Deployment Office, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on April 6, 2023.

Treena V. Garrett,

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

[FR Doc. 2023–07554 Filed 4–10–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[GDO Docket No. EA–445–A]

Application for Renewal of Authorization To Export Electric Energy; Emera Energy Services Subsidiary No. 10 LLC

AGENCY: Grid Deployment Office, Department of Energy.

ACTION: Notice of application.

SUMMARY: Emera Energy Services Subsidiary No. 10 LLC (the Applicant or EESS–10) has applied for renewed authorization to transmit electric energy from the United States to Canada pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before May 11, 2023.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed by electronic mail to *Electricity.Exports@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Christina Gomer, (240) 474–2403, *electricity.exports@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy (DOE) regulates electricity exports from the United States to foreign countries in accordance with section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)) and regulations thereunder (10 CFR 205.300 *et seq.*). Sections 301(b) and 402(f) of the DOE Organization Act (42 U.S.C. 7151(b) and 7172(f)) transferred this regulatory authority, previously exercised by the now-defunct Federal Power Commission, to DOE.

Section 202(e) of the FPA provides that an entity which seeks to export electricity must obtain an order from DOE authorizing that export. (16 U.S.C. 824a(e)). On June 13, 2022, the authority to issue such orders was delegated to the DOE's Grid Deployment Office (GDO) under Delegation Order No. S1–DEL–S3–2022–2 and Redelegation Order No. S3–DEL–GD1–2022.

On June 22, 2018, DOE issued Order No. EA–445 authorizing EESS–10 to transmit electric energy from the United States to Canada as a power marketer. On February 7, 2023, EESS–10 filed an application with DOE (Application or App) for renewal of their export authority for an additional five-year term. App at 1.

In its Application, EESS–10 states that it ''does not own or control any electric power generation or transmission facilities and does not have a franchised electric power service area.'' App at 5. EESS–10 also states it ''operates as a marketing company involved in, among other things, the purchase and sale of electricity in the United States as a power marketer.'' *Id.* EESS–10 represents that it ''will purchase surplus electric energy from electric utilities and other suppliers within the United States and will export this energy to Canada over the international electric transmission facilities.'' *Id.* at 6. Therefore, the Applicant contends that ''because this electric energy will be purchased from others voluntarily, it will be surplus to the needs of the selling entities.'' *Id.* EESS–10's further contends its ''export of power will not impair the sufficiency of electric power supply in the U.S.'' *Id.*

The existing international transmission facilities to be utilized by the Applicant have been previously authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties. *See* App at Exhibit C.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the Application at the address provided previously. Protests should be filed in accordance with Rule 211 of FERC's Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at the previous address in accordance with FERC Rule 214 (18 CFR 385.214).

Comments and other filings concerning EESS–10's Application should be clearly marked with GDO Docket No. EA–445–A. Additional copies are to be provided directly to Keith Sutherland, Vice President, Legal & Regulatory Affairs—Emera Energy, 5151 Terminal Road, Halifax, NS B3J 1A1 Canada, *keith.sutherland@emeraenergy.com* and Bonnie A. Suchman, Suchman Law LLC, 8104 Paisley Place, Potomac, Maryland 20854, *bonnie@suchmanlawllc.com.*

A final decision will be made on the requested authorization after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE evaluates whether the proposed action will have an adverse impact on the sufficiency of supply or reliability of the United States electric power supply system.

Copies of this Application will be made available on the program website at *https://www.energy.gov/gdo/pending-applications* or, upon request, by emailing *Electricity.Exports@hq.doe.gov.*

Signing Authority: This document of the Department of Energy was signed on April 5, 2023, by Maria Robinson, Director, Grid Deployment Office, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on April 6, 2023.

Treena V. Garrett,

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

[FR Doc. 2023–07556 Filed 4–10–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[GDO Docket No. EA–446–A]

Application for Renewal of Authorization To Export Electric Energy; Emera Energy Services Subsidiary No. 11 LLC

AGENCY: Grid Deployment Office, Department of Energy.

ACTION: Notice of application.

SUMMARY: Emera Energy Services Subsidiary No. 11 LLC (the Applicant or EESS–11) has applied for renewed authorization to transmit electric energy from the United States to Canada pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before May 11, 2023.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed by electronic mail to *electricity.exports@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Christina Gomer, (240) 474–2403, *electricity.exports@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The U. S. Department of Energy (DOE) regulates electricity exports from the United States to foreign countries in accordance with section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)) and regulations thereunder (10 CFR 205.300 *et seq.*). Sections 301(b) and 402(f) of the DOE Organization Act (42 U.S.C. 7151(b) and 7172(f)) transferred this regulatory authority, previously exercised by the now-defunct Federal Power Commission, to DOE.

Section 202(e) of the FPA provides that an entity which seeks to export electricity must obtain an order from DOE authorizing that export. (16 U.S.C. 824a(e)). On June 13, 2022, the authority to issue such orders was delegated to the DOE's Grid Deployment Office (GDO) under Delegation Order No. S1–DEL–S3–2022–2 and Redelegation Order No. S3–DEL–GD1–2022.

On June 22, 2018, DOE issued Order No. EA–446 authorizing EESS–11 to transmit electric energy from the United States to Canada as a power marketer. On February 7, 2023, EESS–11 filed an application with DOE (Application or App) for renewal of their export authority for an additional five-year term. App at 1.

In its Application, EESS–11 states that it ''does not own or control any electric power generation or transmission facilities and does not have a franchised electric power service area.'' App. at 5. EESS–11 also states it ''operates as a marketing company involved in, among other things, the purchase and sale of electricity in the United States as a power marketer.'' I*d.* EESS–11 represents that it ''will purchase surplus electric energy from electric utilities and other suppliers within the United States and will export this energy to Canada over the international electric transmission facilities.'' *Id.* at 6. Therefore, the Applicant contends that ''because this electric energy will be purchased from others voluntarily, it will be surplus to the needs of the selling entities.'' *Id.* EESS–11 further contends its ''export of power will not impair the sufficiency of electric power supply in the U.S.'' *Id.*

The existing international transmission facilities to be utilized by the Applicant have been previously authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties. *See* app at Exhibit C.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the Application at the address provided previously. Protests should be filed in accordance with Rule 211 of FERC's Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at the previous address in accordance with FERC Rule 214 (18 CFR 385.214).

Comments and other filings concerning EESS–11's Application should be clearly marked with GDO Docket No. EA–446–A. Additional copies are to be provided directly to Keith Sutherland, Vice President, Legal & Regulatory Affairs—Emera Energy, 5151 Terminal Road, Halifax, NS B3J 1A1 Canada, *keith.sutherland@emeraenergy.com* and Bonnie A. Suchman, Suchman Law LLC, 8104 Paisley Place, Potomac, Maryland, 20854, *bonnie@suchmanlawllc.com.*

A final decision will be made on the requested authorization after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE evaluates whether the proposed action will have an adverse impact on the sufficiency of supply or reliability of the United States electric power supply system.

Copies of this Application will be made available on the program website at *https://www.energy.gov/gdo/pending-applications* or, upon request, by emailing *Electricity.Exports@hq.doe.gov.*

Signing Authority: This document of the Department of Energy was signed on April 5, 2023, by Maria Robinson, Director, Grid Deployment Office, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC on April 6, 2023.

Treena V. Garrett,

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

[FR Doc. 2023–07551 Filed 4–10–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[GDO Docket No. EA–444–A]

Application for Renewal of Authorization To Export Electric Energy; Emera Energy Services Subsidiary No. 9 LLC

AGENCY: Grid Deployment Office, Department of Energy.

ACTION: Notice of application.

SUMMARY: Emera Energy Services Subsidiary No. 9 LLC (the Applicant or EESS–9) has applied for renewed authorization to transmit electric energy from the United States to Canada pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before May 11, 2023.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed by electronic mail to *Electricity.Exports@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Christina Gomer, (240) 474–2403, *electricity.exports@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy (DOE) regulates electricity exports from the United

States to foreign countries in accordance with section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)) and regulations thereunder (10 CFR 205.300 *et seq.*). Sections 301(b) and 402(f) of the DOE Organization Act (42 U.S.C. 7151(b) and 7172(f)) transferred this regulatory authority, previously exercised by the now-defunct Federal Power Commission, to DOE.

Section 202(e) of the FPA provides that an entity which seeks to export electricity must obtain an order from DOE authorizing that export. (16 U.S.C. 824a(e)). On June 13, 2022, the authority to issue such orders was delegated to the DOE's Grid Deployment Office (GDO) under Delegation Order No. S1–DEL–S3–2022–2 and Redelegation Order No. S3–DEL–GD1–2022.

On June 22, 2018, DOE issued Order No. EA–444 authorizing EESS–9 to transmit electric energy from the United States to Canada as a power marketer. On February 7, 2023, EESS–9 filed an application with DOE (Application or App) for renewal of their export authority for an additional five-year term. App at 1.

In its Application, EESS–9 states that it ''does not own or control any electric power generation or transmission facilities and does not have a franchised electric power service area.'' App. at 5. EESS–9 also states it ''operates as a marketing company involved in, among other things, the purchase and sale of electricity in the United States as a power marketer.'' *Id.* at 5. EESS–9 represents that it ''will purchase surplus electric energy from electric utilities and other suppliers within the United States and will export this energy to Canada over the international electric transmission facilities.'' *Id.* at 6. Therefore, the Applicant contends that ''because this electric energy will be purchased from others voluntarily, it will be surplus to the needs of the selling entities.'' *Id.* EESS–9 further contends its ''export of power will not impair the sufficiency of electric power supply in the U.S.'' *Id.*

The existing international transmission facilities to be utilized by the Applicant have been previously authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties. *See* App at Exhibit C.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the Application at the address provided previously. Protests should be filed in accordance with Rule 211 of FERC's Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at the previous address in accordance with FERC Rule 214 (18 CFR 385.214).

Comments and other filings concerning EESS–9's Application should be clearly marked with GDO Docket No. EA–444–A. Additional copies are to be provided directly to Keith Sutherland, Vice President, Legal & Regulatory Affairs—Emera Energy, 5151 Terminal Road, Halifax, NS B3J 1A1 Canada, *keith.sutherland@emeraenergy.com* and Bonnie A Suchman, Suchman Law LLC, 8104 Paisley Place, Potomac, Maryland, 20854, *bonnie@suchmanlawllc.com.*

A final decision will be made on the requested authorization after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE evaluates whether the proposed action will have an adverse impact on the sufficiency of supply or reliability of the United States electric power supply system.

Copies of this Application will be made available on the program website at *https://www.energy.gov/gdo/pending-applications* or, upon request, by emailing *Electricity.Exports@hq.doe.gov.*

Signing Authority: This document of the Department of Energy was signed on April 5, 2023, by Maria Robinson, Director, Grid Deployment Office, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on April 6, 2023.

Treena V. Garrett,

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

[FR Doc. 2023–07555 Filed 4–10–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[GDO Docket No. EA–450–A]

Application for Renewal of Authorization To Export Electric Energy; Emera Energy Services Subsidiary No. 15 LLC

AGENCY: Grid Deployment Office, Department of Energy.

ACTION: Notice of application.

SUMMARY: Emera Energy Services Subsidiary No. 15 LLC (the Applicant or EESS–15) has applied for renewed authorization to transmit electric energy from the United States to Canada pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before May 11, 2023.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed by electronic mail to *Electricity.Exports@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Christina Gomer, (240) 474–2403, *electricity.exports@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The U. S. Department of Energy (DOE) regulates electricity exports from the United States to foreign countries in accordance with section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)) and regulations thereunder (10 CFR 205.300 *et seq.*). Sections 301(b) and 402(f) of the DOE Organization Act (42 U.S.C. 7151(b) and 7172(f)) transferred this regulatory authority, previously exercised by the now-defunct Federal Power Commission, to DOE.

Section 202(e) of the FPA provides that an entity which seeks to export electricity must obtain an order from DOE authorizing that export. (16 U.S.C. 824a(e)). On June 13, 2022, the authority to issue such orders was delegated to the DOE's Grid Deployment Office (GDO) under Delegation Order No. S1–DEL–S3–2022–2 and Redelegation Order No. S3–DEL–GD1–2022.

On June 22, 2018, DOE issued Order No. EA–450 authorizing EESS–15 to transmit electric energy from the United States to Canada as a power marketer. On February 7, 2023, EESS–15 filed an application with DOE (Application or App) for renewal of their export authority for an additional five-year term. App at 1.

In its Application, EESS–15 states that it ''does not own or control any electric power generation or transmission facilities and does not have a franchised electric power service area.'' App. at 5. EESS–15 also states it ''operates as a marketing company involved in, among

other things, the purchase and sale of electricity in the United States as a power marketer.'' *Id.* at 5. EESS–15 represents that it ''will purchase surplus electric energy from electric utilities and other suppliers within the United States and will export this energy to Canada over the international electric transmission facilities.'' *Id.* at 6. Therefore, the Applicant contends that ''because this electric energy will be purchased from others voluntarily, it will be surplus to the needs of the selling entities.'' *Id.* EESS–15 further contends its ''export of power will not impair the sufficiency of electric power supply in the U.S.'' *Id.*

The existing international transmission facilities to be utilized by the Applicant have been previously authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties. *See* App at Exhibit C.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the Application at the address provided previously. Protests should be filed in accordance with Rule 211 of FERC's Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at the previous address in accordance with FERC Rule 214 (18 CFR 385.214).

Comments and other filings concerning EESS–15's Application should be clearly marked with GDO Docket No. EA–450–A. Additional copies are to be provided directly to Keith Sutherland, Vice President, Legal & Regulatory Affairs—Emera Energy, 5151 Terminal Road, Halifax, NS B3J 1A1 Canada, *keith.sutherland@emeraenergy.com* and Bonnie A Suchman, Suchman Law LLC, 8104 Paisley Place, Potomac, Maryland, 20854, *bonnie@suchmanlawllc.com.*

A final decision will be made on the requested authorization after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE evaluates whether the proposed action will have an adverse impact on the sufficiency of supply or reliability of the United States electric power supply system.

Copies of this Application will be made available on the program website at *https://www.energy.gov/gdo/pending-applications* or, upon request, by emailing *Electricity.Exports@hq.doe.gov.*

Signing Authority: This document of the Department of Energy was signed on April 5, 2023, by Maria Robinson, Director, Grid Deployment Office, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on April 6, 2023.

Treena V. Garrett,

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

[FR Doc. 2023–07553 Filed 4–10–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[GDO Docket No. EA–448–A]

Application for Renewal of Authorization to Export Electric Energy; Emera Energy Services Subsidiary No. 13 LLC

AGENCY: Grid Deployment Office, Department of Energy.

ACTION: Notice of application.

SUMMARY: Emera Energy Services Subsidiary No. 13 LLC (the Applicant or EESS–13) has applied for renewed authorization to transmit electric energy from the United States to Canada pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before May 11, 2023.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed by electronic mail to *Electricity.Exports@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Christina Gomer, (240) 474–2403, *electricity.exports@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The U. S. Department of Energy (DOE) regulates electricity exports from the United States to foreign countries in accordance with section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)) and regulations thereunder (10 CFR 205.300 *et seq.*). Sections 301(b) and 402(f) of the DOE Organization Act (42 U.S.C. 7151(b) and 7172(f)) transferred this regulatory authority, previously exercised by the now-defunct Federal Power Commission, to DOE.

Section 202(e) of the FPA provides that an entity which seeks to export electricity must obtain an order from DOE authorizing that export. (16 U.S.C. 824a(e)). On June 13, 2022, the authority to issue such orders was delegated to the DOE's Grid Deployment Office (GDO) under Delegation Order No. S1–DEL–S3–2022–2 and Redelegation Order No. S3–DEL–GD1–2022.

On June 22, 2018, DOE issued Order No. EA–448 authorizing EESS–13 to transmit electric energy from the United States to Canada as a power marketer. On February 7, 2023, EESS–13 filed an application with DOE (Application or App) for renewal of their export authority for an additional five-year term. App at 1.

In its Application, EESS–13 states that it ''does not own or control any electric power generation or transmission facilities and does not have a franchised electric power service area.'' App. at 5. EESS–13 also states it ''operates as a marketing company involved in, among other things, the purchase and sale of electricity in the United States as a power marketer.'' *Id.* at 5. EESS–13 represents that it ''will purchase surplus electric energy from electric utilities and other suppliers within the United States and will export this energy to Canada over the international electric transmission facilities.'' *Id.* at 6. Therefore, the Applicant contends that ''because this electric energy will be purchased from others voluntarily, it will be surplus to the needs of the selling entities.'' *Id.* EESS–13 further contends its ''export of power will not impair the sufficiency of electric power supply in the U.S.'' *Id.*

The existing international transmission facilities to be utilized by the Applicant have been previously authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties. *See* App at Exhibit C.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the Application at the address provided previously. Protests should be filed in accordance with Rule 211 of FERC's Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at the previous address in accordance with FERC Rule 214 (18 CFR 385.214).

Comments and other filings concerning EESS–13's Application should be clearly marked with GDO Docket No. EA–448–A. Additional copies are to be provided directly to Keith Sutherland, Vice President, Legal

& Regulatory Affairs—Emera Energy, 5151 Terminal Road, Halifax, NS B3J 1A1 Canada, *keith.sutherland@emeraenergy.com* and Bonnie A Suchman, Suchman Law LLC, 8104 Paisley Place, Potomac, Maryland, 20854, *bonnie@suchmanlawllc.com.*

A final decision will be made on the requested authorization after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE evaluates whether the proposed action will have an adverse impact on the sufficiency of supply or reliability of the United States electric power supply system.

Copies of this Application will be made available on the program website at *https://www.energy.gov/gdo/pending-applications* or, upon request, by emailing *Electricity.Exports@hq.doe.gov.*

Signing Authority: This document of the Department of Energy was signed on April 5, 2023, by Maria Robinson, Director, Grid Deployment Office, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on April 6, 2023.

Treena V. Garrett,

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

[FR Doc. 2023–07552 Filed 4–10–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[GDO Docket No. EA–449–A]

Application for Renewal of Authorization To Export Electric Energy; Emera Energy LNG, LLC

AGENCY: Grid Deployment Office, Department of Energy.

ACTION: Notice of application.

SUMMARY: Emera Energy LNG, LLC (the Applicant or EE–LNG) has applied for renewed authorization to transmit electric energy from the United States to Canada pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before May 11, 2023.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed by electronic mail to *Electricity.Exports@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Christina Gomer, (240) 474–2403, *electricity.exports@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The U. S. Department of Energy (DOE) regulates electricity exports from the United States to foreign countries in accordance with section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)) and regulations thereunder (10 CFR 205.300 *et seq.*). Sections 301(b) and 402(f) of the DOE Organization Act (42 U.S.C. 7151(b) and 7172(f)) transferred this regulatory authority, previously exercised by the now-defunct Federal Power Commission, to DOE.

Section 202(e) of the FPA provides that an entity which seeks to export electricity must obtain an order from DOE authorizing that export. (16 U.S.C. 824a(e)). On June 13, 2022, the authority to issue such orders was delegated to the DOE's Grid Deployment Office (GDO) under Delegation Order No. S1–DEL–S3–2022–2 and Redelegation Order No. S3–DEL–GD1–2022.

On June 22, 2018, DOE issued Order No. EA–449 authorizing EE–LNG (at the time, EE–LNG was known as Emera Energy Services Subsidiary No. 14) to transmit electric energy from the United States to Canada as a power marketer. On February 7, 2023, EE–LNG filed an application with DOE (Application or App) for renewal of their export authority for an additional five-year term. App at 1.

In its Application, EE–LNG states that it ''does not own or control any electric power generation or transmission facilities and does not have a franchised electric power service area.'' App. at 5. EE–LNG also states it ''operates as a marketing company involved in, among other things, the purchase and sale of electricity in the United States as a power marketer.'' *Id.* at 5. EE–LNG represents that it ''will purchase surplus electric energy from electric utilities and other suppliers within the United States and will export this energy to Canada over the international electric transmission facilities.'' *Id.* at 6. Therefore, the Applicant contends that ''because this electric energy will be purchased from others voluntarily, it will be surplus to the needs of the selling entities.'' *Id.* EE–LNG further contends its ''export of power will not impair the sufficiency of electric power supply in the U.S.'' *Id.*

The existing international transmission facilities to be utilized by the Applicant have been previously authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties. *See* App at Exhibit C.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the Application at the address provided previously. Protests should be filed in accordance with Rule 211 of FERC's Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at the previous address in accordance with FERC Rule 214 (18 CFR 385.214).

Comments and other filings concerning EE–LNG's Application should be clearly marked with GDO Docket No. EA–449–A. Additional copies are to be provided directly to Keith Sutherland, Vice President, Legal & Regulatory Affairs—Emera Energy, 5151 Terminal Road, Halifax, NS B3J 1A1 Canada, *keith.sutherland@emeraenergy.com* and Bonnie A. Suchman, Suchman Law LLC, 8104 Paisley Place, Potomac, Maryland 20854, *bonnie@suchmanlawllc.com.*

A final decision will be made on the requested authorization after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE evaluates whether the proposed action will have an adverse impact on the sufficiency of supply or reliability of the United States electric power supply system.

Copies of this Application will be made available on the program website at *https://www.energy.gov/gdo/pending-applications* or, upon request, by emailing *Electricity.Exports@hq.doe.gov.*

Signing Authority: This document of the Department of Energy was signed on April 5, 2023, by Maria Robinson, Director, Grid Deployment Office, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters

the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on April 6, 2023.

Treena V. Garrett,

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

[FR Doc. 2023–07560 Filed 4–10–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[GDO Docket No. EA–447–A]

Application for Renewal of Authorization To Export Electric Energy; Emera Energy Services Subsidiary No. 12 LLC

AGENCY: Grid Deployment Office, Department of Energy.

ACTION: Notice of application.

SUMMARY: Emera Energy Services Subsidiary No. 12 LLC (the Applicant or EESS–12) has applied for renewed authorization to transmit electric energy from the United States to Canada pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before May 11, 2023.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed by electronic mail to *Electricity.Exports@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Christina Gomer, (240) 474–2403, *electricity.exports@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy (DOE) regulates electricity exports from the United States to foreign countries in accordance with section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)) and regulations thereunder (10 CFR 205.300 *et seq.*). Sections 301(b) and 402(f) of the DOE Organization Act (42 U.S.C. 7151(b) and 7172(f)) transferred this regulatory authority, previously exercised by the now-defunct Federal Power Commission, to DOE.

Section 202(e) of the FPA provides that an entity which seeks to export electricity must obtain an order from DOE authorizing that export. (16 U.S.C. 824a(e)). On June 13, 2022, the authority to issue such orders was delegated to the DOE's Grid Deployment Office (GDO) under Delegation Order No. S1–DEL–S3–2022–2 and Redelegation Order No. S3–DEL–GD1–2022.

On June 22, 2018, DOE issued Order No. EA–447 authorizing EESS–12 to transmit electric energy from the United States to Canada as a power marketer. On February 7, 2023, EESS–12 filed an application with DOE (Application or App) for renewal of their export authority for an additional five-year term. App at 1.

In its Application, EESS–12 states that it ''does not own or control any electric power generation or transmission facilities and does not have a franchised electric power service area.'' App. at 5. EESS–12 also states it ''operates as a marketing company involved in, among other things, the purchase and sale of electricity in the United States as a power marketer.'' *Id.* EESS–12 represents that it ''will purchase surplus electric energy from electric utilities and other suppliers within the United States and will export this energy to Canada over the international electric transmission facilities.'' *Id.* at 6. Therefore, the Applicant contends that ''because this electric energy will be purchased from others voluntarily, it will be surplus to the needs of the selling entities.'' *Id.* EESS–12 further contends its ''export of power will not impair the sufficiency of electric power supply in the U.S.'' *Id.*

The existing international transmission facilities to be utilized by the Applicant have been previously authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties. *See* App at Exhibit C.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the Application at the address provided previously. Protests should be filed in accordance with Rule 211 of FERC's Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to become a party to this proceeding should file a motion to intervene at the previous address in accordance with FERC Rule 214 (18 CFR 385.214).

Comments and other filings concerning EESS–12's Application should be clearly marked with GDO Docket No. EA–447–A. Additional copies are to be provided directly to Keith Sutherland, Vice President, Legal & Regulatory Affairs—Emera Energy, 5151 Terminal Road, Halifax, NS B3J 1A1 Canada, *keith.sutherland@emeraenergy.com* and Bonnie A. Suchman, Suchman Law LLC, 8104 Paisley Place, Potomac, Maryland 20854, *bonnie@suchmanlawllc.com.*

A final decision will be made on the requested authorization after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE evaluates whether the proposed action will have an adverse impact on the sufficiency of supply or reliability of the United States electric power supply system.

Copies of this Application will be made available on the program website at *https://www.energy.gov/gdo/pending-applications* or, upon request, by emailing *Electricity.Exports@hq.doe.gov.*

Signing Authority: This document of the Department of Energy was signed on April 5, 2023, by Maria Robinson, Director, Grid Deployment Office, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on April 6, 2023.

Treena V. Garrett,

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

[FR Doc. 2023–07557 Filed 4–10–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC23–70–000.

Applicants: Blue Cloud Wind Energy, LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act of Blue Cloud Wind Energy, LLC.

Filed Date: 4/4/23.

Accession Number: 20230404–5252.

Comment Date: 5 p.m. ET 4/25/23.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG23–113–000.

Applicants: Umbriel Solar, LLC.

Description: Umbriel Solar, LLC submits Notice of Self–Certification of Exempt Wholesale Generator Status.

Filed Date: 4/4/23.

Accession Number: 20230404–5240.

Comment Date: 5 p.m. ET 4/25/23.

Docket Numbers: EG23–114–000.

Applicants: Cattlemen Solar Park, LLC.

Description: Cattlemen Solar Park, LLC submits Notice of Self–Certification of Exempt Wholesale Generator Status.

Filed Date: 4/4/23.

Accession Number: 20230404–5244.

Comment Date: 5 p.m. ET 4/25/23.

Docket Numbers: EG23–115–000.

Applicants: Crooked Lake Solar, LLC.

Description: Crooked Lake Solar, LLC submits Notice of Self–Certification of Exempt Wholesale Generator Status.

Filed Date: 4/4/23.

Accession Number: 20230404–5245.

Comment Date: 5 p.m. ET 4/25/23.

Docket Numbers: EG23–116–000.

Applicants: Indiana Crossroads Wind Farm II LLC.

Description: Indiana Crossroads Wind Farm II LLC submits Notice of Self–Certification of Exempt Wholesale Generator Status.

Filed Date: 4/4/23.

Accession Number: 20230404–5246.

Comment Date: 5 p.m. ET 4/25/23.

Docket Numbers: EG23–117–000.

Applicants: Pearl River Solar Park LLC.

Description: Pearl River Solar Park LLC submits Notice of Self–Certification of Exempt Wholesale Generator Status.

Filed Date: 4/4/23.

Accession Number: 20230404–5247.

Comment Date: 5 p.m. ET 4/25/23.

Docket Numbers: EG23–118–000.

Applicants: Riverstart Solar Park III LLC.

Description: Riverstart Solar Park III LLC submits Notice of Self–Certification of Exempt Wholesale Generator Status.

Filed Date: 4/4/23.

Accession Number: 20230404–5248.

Comment Date: 5 p.m. ET 4/25/23.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER23–933–001.

Applicants: Idaho Power Company.

Description: Tariff Amendment: Revisions to Attachment M Section 3—Interconnection Requests—Amended to be effective 6/5/2023.

Filed Date: 4/4/23.

Accession Number: 20230404–5205.

Comment Date: 5 p.m. ET 4/25/23.

Docket Numbers: ER23–1479–002.

Applicants: Eversource Energy Service Company (as agent), ISO New England Inc.

Description: Tariff Amendment: ISO New England Inc. submits tariff filing per 35.17(b): ISO–NE/CL&P; First Revised LGIA–ISO–NE/CLP–22–01 to be effective 2/23/2023.

Filed Date: 4/4/23.

Accession Number: 20230404–5219.

Comment Date: 5 p.m. ET 4/25/23.

Docket Numbers: ER23–1565–000.

Applicants: Umbriel Solar, LLC.

Description: Baseline eTariff Filing: Market-Based Rate Application to be effective 6/4/2023.

Filed Date: 4/4/23.

Accession Number: 20230404–5211.

Comment Date: 5 p.m. ET 4/25/23.

Docket Numbers: ER23–1566–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, Service Agreement No. 6852; Queue No. AF1–320 to be effective 3/6/2023.

Filed Date: 4/5/23.

Accession Number: 20230405–5006.

Comment Date: 5 p.m. ET 4/26/23.

Docket Numbers: ER23–1567–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: Tariff Clean-Up Filing Effective 20220215 to be effective 2/15/2022.

Filed Date: 4/5/23.

Accession Number: 20230405–5030.

Comment Date: 5 p.m. ET 4/26/23.

Docket Numbers: ER23–1568–000.

Applicants: Oklahoma Gas and Electric Company, Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: Oklahoma Gas and Electric Company submits tariff filing per 35.13(a)(2)(iii: OG&E Formula Rate Revisions to Incorporate Changes Accepted in ER23–703 to be effective 1/27/2020.

Filed Date: 4/5/23.

Accession Number: 20230405–5036.

Comment Date: 5 p.m. ET 4/26/23.

Docket Numbers: ER23–1569–000.

Applicants: Yellowbud Solar, LLC.

Description: Baseline eTariff Filing: Reactive Power Compensation to be effective 5/8/2023.

Filed Date: 4/5/23.

Accession Number: 20230405–5050.

Comment Date: 5 p.m. ET 4/26/23.

Docket Numbers: ER23–1570–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: WMPA, Service Agreement No. 6847; Queue No. AF2–102 to be effective 3/6/2023.

Filed Date: 4/5/23.

Accession Number: 20230405–5059.

Comment Date: 5 p.m. ET 4/26/23.

Docket Numbers: ER23–1571–000.

Applicants: Duquesne Light Company, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Duquesne Light Company submits tariff filing per 35.13(a)(2)(iii: Duquesne Light Co. submits revisions to OATT Att. H–17 to be effective 6/5/2023.

Filed Date: 4/5/23.

Accession Number: 20230405–5069.

Comment Date: 5 p.m. ET 4/26/23.

Docket Numbers: ER23–1572–000.

Applicants: Niagara Mohawk Power Corporation, New York Independent System Operator, Inc.

Description: § 205(d) Rate Filing: Niagara Mohawk Power Corporation submits tariff filing per 35.13(a)(2)(iii: 205: EP between Niagara Mohawk and Horseshoe Solar Energy (SA 2771) to be effective 3/7/2023.

Filed Date: 4/5/23.

Accession Number: 20230405–5100.

Comment Date: 5 p.m. ET 4/26/23.

Docket Numbers: ER23–1573–000.

Applicants: New York Independent System Operator, Inc., New York State Electric & Gas Corporation.

Description: § 205(d) Rate Filing: New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: NYISO–NYSEG Joint 205: Unexecuted EPCA w Ticonderoga Solar National Grid SA2764 to be effective 4/6/2023.

Filed Date: 4/5/23.

Accession Number: 20230405–5107.

Comment Date: 5 p.m. ET 4/26/23.

Docket Numbers: ER23–1574–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, SA No. 6849; Queue No. AE1–170 to be effective 3/6/2023.

Filed Date: 4/5/23.

Accession Number: 20230405–5118.

Comment Date: 5 p.m. ET 4/26/23.

Docket Numbers: ER23–1576–000.

Applicants: Duquesne Light Company, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Duquesne Light Company submits tariff filing per 35.13(a)(2)(iii: Duquesne Light Co. submits one WDSA, SA No. 6877 to be effective 6/5/2023.

Filed Date: 4/5/23.

Accession Number: 20230405–5128.

Comment Date: 5 p.m. ET 4/26/23.

Docket Numbers: ER23–1577–000.

Applicants: Daggett Solar Power 2 LLC.

Description: Baseline eTariff Filing: Market-Based Rate Application to be effective 6/10/2023.

Filed Date: 4/5/23.

Accession Number: 20230405–5131.

Comment Date: 5 p.m. ET 4/26/23.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's

Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 5, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–07582 Filed 4–10–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos., EG23–53–000, EG23–54–000, EG23–55–000, EG23–56–000, EG23–57–000, EG23–58–000, EG23–59–000, EG23–60–000, EG23–61–000, EG23–62–000, EG23–63–000, EG23–64–000, EG23–65–000, EG23–66–000, EG23–67–000, EG23–68–000, EG23–69–000, EG23–70–000, EG23–71–000, EG23–72–000, EG23–73–000, EG23–74–000, EG23–75–000, EG23–76–000, EG23–77–000, EG23–78–000]

Pike Solar, LLC; Black Mesa Energy, LLC; Wildflower Solar, LLC; 92JT 8ME, LLC; Cavalry Energy Center, LLC; Dunns Bridge Energy Storage, LLC; Big Plain Solar, LLC; Oak Trail Solar, LLC; Westlands Solar Blue (OZ) Owner, LLC; Rodeo Ranch Energy Storage, LLC; Sonoran Solar Energy, LLC; Saint Energy Storage II, LLC; Storey Energy Center, LLC; Texas Solar Nova 1, LLC; Chevelon Butte RE LLC; White Trillium Solar, LLC; Second Division Solar, LLC; Starr Solar Ranch, LLC; Prairie Ronde Solar Farm, LLC; Honeysuckle Solar, LLC; Wolfskin Solar; LLC Bird Dog Solar, LLC; Hobnail Solar, LLC; Blackwater Solar, LLC; Nevada Cogeneration Associates #1; Goleta Energy Storage, LLC; Notice of Effectiveness of Exempt Wholesale Generator Status

Take notice that during the month of March 2023, the status of the above-captioned entities as Exempt Wholesale Generators became effective by operation of the Commission's regulations. 18 CFR 366.7(a) (2022).

Dated: April 5, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–07584 Filed 4–10–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23–125–000]

Natural Gas Pipeline Company of America, LLC; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on March 30, 2023, Natural Gas Pipeline Company of America, LLC (Natural), 1001 Louisiana Street, Suite 1000, Houston, Texas 77002, filed in the above referenced docket, a prior notice request pursuant to sections 157.205, 157.206, 157.213(b), and 157.216(b) of the Commission's regulations under the Natural Gas Act (NGA), and Natural's blanket certificate issued in Docket No. CP82–402–000, for authorization to reclassify four injection/withdrawal (I/W) wells to water removal wells and perform certain associated work, including adding a new launcher assembly for inspection of a lateral, and abandoning associated storage field laterals and above ground appurtenances, all at Natural's Herscher Storage Field, which is located in Kankakee County, Illinois and utilizes the Galesville and Mount Simon reservoirs.

Natural also states that the project will not result in any abandonment of, or decrease in service to, Natural's customers, and that the project will have no impact on the Herscher Storage Field's certificated parameters, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this prior notice request should be directed to Ben Carranza, Vice President, Regulatory, Kinder Morgan, Inc., as Operator of Natural Gas Pipeline Company of America, LLC, 1001 Louisiana Street, Suite 1000, Houston, Texas 77002, at (713) 420–5535, or by email at *ben_carranza@kindermorgan.com.*

Pursuant to Section 157.9 of the Commission's Rules of Practice and Procedure,[1] within 90 days of this Notice the Commission staff will either: complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on June 5, 2023. How to file protests, motions to intervene, and comments is explained below.

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,[2] any person[3] or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for

[1] 18 CFR (Code of Federal Regulations) 157.9.

[2] 18 CFR 157.205.

[3] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,[4] and must be submitted by the protest deadline, which is June 5, 2023. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [5] and the regulations under the NGA [6] by the intervention deadline for the project, which is June 5, 2023. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before June 5, 2023. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP23–125–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select General'' and then select ''Protest'', ''Intervention'', or ''Comment on a Filing''; or [7]

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP23–125–000.

To mail via USPS, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

To mail via any other courier, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Protests and motions to intervene must be served on the applicant either by mail at: Ben Carranza, Vice President, Regulatory, Kinder Morgan, Inc., as Operator of Natural Gas Pipeline Company of America, LLC, 1001 Louisiana Street, Suite 1000, Houston, Texas 77002, or by email at *ben_carranza@kindermorgan.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: April 5, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–07574 Filed 4–10–23; 8:45 am]

BILLING CODE 6717–01–P

[4] 18 CFR 157.205(e).

[5] 18 CFR 385.214.

[6] 18 CFR 157.10.

[7] Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER23–1512–000]

Westlake Natrium LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Westlake Natrium LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket

authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is April 25, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: April 5, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–07581 Filed 4–10–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas & Oil Pipeline Rate and Refund Report filings:

Filings in Existing Proceedings

Docket Numbers: PR23–26–002.

Applicants: Columbia Gas of Maryland, Inc.

Description: § 284.123 Rate Filing: Amendment to CMD Rates effective Jan. 1, 2023 to be effective N/A.

Filed Date: 4/5/23.

Accession Number: 20230405–5074.

Comment Date: 5 p.m. ET 4/26/23.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 5, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–07583 Filed 4–10–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP23–124–000]

Gulf South Pipeline Company, LLC; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on March 29, 2023, Gulf South Pipeline Company, LLC (Gulf South), 9 Greenway Plaza, Suite 2800, Houston, Texas 77046, filed a prior notice application pursuant to sections 157.205 and 127.216(b) of the Federal Energy Regulatory Commission's (Commission) regulations under the Natural Gas Act, and Gulf South's blanket certificate issued in Docket No. CP82–430–000. Gulf South proposes to abandon in place and by removal its Index 293–2 and Index 293–2S pipelines consisting of approximately 1.3 miles total of 10-inch natural gas pipelines located in Plaquemines Parish, Louisiana. The project will involve both excavation on land and dredging within the Mississippi River to remove pipeline, all as more fully set forth in the application, which is open to the public for inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov.*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding this application should be directed to Juan Eligio, Jr., Manager of Regulatory Affairs, Gulf South Pipeline Company, LLC, 9 Greenway Plaza, Houston, Texas 77046, at (713) 479–3480 or by email to *juan.eligio@bwpipelines.com.* Questions may also be directed to Payton Barrientos, Regulatory Analyst & Public Affairs Specialist, Gulf South Pipeline Company, LLC, 9 Greenway Plaza, Houston, Texas 77046, at (713) 479–8157 or by email to *payton.barrientos@bwpipelines.com.*

Pursuant to Section 157.9 of the Commission's Rules of Practice and Procedure,[1] within 90 days of this Notice the Commission staff will either: complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Public Participation

There are three ways to become involved in the Commission's review of

[1] 18 CFR (Code of Federal Regulations) 157.9.

this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on June 5, 2023. How to file protests, motions to intervene, and comments is explained below.

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,[2] any person [3] or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,[4] and must be submitted by the protest deadline, which is June 5, 2023. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [5] and the regulations under the NGA [6] by the intervention deadline for the project, which is June 5, 2023. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before June 5, 2023. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP23–124–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov)* under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select General'' and then select ''Protest'', ''Intervention'', or ''Comment on a Filing''; or [7]

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP23–124–000.

To mail via USPS, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

To mail via any other courier, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Protests and motions to intervene must be served on the applicant either by mail or email (with a link to the document) at: Juan Eligio, Jr., Manager of Regulatory Affairs, Gulf South Pipeline Company, LLC, 9 Greenway Plaza, Houston, Texas 77046, or by email to *juan.eligio@bwpipelines.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: April 5, 2023.

Kimberly D. Bose,

Secretary.

[FR Doc. 2023–07573 Filed 4–10–23; 8:45 am]

BILLING CODE 6717–01–P

[2] 18 CFR 157.205.

[3] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[4] 18 CFR 157.205(e).

[5] 18 CFR 385.214.

[6] 18 CFR 157.10.

[7] Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

FARM CREDIT SYSTEM INSURANCE CORPORATION

Board of Directors Meeting

SUMMARY: Notice of the forthcoming regular meeting of the Board of Directors of the Farm Credit System Insurance Corporation (FCSIC), is hereby given in accordance with the provisions of the Bylaws of the FCSIC.

DATES: 10 a.m., Wednesday, April 12, 2023.

ADDRESSES: You may observe the open portions of this meeting in person at 1501 Farm Credit Drive, McLean, Virginia 22102–5090, or virtually. If you would like to virtually attend, at least 24 hours in advance, visit *FCSIC.gov,* select ''News & Events,'' then select ''Board Meetings.'' From there, access the linked ''Instructions for board meeting visitors'' and complete the described registration process.

FOR FURTHER INFORMATION CONTACT: If you need more information or assistance for accessibility reasons, or have questions, contact Ashley Waldron, Secretary to the Board. Telephone: 703–883–4009. TTY: 703–883–4056.

SUPPLEMENTARY INFORMATION: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public. The following matters will be considered:

Portions Open to the Public

- Approval of February 8, 2023, Minutes
- Quarterly FCSIC Financial Reports
- Quarterly Report on Insured Obligations
- Quarterly Report on Annual Performance Plan
- Annual Report on Investment Portfolio
- Presentation of 2022 Audit Results

Portions Closed to the Public

- Quarterly Report on Insurance Risk
- Executive Session of the FCSIC Board Audit Committee with the External Auditor

Ashley Waldron,

Secretary to the Board.

[FR Doc. 2023–07549 Filed 4–10–23; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, April 19, 2023 at 10:30 a.m.

PLACE: Hybrid meeting: 1050 First Street NE, Washington, DC (12th floor) and virtual.

Note: For those attending the meeting in person, current Covid–19 safety protocols for visitors, which are based on the CDC Covid–19 community level in Washington, DC, will be updated on the commission's contact page by the Monday before the meeting. See the contact page at *https://www.fec.gov/contact/.* If you would like to virtually access the meeting, see the instructions below.

STATUS: This meeting will be open to the public, subject to the above-referenced guidance regarding the Covid–19 community level and corresponding health and safety procedures. To access the meeting virtually, go to the commission's website *www.fec.gov* and click on the banner to be taken to the meeting page.

MATTERS TO BE CONSIDERED:

Draft Advisory Opinion 2023–01: U.S. Representative Nanette Diaz Barragán.

Audit Division Recommendation Memorandum on Latinos for America First (A21–12).

Memorandum of Understanding Between FEC and DOJ.

Audit Process for Committees That Do Not Receive Public Funds.

Management and Administrative Matters.

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer; Telephone: (202) 694–1220.

Individuals who plan to attend in person and who require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Laura E. Sinram, Secretary and Clerk, at (202) 694–1040, at least 72 hours prior to the meeting date.

(Authority: Government in the Sunshine Act, 5 U.S.C. 552b)

Laura E. Sinram,

Secretary and Clerk of the Commission.

[FR Doc. 2023–07744 Filed 4–7–23; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than May 10, 2023.

A. Federal Reserve Bank of New York (Ivan J. Hurwitz, Head of Bank Applications) 33 Liberty Street, New York, New York 10045–0001. Comments can also be sent electronically to *comments.applications@ny.frb.org:*

1. *The K&Z Company LLC, Brooklyn, New York*; to become a bank holding company by acquiring The Upstate National Bank, Ogdensburg, New York.

Board of Governors of the Federal Reserve System.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2023–07483 Filed 4–10–23; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained

on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than April 26, 2023.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *David Oren Nelson Living Trust dated January 28, 2022, Memphis, Tennessee; David Oren Nelson, as trustee, Somerville, Tennessee;* to retain voting shares of A.M. Saylor, Incorporated, and thereby indirectly retain voting shares of First Hampton Bank, both of Hampton, Iowa.

Board of Governors of the Federal Reserve System.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2023–07577 Filed 4–10–23; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than April 25, 2023.

A. Federal Reserve Bank of Dallas (Karen Smith, Director, Mergers & Acquisitions) 2200 N Pearl St., Dallas, Texas 75201. Comments can also be sent electronically to *Comments.applications@dal.frb.org:*

1. *Jane Cheever Powell and Suzanne Cheever Goudge, individually and as co-voting person of the Jane Cheever Powell Trust under the Last Will and Testament of Charles E. Cheever, Sr., the Jane Cheever Powell Trust Under the Last Will & Testament of Elizabeth D. Cheever; and Cecelia Daley Cheever, individually and as trustee of the Cecelia Daley Cheever 2012 Trust; and Jean Mary Cheever, individually and as trustee of the Cece Cheever 2019 Stock Trust, the Jean Mary Cheever 2012 Trust, the Charles E. Cheever, III 2020 Family Trust, the Hope Eileen Cheever Descendant's Trust, and the Emmett Hunter Cheever Descendant's Trust; and Joan McKinney Cheever, individually, as trustee of the Joan McKinney Cheever 2012 Trust, Joan M. Cheever, and as co-trustee of the Joan M. Cheever Irrevocable Trust, and the Joan McKinney Cheever 2012 Trust; and Christopher Hance Cheever, individually and as trustee of the Christopher Hance Cheever 2012 Trust; all of San Antonio, Texas;*

Helen Elizabeth Cheever, individually, and Jean Cheever, individually, as trustee of the Helen Elizabeth Cheever Descendant's Trust, all of San Diego, California; and as custodian of the Hope E. Cheever Texas Uniform Transfer to Minors Act (UTMA), and the Emmett Hunter Cheever Texas UTMA; and Hope Eileen Cheever, individually, all of Dallas, Texas;

Dennis C. Quinn, individually and as co-trustee of the Joan M. Cheever Irrevocable Trust, both of San Antonio, Texas; as trustee of the Elizabeth Daley Quinn Descendant's Trust, and Elizabeth Daley Quinn, individually, both of New York, New York; and as trustee of the Austin McKinney Quinn Descendant's Trust, and Austin McKinney Quinn, individually, both of Los Angeles, California;

Sara E. Goudge Brouillard, individually, as trustee of the Sara Goudge Brouillard Descendant's Trust, the John Cyril Goudge Descendant's Trust, the Suzanne Cheever Goudge 2012 Trust, the Katherine McKinney Goudge Descendant's Trust, the Carrie Goudge Dyer Descendant's Trust, and as custodian of the Minor Children A, B and C under the Texas Uniform Transfer to Minors Act, all of San Antonio, Texas;

Carrie Patricia Goudge Dyer, individually and as custodian of the Minor Children D, E and F, under the Texas UTMA, and Nick Dyer, all of Austin, Texas;

John Cyril Goudge, individually, as trustee of the Jean Cheever 2109 Stock Trust, and as custodian of the Minor Children G and H under the Texas UTMA; and James D. Goudge, Jeff Brouillard, and Laura M. Goudge, all individually, all of San Antonio, Texas;

Katherine McKinney Goudge Ankumah, individually and as custodian of the Minor Children I, and J under the Texas UTMA; and Kobi Ankumah, individually, all of Nashville, Tennessee;

Cheever Partners, as authorized signer to the following GST Trusts: the Charles E. Cheever, III GST Trust, both of New Canaan, Connecticut; the Suzanne C. Goudge GST Trust, the Cecelia Daley Cheever GST Trust, the Jean Mary Cheever GST Trust, the Joan M. Cheever GST Trust, and the Christopher Hance Cheever GST Trust, all of San Antonio, Texas; and

Charles Emmett Cheever, III, individually and trustee of the Charles Emmett Cheever, III 2012 Trust, and the Chris Cheever 2109 Stock Trust, all of San Antonio, Texas; and *Regina Cheever, New Canaan, Connecticut;* a group acting in concert to retain voting shares of Broadway Bancshares, Inc., and thereby indirectly retain voting shares of Broadway National Bank, both of San Antonio, Texas.

Board of Governors of the Federal Reserve System.

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2023–07482 Filed 4–10–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers CMS–10224 & CMS–10242]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by May 11, 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.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* CMS HCPCS Modification to Code Set Form; *Use:* The Healthcare Common Procedure Coding System (HCPCS) Level II code set is one of the standard code sets used for this purpose. The HCPCS Level II code set, also referred to as alpha-numeric codes, is a standardized coding system that is used primarily to identify items, supplies, and services not included in the HCPCS Level I Current Procedural Terminology (CPT®) codes, such as ambulatory services and durable medical equipment, prosthetics, orthotics, and supplies when used in the home or outpatient setting as well as certain drugs and biologicals. Because Medicare and other insurers cover a variety of these services and supplies, HCPCS Level II codes were established for assignment by insurers to identify items on claims. HCPCS Level II classifies similar items or services that are medical in nature into categories for the purpose of efficient claims processing. For each alpha-numeric HCPCS code, there is descriptive terminology that identifies a category of like items.

As stated in 42 CFR Sec. 414.40 (a) CMS establishes uniform national definitions of services, codes to represent services, and payment modifiers to the codes. The HCPCS code set has been maintained and distributed via modifications of codes, modifiers and descriptions, as a direct result of data received from applicants. Thus, information collected in the application is significant to code set maintenance. The HCPCS code set maintenance is an ongoing process, as changes are implemented and updated quarterly (for drug and biological products) and biannual (for non-drug and non-biological items or services); therefore, the process requires continual collection of information from applicants on a quarterly and bi-annual basis. As new technology evolves and new devices, drugs and supplies are introduced to the market, applicants submit applications to CMS requesting modifications to the HCPCS Level II code set. *Form Number:* CMS–10244 (OMB control number: 0938–1042); *Frequency:* Quarterly; *Affected Public:* Private sector, Business or other for-profit; *Number of Respondents:* 250; *Total Annual Responses:* 250; *Total Annual Hours:* 2,500. (For policy questions regarding this collection contact Sundus Ashar at 410–786–0750.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Emergency Ambulance Transports and Beneficiary Signature; *Use:* The statutory authority requiring a beneficiary's signature on a claim submitted by a provider is located in section 1835(a) and in 1814(a) of the Social Security Act (the Act), for Part B and Part A services, respectively. The authority requiring a beneficiary's signature for supplier claims is implicit in sections 1842(b) (3) (B) (ii) and in 1848(g) (4) of the Act. Federal regulations at 42 CFR 424.32(a) (3) state that all claims must be signed by the beneficiary or on behalf of the Beneficiary (in accordance with 424.36). Section 424.36(a) states that the beneficiary's signature is required on a claim unless the beneficiary has died or the provisions of 424.36(b), (c), or (d) apply.

For emergency and nonemergency ambulance transport services, where the beneficiary is physically or mentally incapable of signing the claim (and the beneficiary's authorized representative is unavailable or unwilling to sign the claim), that it is impractical and infeasible to require an ambulance provider or supplier to later locate the beneficiary or the person authorized to sign on behalf of the beneficiary, before submitting the claim to Medicare for payment. Therefore, an exception was created to the beneficiary signature requirement with respect to emergency and nonemergency ambulance transport services, where the beneficiary is physically or mentally incapable of signing the claim, and if certain documentation requirements are met. Thus, we added subsection (6) to paragraph (b) of 42 CFR 424.36. The information required in this ICR is needed to help ensure that services were in fact rendered and were rendered as billed. *Form Number:* CMS–10242 (OMB control number: 0938–1049); *Frequency:* Occasionally; *Affected Public:* Private sector, Business or other for-profit, Not-for-profits institutions; *Number of Respondents:* 10,233; *Total Annual Responses:* 10,954,288; *Total Annual Hours:* 912,492. (For policy questions regarding this collection

contact Sabrina Teferi at 404–562–7251).

Dated: April 5, 2023.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2023–07525 Filed 4–10–23; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Child Care and Development Fund (CCDF) Consumer Education Website and Reports of Serious Injuries and Death

AGENCY: Office of Child Care, Administration for Children and Families, Department of Health and Human Services.

ACTION: Request for Public Comments.

SUMMARY: The Office of Child Care (OCC), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is requesting a 3-year extension of the CCDF Consumer Education website and Reports of Serious Incidents and Death (Office of Management and Budget (OMB) #: 0970–0473, expiration date: April 30, 2023). There are no changes requested to the reporting requirements.

DATES: *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. You can also obtain copies of the proposed collection of information by emailing *infocollection@acf.hhs.gov.* Identify all emailed requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The existing Consumer Education Website reporting requirement will not be modified and requires states and territories to include information about state or territory policies (related to licensing, monitoring, and background checks) and provider-specific information, including results of monitoring and inspection reports and, if available, information about quality. The existing Reporting of Serious Injuries and Death reporting requirement will not be modified. CCDF Lead Agencies must establish procedures that require child care providers that care for children receiving CCDF subsidies to report to a designated state, territorial, or tribal entity any serious injuries or deaths of children occurring in child care. There are no standard federal forms associated with these reporting requirements.

Respondents: The Consumer Education website information collection requirement applies to the 50 states, the District of Columbia, and 5 territories that receive CCDF grants. Reporting of Serious Injuries and Death is a requirement for child care providers.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
Consumer Education Website	56	1	300	50,400	16,800
Reporting of Serious Injuries and Death	10,000	1	1	30,000	10,000

Estimated Total Annual Burden Hours: 26,800.

Authority: Pub. L. 113–186; 42 U.S.C. 9858 *et seq.*

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2023–07513 Filed 4–10–23; 8:45 am]

BILLING CODE 4184–43–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–1006]

Agency Information Collection Activities; Proposed Collection; Comment Request; Medical Devices; Reports of Corrections and Removals

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 information collection associated with reports of removals and corrections for medical and radiation emitting products regulated by FDA's Center for Devices and Radiological Health.

DATES: Either electronic or written comments on the collection of information must be submitted by June 12, 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 June 12, 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–1006 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Medical Devices; Reports of Corrections and Removals.'' 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: JonnaLynn Capezzuto, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–3794, *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.

Medical Devices; Reports of Corrections and Removals—21 CFR Part 806

OMB Control Number 0910–0359—Revision

This information collection supports implementation of provisions of section 519(g) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360i(g)) requiring device manufacturers and importers to report promptly to FDA certain actions concerning device corrections and removals and to maintain associated records. Applicable regulations are found in 21 CFR part 806 and set forth definitions, prescribe format and required content elements for reporting, and identify actions that are exempt from the reporting requirements. The information collected is used by FDA to identify marketed devices that have serious problems and to ensure that defective devices are removed from the market. The information also helps ensure that FDA has current and complete information regarding these corrections and removals to determine whether recall action is adequate.

Reports of corrections and removals may be submitted to FDA via mail, email, or using FDA's Electronic Submission Gateway (ESG). To assist respondents with submitting reports of corrections or removals, we developed a fillable PDF electronic submission template entitled, ''Device Correction/Removal Report for Industry,'' that transmits required data to FDA's Recall Enterprise System. Instructions for the fillable template are provided in pop-up text boxes that appear over each data field. We expect that use of the fillable template will expedite processing of the reports of corrections or removals submitted to FDA.

We estimate the burden of the information collection as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR part; collection activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours	Total operating and maintenance costs
Electronic process setup	517	1	517	3.08	1,592	$25,850
806; Submission of corrections and removals	1,033	1	1,033	10	10,330	
4.102(c)(1)(iii)); Submitting correction or removal reports	20	1	20	10	200	
Total						25,850

For respondents who submit corrections and removals using the ESG, the operating and maintenance costs associated with this information collection are approximately $50 per year to purchase a digital verification certificate (certificate must be valid for 1 to 3 years). This burden may be reduced if the respondent has already purchased a verification certificate for other electronic submissions to FDA. This burden may also be reduced if respondents utilize the new PDF template and submit it to the Agency using email, mitigating the need for a digital verification certificate.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1] [2]

21 CFR part; collection activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
806; Records of corrections and removals	93	1	93	10	930
4.105(b); recordkeeping by device-led combination products.	279	1	279	0.5 (30 minutes)	140
Total					1,070

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Figures have been rounded.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate. We estimate that 50 percent of submitters will use the ESG to submit the required information. Our estimate of the reporting and recordkeeping burden is based on Agency records and our experience with this program, as well as similar programs that utilize FDA's ESG. For the purposes of estimating the burden, we assume that all respondents who submit corrections and removals using the electronic process will establish a new WebTrader account and purchase a digital verification certificate.

Dated: April 5, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–07524 Filed 4–10–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0736]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Tracking Network for PETNet, LivestockNet, and SampleNet

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by May 11, 2023.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The OMB control number for this information collection is 0910–0680. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Tracking Network for PETNet, LivestockNet, and SampleNet

OMB Control Number 0910–0680—Extension

The Center for Veterinary Medicine and the Partnership for Food Protection developed a web-based tracking network (the tracking network) to allow Federal, State, and Territorial regulatory and public health Agencies to share

safety information about animal food. Information is submitted to the tracking network by regulatory and public health Agency employees with membership rights. The efficient exchange of safety information is necessary because it improves early identification and evaluation of a risk associated with an animal food product. We use the information to assist regulatory Agencies to quickly identify and evaluate a risk and take whatever action is necessary to mitigate or eliminate exposure to the risk. Earlier identification and communication with respect to emerging safety information may also mitigate the potential adverse economic impact for the impacted parties associated with such safety issues. The tracking network was developed under the requirements set forth under section 1002(b) of the Food and Drug Administration Amendments Act of 2007 (FDAAA) (Pub. L. 110–085). Section 1002(b) of the FDAAA required FDA, in relevant part, to establish a pet food early warning alert system.

The tracking network collects: (1) reports of pet food-related illness and product defects associated with dog food, cat food, and food for other pets, which are submitted via the Pet Event Tracking Network (PETNet); (2) reports of animal food-related illness and product defects associated with animal food for livestock animals, aquaculture species, and horses (LivestockNet); and (3) reports about animal food laboratory samples considered adulterated by State or FDA regulators (SampleNet).

PETNet and LivestockNet reports share the following common data elements, the majority of which are drop down menu choices: product details (product name, lot code, product form, and the manufacturer or distributor/packer (if known)), the species affected, number of animals exposed to the product, number of animals affected, body systems affected, product problem/defect, date of onset or the date product problem was detected, the State where the incident occurred, the origin of the information, whether there are supporting laboratory results, and contact information for the reporting member (*i.e.,* name, telephone number will be captured automatically when member logs in to the system). For the LivestockNet report, additional data elements specific to livestock animals are captured: product details (indication of whether the product is a medicated product, product packaging, and intended purpose of the product), class of the animal species affected, and production loss. For PETNet reports, the only additional data field is the animal life stage. The SampleNet reports have the following data elements, many of which are drop down menu choices: product information (product name, lot code, guarantor information, date and location of sample collection, and product description); laboratory information (sample identification number, the reason for testing, whether the food was reported to the Reportable Food Registry, who performed the analysis); and results information (analyte, test method, analytical results, whether the results contradict a label claim or guarantee, and whether action was taken as a result of the sample analysis).

Description of Respondents: Voluntary respondents to this collection of information are Federal, State, and Territorial regulatory and public health Agency employees with membership access to the Animal Feed Network.

In the **Federal Register** of December 22, 2022 (87 FR 78687), we published a 60-day notice requesting public comment on the proposed collection of information. One comment was received but was not responsive to the information collection topics solicited.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
PETNet	5	5	25	0.25 (15 minutes)	6.25
LivestockNet	5	5	25	0.25 (15 minutes)	6.25
SampleNet	5	5	25	0.25 (15 minutes)	6.25
Total					18.75

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate.

Dated: April 5, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–07510 Filed 4–10–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–1005]

Agency Information Collection Activities; Proposed Collection; Comment Request; Focus Groups as Used by the Food and Drug Administration

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 generic collection of focus group information as used by FDA for all FDA-regulated products.

DATES: Either electronic or written comments on the collection of information must be submitted by June 12, 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 June 12, 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–1005 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Focus Groups as Used by the Food and Drug Administration.'' 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: JonnaLynn Capezzuto, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–3794, *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.

Focus Groups as Used by the Food and Drug Administration

OMB Control Number 0910–0497—Extension

FDA conducts focus group interviews on a variety of topics involving FDA-regulated products, including drugs, biologics, devices, food, tobacco products, and veterinary medicine.

Focus groups provide an important role in gathering information because they allow for a more in-depth understanding of consumers' attitudes, beliefs, motivations, and feelings than do quantitative studies. Focus groups serve the narrowly defined need for direct and informal opinion on a specific topic and as a qualitative research tool have three major purposes:

• To obtain consumer information that is useful for developing variables and measures for quantitative studies,

• To better understand consumers' attitudes and emotions in response to topics and concepts, and

• To further explore findings obtained from quantitative studies.

FDA will use focus group findings to test and refine ideas but will generally conduct further research before making important decisions, such as adopting new policies and allocating or redirecting significant resources to support these policies.

Respondents to this collection of information will include members of the general public, healthcare professionals, the industry, and other stakeholders who are related to a product under FDA's jurisdiction. Inclusion and exclusion criteria will vary depending on the research topic.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Focus group interviews	12,000	1	12,000	1.75	21,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimated burden for the information collection reflects an overall increase of 5,600 hours and a corresponding increase of 3,200 responses. We increased the number of consolidating the burden from ICR 0910–0677, ''Focus Groups About Drug Products as Used by the Food and Drug Administration.''

Dated: April 5, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–07515 Filed 4–10–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–1721]

Agency Information Collection Activities; Proposed Collection; Comment Request; Investigational New Drug Application Requirements

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, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection associated with the guidance ''E6(R2) Good Clinical Practice: Integrated Addendum to ICH E6(R1).''

DATES: Either electronic or written comments on the collection of information must be submitted by June 12, 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 June 12, 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–2014–N–1721 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Investigational New Drug Application Requirements.'' 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: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: 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.

Investigational New Drug Application Requirements

OMB Control Number 0910–0014—Revision

This information collection supports implementation of provisions of section 505 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355) and of the licensing provisions of the Public Health Service Act (42 U.S.C. 201 *et seq.*) that govern investigational new drugs and investigational new drug applications (INDs). Implementing regulations are found in part 312 (21 CFR part 312) and provide for the issuance of guidance documents under 21 CFR 10.115 to assist persons in complying with the applicable requirements (see § 312.145). The information collection applies to all clinical investigations subject to section 505 of the FD&C Act. For efficiency of Agency operations, we are revising the information collection to include burden that may be associated with recommendations found in the guidance document entitled ''E6(R2) Good Clinical Practice: Integrated Addendum to ICH E6(R1) (March 2018),'' currently approved in OMB control number 0910–0843. The guidance is intended to facilitate implementation of improved and efficient approaches to clinical trial design, including conduct, oversight, recording, and reporting. The recommendations in the guidance help us ensure that sponsors of clinical trials are adhering to requirements prescribed in FDA regulations regarding new drug applications (NDA) (part 312), INDs (21 CFR part 314), and biological licensing applications (BLA) (21 CFR part 601). The guidance document is available for download from our website at *https://www.fda.gov/media/93884/download.*

FDA estimates the burden of the information collection as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING [1]

§ 312.145: Guidance Documents; Recommendations in ICH E6(R2) ''Good Clinical Practice''	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Section 5.0.7. Risk Reporting—Describing the Quality Management Approach Implemented in a Clinical Trial and Summarizing Important Deviations From the Predefined Quality Tolerance Limits and Remedial Actions Taken in the Clinical Study Report	1,880	3.9	7,362	3	22,082
Section 5 Quality Management (including sections 5.0.1 to 5.0.7)—Developing a Quality Management System	1,880	1	1,880	60	112,800
Total			9,242		134,882

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on IND and NDA submission data, including submissions to both FDA's Center for Drug Evaluation and Research and the Center for Biologics Evaluation and Research, we estimate there are 1,880 respondents (sponsors of clinical trials of human drugs) to the information collection. We assume the risk reporting recommendations and associated records discussed in section 5 of the guidance document requires 3 hours to complete, as reflected in table 1 row 1. In table 1, row 2, we account for burden associated with the development of a quality management system and associated recordkeeping also discussed in section 5 of the guidance document. We assume it will take respondents 60 hours to develop and implement each quality management system, as recommended.

Since last OMB approval of the information collection, we have made no adjustments to burden we attribute to recommendations that may be applicable to activities discussed in the guidance document.

Dated: April 5, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–07529 Filed 4–10–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–0941]

Agency Information Collection Activities; Proposed Collection; Comment Request; Generic Drug User Fee Program; Controlled Correspondence Related to Generic Drug Development

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) 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 controlled correspondence related to generic drug development.

DATES: Either electronic or written comments on the collection of information must be submitted by June 12, 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 June 12, 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–2018–D–1592 for ''Controlled Correspondence Related to Generic Drug Development.'' 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: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: 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.

Generic Drug User Fee Program; Controlled Correspondence

OMB Control Number 0910–0727—REVISION

This information collection supports implementation of FDA's Generic Drug User Fee program. The Generic Drug User Fee Amendments (GDUFA) (Pub. L. 112–144, Title III) were enacted to speed the delivery of safe and effective generic drugs to the public and reduce costs to industry. GDUFA authorizes FDA to assess user fees to fund critical and measurable enhancements to the performance of FDA's generic drugs program, bringing greater predictability and timeliness to the review of generic drug applications. GDUFA is currently authorized through September 30, 2027. For more information regarding GDUFA and ongoing implementation, we invite you to visit our website at *https://www.fda.gov/industry/fda-user-fee-programs/generic-drug-user-fee-amendments.*

For operational efficiency, we are revising the information collection to include recommendations found in Agency guidance currently approved in OMB control no. 0910–0797. As discussed in the current GDUFA Commitment Letter, found on our website and included in the information collection, FDA has agreed to specific program enhancements and performance goals. Accordingly, we issued the guidance document entitled ''Controlled Correspondence Related to Generic Drug Development'' (December 2022), to communicate instruction regarding the process by which generic drug manufacturers and related industry or their representatives can request information related to generic drug development. The guidance document also identifies necessary content elements to facilitate FDA's prompt consideration of the request, as well as prescribed timeframes. The guidance document is available from our website at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/controlled-correspondence-related-generic-drug-development* and was issued consistent with our Good Guidance Practice regulations found in 21 CFR 10.115, which provide for public comment at any time.

We are also revising the information collection to include Covered Product Authorization Requests (CPAs), provided for under the Creating and Restoring Equal Access to Equivalent Samples Act of 2019 (CREATES Act). The CREATES Act provides a pathway for eligible product developers to obtain access to the product samples they need to fulfill testing and other regulatory requirements to support their applications. To make use of this pathway, an eligible product developer seeking to develop a product subject to a Risk Evaluation and Mitigation Strategies with elements to assure safe use must obtain from the Agency a Covered Product Authorization (see 21 U.S.C. 355–2(b)(2)). The draft procedural guidance document entitled ''How to Obtain Covered Product Authorization'' (September 2022) explains that CPAs are submitted as controlled correspondence to the CDER NextGen Collaboration Portal and that general questions may be submitted by email to *GenericDrugs@fda.hhs.gov.* The draft guidance is available from our website at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/how-obtain-covered-product-authorization.*

We estimate the burden of the information collection as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN

Information collection activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
GDUFA Controlled Correspondence submitted consistent with GFI Section IV	390	12.5	4,875	5	24,375
CPA Requests submitted consistent with Draft GFI Section IV	10	12.5	125	5	625
Total			5,000		25,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Our burden estimate reflects an increase of 125 responses and 625 hours annually corresponding with the inclusion of CPAs to the information collection. We have otherwise retained the currently approved burden estimate associated with controlled correspondence for generic drug development

Dated: April 5, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–07527 Filed 4–10–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–1190]

Cellular, Tissue, and Gene Therapies 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 Cellular, Tissue, and Gene Therapies Advisory Committee. The general function of the committee is to provide advice and recommendations to FDA on regulatory issues. The committee will discuss the Biologics License Application (BLA) 125781 from Sarepta Therapeutics, Inc. for delandistrogene moxeparvovec with the requested indication for the treatment of ambulatory patients with Duchenne muscular dystrophy (DMD) with a confirmed mutation in the DMD gene. 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 May 12, 2023, from 9 a.m. to 6 p.m. Eastern Time.

ADDRESSES: Please note that due to the impact of COVID–19, 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, including information regarding special accommodations due to a disability, may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.* The online web conference meeting will be available at the following link on the day of the meeting: *https://youtube.com/live/k33d4h-CpGU.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2023–N–1190. Please note that late, untimely filed comments will not be considered. The docket will close on May 11, 2023. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of May 11, 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 May 5, 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 canceled, 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–2023–N–1190 for ''Cellular, Tissue, and Gene Therapies 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: Marie DeGregorio or Christina Vert, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 1246, Silver Spring, MD 20993–0002, *ctgtac@fda.hhs.gov,* 240–701–9119, 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 the 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. On May 12, 2023, the committee will discuss BLA 125781 from Sarepta Therapeutics, Inc. for delandistrogene moxeparvovec. The applicant has requested an indication for the treatment of ambulatory patients with DMD with a confirmed mutation in the DMD gene.

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 submitted to the Docket (see **ADDRESSES**) on or before May 5, 2023, will be provided to the committee. Comments received after May 5, 2023, and by May 11, 2023, will be taken into consideration by FDA. Oral presentations from the public will be scheduled between approximately 12:30 p.m. and 1:30 p.m. Eastern Time on May 12, 2023. 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, phone numbers, and email addresses of proposed participants; and an indication of the approximate time requested to make their presentation on or before 12 p.m. Eastern Time on April 26, 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 6 p.m. Eastern Time on April 28, 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 Marie DeGregorio at *ctgtac@fda.hhs.gov* (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: April 5, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–07518 Filed 4–10–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–1875]

Financial Transparency and Efficiency of the Prescription Drug User Fee Act, Biosimilar User Fee Act, and Generic Drug User Fee Amendments; Public Meeting; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing the following public meeting entitled ''Financial Transparency and Efficiency of the Prescription Drug User Fee Act, Biosimilar User Fee Act, and Generic Drug User Fee Amendments.'' The topic to be discussed is the financial transparency and efficiency of the Prescription Drug User Fee Act, Biosimilar User Fee Act, and Generic Drug User Fee Amendments.

DATES: The public meeting will be held on June 8, 2023, from 9:30 a.m. to 10:30 a.m. via ZoomGov. Either electronic or written comments on this public meeting must be submitted by July 8, 2023. See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: The public meeting will be held virtually due to extenuating circumstances.

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 July 8, 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–2019–N–1875 for ''Financial Transparency and Efficiency of the Prescription Drug User Fee Act, Biosimilar User Fee Act, and Generic Drug User Fee Amendments; Public Meeting; 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.'' 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: Monica Ellerbe, Office of Finance, Budget, Acquisitions, and Planning, Food and Drug Administration, Rm. 72044, Beltsville, MD 20705, 301–796–5276, *OFBAPBusinessManagementServices@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The meeting will include presentations from FDA on: (1) the 5-year plan for the Prescription Drug User Fee Act (PDUFA) VII, Biosimilar User Fee Act (BsUFA) III, and Generic Drug User Fee Amendments (GDUFA) III; and (2) the Agency's progress in implementing resource capacity planning and modernized time reporting. This meeting is intended to satisfy FDA's commitment to host an annual public meeting in the third quarter of each fiscal year and can be found in the Commitment Letters listed below (sections II.B.2 of PDUFA VII (p. 58), III.B.2 of BsUFA III (p. 33), and VIII.D.3 of GDUFA III (p.40–41)).

PDUFA VII, BsUFA III, and GDUFA III were reauthorized as part of the FDA User Fee Reauthorization Act of 2022, which was signed by the President on September 30, 2022. The complete set of performance goals for each program are available at:

- *PDUFA VII: https://www.fda.gov/media/151712/download*
- *BsUFA III: https://www.fda.gov/media/152279/download*
- *GDUFA III: https://www.fda.gov/media/153631/download*

Each of these user fee programs' Commitment Letters included a set of commitments related to financial management. These included commitments to publish a 5-year financial plan and update that plan annually, continue activities to mature FDA's resource capacity planning capability, and modernize time reporting practices. In addition, each user fee program includes a commitment to host a public meeting in the third quarter of each fiscal year to discuss specific topics.

II. Topics for Discussion at the Public Meeting

This meeting will provide FDA with the opportunity to update interested public stakeholders on topics related to the financial management of PDUFA VII, BsUFA III, and GDUFA III. These topics include the 5-year financial plans for each of these programs and FDA's progress toward implementing resource capacity planning and modernizing its time reporting approach.

III. Participating in the Public Meeting

Registration: To register for the public meeting, please visit the following website: *https://fda.zoomgov.com/webinar/register/WN_K0tpd9eXTvCyfQ_1iJrgXg.* Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone.

Persons interested in attending this public meeting must register by June 5, 2023, at 11:59 p.m. Eastern Time. If registration closes before the day of the public meeting, the Webinar Registration website will be updated.

If you need special accommodations due to a disability, please indicate this during registration or contact Monica Ellerbe at *OFBAPBusinessManagementServices@fda.hhs.gov* no later than June 5, 2023.

Streaming Webcast of the Public Meeting: This public meeting will be webcast. To register for the public meeting and obtain the webcast information, please visit the following website: *https://fda.zoomgov.com/webinar/register/WN_K0tpd9eXTvCyfQ_1iJrgXg.*

Transcripts: Please be advised that as soon as a transcript of the public meeting is available, it will be accessible at *https://www.regulations.gov.* It may also be viewed at the Dockets Management Staff (see **ADDRESSES**).

Dated: April 5, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–07506 Filed 4–10–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–0378]

Vaccines and Related Biological Products 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 Vaccines and Related Biological Products Advisory Committee (VRBPAC). The general function of the committee is to provide advice and recommendations to FDA on regulatory issues. The committee will discuss the biologics license application (BLA) 125768 from Pfizer, Inc. for ABRYSVO (Respiratory Syncytial Virus Vaccine) with the requested indication for the prevention of lower respiratory tract disease and severe lower respiratory tract disease caused by respiratory syncytial virus (RSV) in infants from birth through 6 months of age by active immunization of pregnant individuals. 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 May 18, 2023, from 8:30 a.m. to 5:30 p.m. Eastern Time.

ADDRESSES: Please note that due to the impact of COVID–19, 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, including information regarding special accommodations due to a disability, may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.* The online web conference meeting will be available at the following link at: *https://youtube.com/live/NXVMILYvocM?feature=share.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2023–N–0378. Please note that late, untimely filed comments will not be considered. The docket will close on May 17, 2023. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end

of May 17, 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 May 11, 2023, will be provided to the committee. Comments received after May 11, 2023, and by May 17, 2023, will be taken into consideration by FDA. In the event that the meeting is canceled, 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–2023–N–0378 for ''Vaccines and Related Biological Products Advisory Committee (VRBPAC); 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, September18, 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: Valerie Vashio and Prabhakara Atreya, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Silver Spring, MD 20993–0002, 240–506–4946, *CBERVRBPAC@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 the 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 coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The meeting presentations will be heard, viewed, captioned, and recorded through an online teleconferencing platform. On May 18, 2023, the committee will meet in open session to discuss and make recommendations on the safety and effectiveness of ABRYSVO (Respiratory Syncytial Virus Vaccine), manufactured by Pfizer Inc., with a requested indication, in BLA 125768 (STN 125768/0), for the prevention of lower respiratory tract disease and severe lower respiratory tract disease caused by RSV in infants from birth through 6 months of age by active immunization of pregnant individuals.

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 submitted to the Docket (see **ADDRESSES**) on or before May 11, 2023, will be provided to the committee. Comments received after May 11, 2023, and by May 17, 2023, will be taken into consideration by FDA. Oral presentations from the public will be scheduled between approximately 1:15 p.m. and 2:15 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, phone numbers, and email addresses of proposed participants; and an indication of the approximate time requested to make their presentation on or before 6 p.m. Eastern Time on May 3, 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 6 p.m. Eastern Time on May 5, 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 Valerie Vashio or Prabhakara Atreya (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: April 5, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–07550 Filed 4–10–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–N–1114]

Peripheral and Central Nervous System 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 Peripheral and Central Nervous System 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 June 9, 2023, from 10 a.m. to 5 p.m. Eastern Time.

ADDRESSES: Please note that due to the impact of COVID–19, 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, including information regarding special accommodations due to a disability, 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–2023–N–1114. Please note that late, untimely filed comments will not be considered. The docket will close on June 8, 2023. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of June 8, 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 May 25, 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–2023–N–1114 for ''Peripheral and Central Nervous System 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: Jessica Seo, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–7699, email: *PCNS@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 supplemental biologics license application 761269/s-001, for LEQEMBI (lecanemab) solution for intravenous infusion, submitted by Eisai, Inc., for the treatment of early Alzheimer's disease. This product was approved under 21 CFR 314.500 (subpart H, accelerated approval regulations) for the treatment of Alzheimer's disease. Confirmatory studies are studies to verify and describe the clinical benefit of a product after it receives accelerated approval. The committee will discuss the confirmatory study, BAN2401–G000–301, conducted to fulfill postmarketing requirement 4384–1 detailed in the January 6, 2023, approval letter, available at *https://www.accessdata.fda.gov/drugsatfda_docs/appletter/2023/761269Orig1s000ltr.pdf.*

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 submitted to the Docket (see **ADDRESSES**) on or before May 25, 2023, will be provided to the committee. Oral presentations from the public will be scheduled between approximately 2 p.m. and 3 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 May 17, 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 May 18, 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 Jessica Seo (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: April 5, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–07526 Filed 4–10–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Global Affairs; Stakeholder Listening Session in preparation for the 76th World Health Assembly

ACTION: Notice of public listening session; request for comments.

Time and date: The listening session will be held Wednesday, May 3, 2023, from 10:00 a.m. to 12:00 p.m., Eastern Daylight Time.

Place: The session will be held virtually, with online and dial-in information shared with registered participants.

Status: This session is open to the public but requires RSVP to *oga.rsvp@hhs.gov* by Friday, April 20, 2023. *See RSVP section below for details.*

SUPPLEMENTARY INFORMATION:

Purpose: The U.S. Department of Health and Human Services (HHS) is charged with leading the U.S. delegation to the 76th World Health Assembly and will convene a Stakeholder Listening Session.

The World Health Assembly is the decision-making body of WHO. It is attended by delegations from all WHO Member States and focuses on a health agenda prepared by the World Health Organization Executive Board. The main functions of the World Health Assembly are to determine the policies of the Organization, appoint the Director-General, supervise financial policies, and review and approve the proposed programme budget.

The Stakeholder Listening Session is designed to seek input from stakeholders and subject matter experts to help inform and prepare for U.S. government engagement with the World Health Assembly.

Matters to be Discussed: The listening session will discuss resolutions and other decisions to be covered at the 76th World Health Assembly. Topics will

include those found in the agenda and will be organized by agenda item. A provisional agenda of the 76th World Health Assembly can be found at: *https://apps.who.int/gb/ebwha/pdf_files/EB152/B152(20)-en.pdf.* Additional information about the World Health Assembly can be found at: *https://www.who.int/about/governance/world-health-assembly.* Participation is welcome from all stakeholder communities.

RSVP: Persons seeking to participate in the listening session *must register by April 20, 2023.*

Registrants must include their full name, email address, and organization, if any, and indicate whether they are registering as a *listen-only attendee* or as a *speaker participant* to *oga.rsvp@hhs.gov.*

Requests to participate as a speaker must include all of the following information:

1. The name and email address of the person desiring to participate
2. The organization(s) that person represents, if any
3. Identification of agenda item(s) of interest

Other Information: This listening session will be recorded for the benefit of the members of the US Government who will participate in WHA76.

Written comments should be emailed to *oga.rsvp@hhs.gov* with the subject line ''*Written Comment Re: Stakeholder Listening Session for WHA76*'' by Wednesday, May 10, 2023.

We look forward to your comments on the 76th World Health Assembly.

Dated: March 20,2023.

Susan Kim,

Chief of Staff, Office of Global Affairs.

[FR Doc. 2023–07562 Filed 4–10–23; 8:45 am]

BILLING CODE 4150–38–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Minority Health and Health Disparities; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council on Minority Health and Health Disparities.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend as well as those who need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov/*).

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Minority Health and Health Disparities.

Date: May 22, 2023.

Closed: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 31 Center Drive, Building 31/6C, Rm A/B, Bethesda, MD 20892.

Name of Committee: National Advisory Council on Minority Health and Health Disparities.

Date: May 23, 2023.

Open: 8:00 a.m. to 3:00 p.m.

Agenda: Opening Remarks, Administrative Matters, Director's Report, Presentations, and Other Business of the Council.

Place: National Institutes of Health, 31 Center Drive, Building 31/6C, Rm A/B, Bethesda, MD 20892.

Contact Person: Paul Cotton, Ph.D., RDN, Director, Office of Extramural Research Activities, National Institute on Minority Health and Health Disparities, National Institutes of Health, 6707 Democracy Boulevard, Suite 800, Bethesda, MD 20892, 301–402–1366, *paul.cotton@nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has procedures at *https://www.nih.gov/about-nih/visitor-information/campus-access-security* for entrance into on-campus and off-campus facilities. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors attending a meeting on campus or at an off-campus federal facility will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: NIMHD: *https://www.nimhd.nih.gov/about/advisory-council/,* where an agenda and any additional information for the meeting will be posted when available.

Dated: April 5, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–07547 Filed 4–10–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; DNA and Aging.

Date: May 9, 2018.

Time: 12:01 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Greg Bissonette, Ph.D., Scientific Review Officer, National Institute on Aging, National Institutes of Health, Gateway Building, Suite 2W200, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–1622, *bissonettegb@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 5, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–07546 Filed 4–10–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, SEP–1: NCI Clinical and Translational Cancer Research, June 1, 2023, 10:00 a.m. to 5:00 p.m., National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W108, Rockville, Maryland 20850 which was published in the **Federal Register** on April 06, 2023, FR Doc 2023–07213, 88 FR 20542.

This notice is being amended to change the meeting date from June 1, 2023 to June 8, 2023. Meeting times and location will stay the same. The meeting is closed to public.

Dated: April 6, 2023.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–07570 Filed 4–10–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Neurological Disorders and Stroke Special Emphasis Panel, April 11, 2023, 10:00 a.m. to April 12, 2023, 05:00 p.m., National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting) which was published in the **Federal Register** on March 22, 2023, FR Doc. 2023–05787, 88 FR 17240.

This notice is being amended to change the meeting dates from April 11–12, 2023, to April 20–21, 2023. The time remains the same. The meeting is closed to the public.

Dated: April 6, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–07587 Filed 4–10–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; RFA DK22–021: Collaborative Research Using Biosamples from Type 1 Diabetes (R01) Special Emphasis Panel.

Date: June 8, 2023.

Time: 1 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of Diabetes and Digestive and Kidney Diseases, Democracy II, 6707 Democracy Blvd. Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Najma S. Begum, Ph.D., Scientific Review Officer, NIDDK/Scientific Review Branch, National Institutes of Health, 6707 Democracy Blvd., Room 7349, Bethesda, MD 20892, (301) 594–8894, *begumn@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: April 5, 2023.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–07545 Filed 4–10–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Neurological Sciences Training Initial Review Group; NST–1 Study Section Mentored K Grant Review.

Date: May 22–23, 2023.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave. NW, Washington, DC 20037.

Contact Person: William C. Benzing, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH, NSC, 6001 Executive Blvd., Suite 3204, MSC 9529, Rockville, MD 20852, 301–496–0660, *benzingw@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS.)

Dated: April 6, 2023.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2023–07586 Filed 4–10–23; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

DEPARTMENT OF STATE

[CIS No. 2724–22; DHS Docket No. USCIS–2022–0009]

RIN 1615–ZB98

Bureau of Population, Refugees, and Migration; Central American Minors Program

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security; Bureau of Population, Refugees, and Migration, Department of State.

ACTION: Notice of enhancements to the Central American Minors Program.

SUMMARY: This notice announces enhancements to the Central American Minors (CAM) Program by, among other things, updating certain eligibility criteria for program access. The CAM Program allows certain qualifying individuals to request access to the U.S. Refugee Admissions Program (USRAP) on behalf of their qualifying children who are nationals of El Salvador, Guatemala, and Honduras (collectively known as northern Central America or NCA), and certain family members of those children, for possible resettlement, or if ineligible for refugee status, for possible parole in the United States. U.S. Citizenship and Immigration Services (USCIS) and the Department of State, Bureau of Population, Refugees, and Migration (PRM) are announcing changes to the CAM Program consistent with an Executive order (E.O.) issued on February 2, 2021, which directed the Secretary of Homeland Security to consider actions to reinstitute and improve upon the CAM parole process, leading to the reopening of the broader CAM Program as part of the USRAP. The CAM Program is a key component of the Collaborative Migration Management Strategy (CMMS), the first U.S. Government strategy focused on strengthening cooperative efforts to manage safe, orderly, and humane migration in North and Central America and complements other U.S. Government efforts to manage the flow of irregular migration to the United States, by providing a lawful, safe, orderly, and humane pathway for certain Central American children to come to the United States and reunite with family members. It also helps to reduce strain on limited U.S. resources through more managed migration and promotes family unity.

DATES: The program enhancements announced by this notice are effective on April 11, 2023, with implementation to follow as operational updates are made to accord with the enhanced program, including required revisions to the DS–7699, Affidavit of Relationship (AOR) for Minors Who are Nationals of El Salvador, Guatemala, or Honduras, after a separate **Federal Register** notice to follow.

FOR FURTHER INFORMATION CONTACT: René Cutlip-Mason, Chief, Humanitarian Affairs Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, by mail at 5900 Capital Gateway Drive, Camp Springs, MD 20746, or by phone at 240–721–3000. Kelly Gauger, Deputy Director, Office of Refugee Admissions, Bureau of Population, Refugees, and Migration, Department of State, by mail at 2025 E Street NW, Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

Executive Summary

The U.S. Government (USG) is committed to implementing a comprehensive framework to manage migration throughout North and Central America, in which the CAM Program plays an important role.[1] Issued on February 2, 2021, E.O. 14010 calls for a four-pronged approach to managing this migration, including: addressing the root causes of irregular migration; managing migration throughout the region collaboratively with other nations and stakeholders; restoring and enhancing the U.S. asylum system and the process for migrants at the Southwest Border (SWB) to access this system; and creating and expanding lawful pathways for migrants to enter the United States and seek protection.[2] In its section on expanding lawful pathways for protection and opportunity, E.O. 14010 specifically directs the Secretary of Homeland Security to consider actions to ''reinstitute and improve upon the CAM Parole Program.'' [3] On February 4, 2021, E.O. 14013 likewise directed actions to rebuild, expand, and improve the USRAP.[4] On March 10, 2021, consistent with these Executive orders, and following submission of a publicly available report to and consultation with Congressional committees, Department of Homeland Security (DHS) and the Department of State (State or DOS) publicly announced the first phase of reopening and improving the CAM Program to make certain qualified children from El Salvador, Guatemala, and Honduras eligible for potential refugee resettlement to reunite with their parent or parents in the United States in certain qualifying immigration categories.[5] On June 15, 2021, DHS and State provided the details of plans to expand access to an additional number of qualifying individuals.[6]

In July 2021, the White House published the CMMS, which described U.S. strategy to collaboratively manage migration throughout Central America, with specific reference to the structure and purpose of the CAM Program under Pillar 8, ''Expand Access to Lawful Pathways for Protection and Opportunity in the United States.'' [7] In March 2022, DHS published an interim final rule (IFR) to allow U.S. immigration officials to more promptly consider the asylum claims of individuals encountered at or near the SWB, thereby more effectively and efficiently identifying those who have

[1] *See, e.g.,* E.O. 14010, Creating a Comprehensive Regional Framework To Address the Causes of Migration, To Manage Migration Throughout North and Central America, and To Provide Safe and Orderly Processing of Asylum Seekers at the United States Border, sec. 1, 86 FR 8267 (Feb. 2, 2021); Collaborative Migration Management Strategy, National Security Council (July 2021) available at: *https://www.whitehouse.gov/wp-content/uploads/2021/07/Collaborative-Migration-Management-Strategy.pdf.*

[2] E.O. 14010, sec. 2–4, 86 FR 8267–71.

[3] Specifically, E.O. 14010, Creating a Comprehensive Regional Framework To Address the Causes of Migration, To Manage Migration Throughout North and Central America, and To Provide Safe and Orderly Processing of Asylum Seekers at the United States Border, sec. 3(b)(i), directed the Secretary of Homeland Security to ''consider taking all appropriate actions to reverse the 2017 decision rescinding the Central American Minors (CAM) parole policy and terminating the CAM Parole Program; 'Termination of the Central American Minors Parole Program,' 82 FR 38,926 (Aug. 16, 2017), and consider initiating appropriate actions to reinstitute and improve upon the CAM Parole Program.'' 86 FR 8269.

[4] *See* E.O. 14013, Rebuilding and Enhancing Programs to Resettle Refugees and Planning for the Impact of Climate Change on Migration, 86 FR 8839 (Feb. 9, 2021).

[5] Restarting the Central American Minors Program, DOS (Mar. 10, 2021), available at: *https://www.state.gov/restarting-the-central-american-minors-program/.*

[6] Joint Statement by the U.S. Department of State and U.S. Department of Homeland Security on the Expansion of Access to the Central American Minors Program, DOS (Jun. 15, 2021), available at: *https://www.state.gov/joint-statement-by-the-u-s-department-of-state-and-u-s-department-of-homeland-security-on-the-expansion-of-access-to-the-central-american-minors-program/.*

[7] Collaborative Migration Management Strategy, National Security Council (July 2021), available at: *https://www.whitehouse.gov/wp-content/uploads/2021/07/Collaborative-Migration-Management-Strategy.pdf.*

valid asylum claims, while more promptly removing those who do not.[8]

Furthermore, at the Ninth Summit of the Americas in June 2022, countries in the Western Hemisphere, including the United States, endorsed the Los Angeles Declaration on Migration and Protection (Los Angeles Declaration), in which the countries made significant commitments related to promoting safe, orderly, and humane migration, and countries have since implemented initiatives or reaffirmed their commitments to continuing earlier programs. Specifically, in the Los Angeles Declaration, countries affirmed that ''regular pathways, including circular and seasonal labor migration opportunities, family reunification, temporary migration mechanisms, and regularization programs promote safer and more orderly migration.'' [9] Recognizing the importance of regular pathways, more than 20 countries, including the United States, reaffirmed their commitment to expand access to regular pathways with a goal of changing the way people migrate. Within the framework of deliverables under the Los Angeles Declaration, the United States committed to resettle up to 20,000 refugees from the Americas during the twenty-four months of fiscal years (FYs) 2023 and 2024.

A critical component of the USG's comprehensive framework to manage migration is the creation and expansion of lawful pathways through which migrants can come to the United States. The availability of lawful pathways serves two key goals: First, they provide a safe and lawful alternative to irregular migration, thus helping to reduce irregular migration flows. Second, they serve other significant public benefit and urgent humanitarian needs, including the safe reunification of children with their parents. As part of efforts to increase access to lawful pathways, DHS and State have expanded refugee processing in Central America [10] and reduced immigrant visa backlogs.[11] Additionally, DHS, in consultation with the Department of Labor (DOL), allocated, on multiple occasions, a set number of H–2B visas to NCA countries as part of efforts to increase access to temporary nonimmigrant work visas to individuals in the region while enhancing worker protections.[12] DHS intends for the parole component of the CAM Program (or ''CAM parole process'') to complement these other pathways by providing a process for certain qualifying children and family members to lawfully enter the United States in a safe and orderly manner to reunite with the qualifying child's parent or legal guardian. It therefore contributes to the broader strategy of providing safe, lawful, and orderly pathways to individuals who may otherwise be driven to travel to the United States through irregular means, cuts out the smugglers who prey on vulnerable individuals seeking to make this dangerous journey, and supports the interest in promoting family reunification.

This Notice announces enhancements to the CAM parole process and expands eligibility criteria for those who may request USRAP access for qualifying children through the CAM Program. The notice also provides historical and legal background on the CAM Program and explains the reasons for establishing and continuing the CAM Program as a whole.

Background on the CAM Program

History and Purpose of the CAM Program

A. Initial Establishment and 2016 Expansion

The CAM Program was initially established in December 2014,[13] following a significant surge in the number of unaccompanied children (UC) from El Salvador, Guatemala, and Honduras irregularly crossing the SWB. In Fiscal Year (FY) 2014, the number of UC encounters from these three countries increased to approximately 52,000, more than doubling the number of UC encounters from these countries in FY 2013.[14] The CAM Program was designed to address this increase by providing an alternative to irregular migration for children seeking to reunify with certain family members. Protecting children and providing them with the stability of their families are the driving forces behind the CAM Program and what distinguishes it from many other available lawful pathways. In establishing the CAM Program, the United States recognized that the dangers of irregular migration, including abuse and harm from transnational criminal organizations, are particularly acute for children.

Specifically, the CAM Program allowed, and continues to allow, qualifying parents present in the United States in certain immigration categories to request that their unmarried children under 21 years of age, as well as certain

[8] Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers, 87 FR 18078 (Mar. 29, 2022).

[9] Los Angeles Declaration on Migration and Protection (June 10, 2022), available at *https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/10/los-angeles-declaration-on-migration-and-protection/.*

[10] The United States continues these efforts by pursuing the use of new technologies and processes to facilitate and expand remote case processing capabilities. It is also seeking to continue increasing U.S. Refugee Admissions Program (USRAP) processing capacity in Central America.

[11] As of January 31, 2022, the United States has resolved the backlog of immigrant visa petitions filed on behalf of Central American nationals from a high of approximately 19,000 in April 2021.

[12] *See, e.g.,* Exercise of Time-Limited Authority to Increase the Fiscal Year 2021 Numerical Limitation for the H–2B Temporary Nonagricultural Worker Program and Portability Flexibility for H–2B Workers Seeking to Change Employers, 87 FR 76816 (Dec. 15, 2022) (DHS and DOL authorized a total of 64,716 supplemental visas, of which 20,000 visas were reserved for nationals of Central American countries); Exercise of Time-Limited Authority to Increase the Fiscal Year 2022 Numerical Limitation for the H–2B Temporary Nonagricultural Worker Program and Portability Flexibility for H–2B Workers Seeking to Change Employers, 87 FR 4722 (Jan. 28, 2022) (DHS and DOL again authorized an additional 20,000 H–2B visas, of which 6,500 were reserved for nationals of Central American countries, with the addition of Haiti) (available at: *https://www.federalregister.gov/documents/2022/01/28/2022-01866/exercise-of-time-limited-authority-to-increase-the-fiscal-year-2022-numerical-limitation-for-the; see also https://www.federalregister.gov/documents/2022/02/03/C1-2022-01866/exercise-of-time-limited-authority-to-increase-the-fiscal-year-2022-numerical-limitation-for-the* (corrected version as of Feb. 3, 2022)); Exercise of Time-Limited Authority To Increase the Numerical Limitation for Second Half of FY 2022 for the H–2B Temporary Nonagricultural Worker Program and Portability Flexibility for H–2B Workers Seeking To Change Employers, 87 FR 30334 (May 18, 2022) (DHS and DOL authorized an additional 35,000 supplemental visas, of which 11,500 were reserved for nationals of Central American countries and Haiti) (available at: *https://www.federalregister.gov/documents/2022/05/18/2022-10631/exercise-of-time-limited-authority-to-increase-the-numerical-limitation-for-second-half-of-fy-2022*). On October 12, 2022, DHS announced a forthcoming rule that would authorize nearly 65,000 additional visas, of which 20,000 would be reserved for nationals of Central American countries and Haiti. *See* DHS, Press Release, DHS to Supplement H–2B Cap with Nearly 65,000 Additional Visas for Fiscal Year 2023 (Oct. 12, 2022), *https://www.dhs.gov/news/2022/10/12/dhs-supplement-h-2b-cap-nearly-65000-additional-visas-fiscal-year-2023* (last visited Nov. 2, 2022).

[13] ''Vice President Biden announced the CAM Program publicly on November 14, 2014, at the Inter-American Development Bank as part of a broader U.S. commitment to working with Central American countries to help create the economic, social, governance, and security conditions to address factors contributing to increases in migration to the United States.'' Written testimony of USCIS Refugee, Asylum and International Operations Associate Director Joseph Langlois for Senate Committee on the Judiciary, Subcommittee on Immigration and The National Interest hearing titled ''Eroding the Law and Diverting Taxpayer Resources: An Examination of the Administration's Central American Minors Refugee/Parole Program'' (Apr. 23, 2015), available at: *https://www.dhs.gov/news/2015/04/23/written-testimony-uscis-senate-judiciary-subcommittee-immigration-and-national.*

[14] Unaccompanied Alien Children Encountered by Fiscal Year, Fiscal Years 2009–2013; Fiscal Year 2014 through September 30, Southwest Border Unaccompanied Alien Children FY 2014, U.S. Customs and Border Protection, *https://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children/fy-2014.*

other eligible family members who are nationals of El Salvador, Guatemala, or Honduras, gain access to the USRAP by filing with State Form DS–7699, Affidavit of Relationship (AOR) for Minors Who Are Nationals of El Salvador, Guatemala, and Honduras.[15] Qualifying children and eligible family members who are granted access to the USRAP via the CAM Program must undergo DNA testing to verify any claimed biological relationship and are interviewed by USCIS Refugee Officers to determine who may be approved for classification as a refugee. Qualifying children and eligible family members who do not establish eligibility for refugee status,[16] may then be considered, on a case-by-case basis, for parole. Qualifying children may be eligible for parole when they face a well-founded fear of harm in their home countries, regardless of whether it is on account of a protected characteristic. In addition, if a qualifying child is eligible for refugee status or parole, any accompanying family members who are ineligible for refugee status will also be considered for parole for the purpose of promoting family unity and based on the positive factor of promoting safe, legal, humane, and orderly migration. CAM applicants approved for refugee status are admitted into the United States as refugees through the U.S. Refugee Admissions Program and are counted against the regional allocation for Latin America and the Caribbean. Parolees are allowed to temporarily enter the United States but do not have access to the benefits afforded to refugees, including lawful immigration status, the ability to sponsor additional family members for lawful immigration status, a pathway to permanent residence and ultimately citizenship, or access to resettlement services and public benefits based on said refugee status.[17]

As established in 2014, certain parents in the United States in a qualifying immigration category could, and remain able to, request access to USRAP via the CAM Program for qualifying children and eligible family members.[18] A qualified child was, and remains, defined as an unmarried child, under the age of 21, who is a national of El Salvador, Guatemala, or Honduras, and is physically located in one of those countries. In some cases, an in-country parent of the qualifying child who is part of the same household and economic unit as the qualifying child and legally married to the parent in the United States could also qualify for access.[19] Children of a qualifying child or of other eligible family members can also qualify, if those children are under the age of 21 and unmarried. If an individual receives access to USRAP via the CAM Program, but is found ineligible for refugee status because, for example, their fear of harm is not based on a protected characteristic,[20] USCIS may consider parole. Each parole determination was, and continues to be made on an individualized, case-by-case basis. Authorization of parole may be warranted based on serving a significant public benefit or for urgent humanitarian reasons, as described below, and if a favorable exercise of discretion is merited.[21]

If USCIS determines that an individual may be eligible for parole,[22] USCIS will authorize parole and issue the necessary travel documents to the beneficiary. These travel documents will enable the beneficiary to travel to the United States and seek parole from U.S. Customs and Border Protection (CBP) at a U.S. port of entry to join parent(s) or legal guardian(s).

In 2016, DHS and State expanded the CAM Program to allow for additional categories of family members to be eligible to be considered for USRAP access and potential refugee status or parole, also on a case-by-case basis,[23] including: (1) a biological parent of a qualifying child who is not legally married to the qualifying parent and lives in the same household as the qualifying child and is part of the same economic unit; (2) a primary caregiver of the qualifying child who does not qualify as a legal or biological parent and is related to either the qualifying parent (biologically or by legal marriage) or to the qualifying child (through a biological, step, or adoptive relationship); and (3) the qualifying parent's married and/or age 21 or older children. Individuals under these expanded categories are eligible to gain access to the USRAP only in connection with a qualifying child.

B. Rescission

In 2017, USCIS stopped considering parole in CAM Program cases pursuant to directives in E.O. 13767 that has since been rescinded.[24] On August 16, 2017, DHS published a **Federal Register** Notice (FRN) announcing the termination of the parole component of the CAM Program and rescinded conditional parole approvals for CAM Program beneficiaries who had not yet completed travel to the United States.[25] DHS predicated the 2017 termination of parole for CAM on a ''discretionary

[15] Central American Minors (CAM) Refugee and Parole Program, *https://uscis.gov/CAM.*

[16] Among other things, refugee applicants must show that they meet the statutory definition in Immigration and Nationality Act (INA) sec. 101(a)(42): The term ''refugee'' means (A) any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, or (B) in such special circumstances as the President after appropriate consultation (as defined in 8 U.S.C. 1157(e)) may specify, any person who is within the country of such person's nationality or, in the case of a person having no nationality, within the country in which such person is habitually residing, and who is persecuted or who has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. The term ''refugee'' does not include any person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion. For purposes of determinations under 8 U.S.C. chapter 12, a person who has been forced to abort a pregnancy or to undergo involuntary sterilization, or who has been persecuted for failure or refusal to undergo such a procedure or for other resistance to a coercive population control program, shall be deemed to have been persecuted on account of political opinion, and a person who has a well-founded fear that he or she will be forced to undergo such a procedure or subject to persecution for such failure, refusal, or resistance shall be deemed to have a well-founded fear of persecution on account of political opinion.

[17] *See* INA secs. 207, 209, 412.

[18] In 2013, the U.S.-based qualifying parent included those with Lawful Permanent Residence, Temporary Protected Status, Parole, Deferred Action, Deferred Enforced Departure, and Withholding of Removal.

[19] *See https://www.uscis.gov/archive/central-american-minors-cam-refugeeparole-program.*

[20] The primary reason a qualifying child would be found ineligible for refugee status is because they did not establish all elements of the refugee definition, which requires any harm experienced or feared in the future to rise to the level of persecution and to have been committed on account of at least one protected ground (*i.e.* race, religion, nationality, political opinion, or membership in a particular social group).

[21] Any person who is outside the U.S. may apply for parole using USCIS Form I–131, Application for Travel Document. See Humanitarian or Significant Public Benefit Parole for Individuals Outside the United States, at *www.uscis.gov/humanitarian/humanitarianpublicbenefitparoleindividualsoutsideUS* (last viewed Feb. 14, 2023).

[22] 8 U.S.C. 1182(d)(5)(A); 8 CFR 212.5.

[23] U.S. Department of State, Expansion of the Central American Minors (CAM) Program—Fact Sheet (Nov. 15, 2016), available at: *https://2009-2017.state.gov/r/pa/prs/ps/2016/11/264332.htm.*

[24] Border Security and Immigration Enforcement Improvements, E.O. 13767 of January 25, 2017, 82 FR 8793 (Jan. 30, 2017); revoked by Creating a Comprehensive Regional Framework to Address the Causes of Migration, To Manage Migration Throughout North and Central America, and To Provide Safe and Orderly Processing of Asylum Seekers at the United States Border, E.O. 14010 of February 2, 2021, 86 FR 8267 (Feb. 5, 2021).

[25] Termination of the Central American Minors Parole Program, 82 FR 38926 (Aug. 16, 2017) (available at: *https://www.federalregister.gov/documents/2017/08/16/2017-16828/termination-of-the-central-american-minors-parole-program*).

change in policy'' with respect to how it utilized ''the Secretary's discretionary parole authority and the broad authority to administer the immigration laws.'' [26] Although DHS terminated the parole component of the CAM Program, the FRN did not impact the process for requesting access to USRAP or obtaining refugee status under the CAM Program. However, the annual Report to Congress on Proposed Refugee Admissions for FY 2018 noted that the CAM Program would be phased out citing low refugee approval rates and on November 10, 2017, State stopped accepting new submissions for USRAP access through the CAM Program. On January 31, 2018, USCIS stopped interviewing new refugee cases that accessed USRAP through the CAM Program altogether. Applicants who had already been interviewed and qualified for refugee status were allowed to continue processing and seek admission into the United States as refugees. Under a court order and related settlement agreement reached over litigation regarding the termination of the parole component of the CAM Program, USCIS also agreed to continue processing cases for individuals who received a conditional parole approval notice prior to receiving rescission notices following the termination of the parole component of the CAM Program.[27]

C. Reinstatement

On February 2, 2021, E.O. 14010 announced the implementation of a multi-pronged approach toward managing migration throughout North and Central America and directed the Secretary of Homeland Security and Secretary of State to ''consider initiating appropriate actions to reinstitute and improve upon'' the CAM Program.[28] In accordance with E.O. 14010, USCIS and State re-examined the previous decision to terminate the CAM parole process as an additional mechanism for creating and expanding lawful pathways for migrants to enter the United States and seek protection. The re-examination also considered that, as a child protection and stability measure, the CAM Program could be improved upon by expanding eligibility to request USRAP access and by adjusting the duration of parole to provide additional time to pursue immigration status.

On February 12, 2021, State submitted a report, including on the CAM Program, to Congressional committees and conducted appropriate consultations regarding the President's proposal to increase refugee admissions for Fiscal Year 2021 due to an unforeseen refugee situation around the globe. On March 10, 2021, DHS and State publicly announced the reopening of the CAM Program in two phases.[29] Phase One began in March 2021 and focused on reopening and processing eligible cases that were closed without having received a refugee interview before CAM interviewing ceased on January 31, 2018. On June 15, 2021, DHS and State jointly announced the details of Phase Two of the reopening,[30] which included expanding eligibility to request USRAP access for their children and certain other qualifying relatives to: (i) legal guardians, in addition to parents, who are in the United States in certain immigration categories; and (ii) U.S.-based parents and legal guardians who have a pending asylum application or a pending petition for U nonimmigrant status [31] filed before May 15, 2021. The reopening of the CAM Program also included providing children with parole additional time to pursue immigration status by providing parole for a three-year period, rather than the previous two-year parole period. Beneficiaries of parole may also continue, as before, to individually request re-parole, where re-parole would generally continue to serve the underlying significant public benefit and/or urgent humanitarian reasons that existed at the time of their initial parole determination.

DHS acknowledges that the reinstatement of the CAM Program in 2021 and the look afresh at the process being announced in this notice are a departure from the decision to terminate the CAM parole process announced in the **Federal Register** in 2017.[32] DHS has changed its position and has initiated these actions to reinstitute and improve upon the CAM parole process after examining the termination as directed by E.O. 14010. Further, this change is permissible under the statute, and as explained in the remainder of this notice, DHS has good reasons for the change in policy and has decided that reinstating and improving the CAM parole process is a better choice than not doing so. The 2017 termination was a discretionary change in policy, and the decision to reinstate the CAM parole process and announce the changes in this FRN is not factually inconsistent or contradictory to the factual findings in the 2017 termination notice. Finally, DHS has made an effort to identify any reliance interests of the parties affected by this Notice and has determined that the 2017 termination did not result in any reliance interests inuring to the affected parties. The CAM parole process does not result in the entry of a child who will rely on state, or local governments; generally, under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), ''qualified aliens'' are eligible for Federal means-tested benefits after 5 years, are not eligible for ''specified federal programs,'' and states are allowed to determine whether the qualified alien is eligible for ''designated federal programs.'' Individuals who are paroled for more than a year, such as CAM parolees, are qualified aliens subject to that 5-year waiting period. And many state services are generally funded by fees that the CAM parolee would pay.[33] To the extent that there may be reliance interests associated with not restarting the CAM parole process that may have attached to other affected parties, DHS ultimately concludes that the other interests and policy concerns described in this document outweigh those interests.

D. Expansion and Enhancements

DHS and State have continued to evaluate the role of the CAM Program as a protection and stability strategy for children, and in light of the Administration's larger migration strategy, including its efforts to reduce

[26] Termination of the Central American Minors Parole Program, 82 FR 38926 (Aug. 16, 2017) (available at: *https://www.federalregister.gov/documents/2017/08/16/2017-16828/termination-of-the-central-american-minors-parole-program*).

[27] Under the Final Judgment and Order for Permanent Injunction in *S.A.* v. *Trump,* No. 3:18–cv–03539–LB (N.D. Cal.) issued on May 17, 2019, and related settlement agreement, DHS is required to continue to process the approximately 2,700 individuals who had been issued conditional approval notices but then received rescission notices at the time of the Program's termination, under the policies and procedures that it had in place prior to the termination.

[28] E.O. 14010, Creating a Comprehensive Regional Framework To Address the Causes of Migration, To Manage Migration Throughout North and Central America, and To Provide Safe and Orderly Processing of Asylum Seekers at the United States Border, sec. 3(b)(i), 86 FR 8267 (Feb. 2, 2021).

[29] Restarting the Central American Minors Program, U.S. Department of State, (Mar. 10, 2021), available at: *https://www.state.gov/restarting-the-central-american-minors-program/.*

[30] Joint Statement by the U.S. Department of Homeland Security and U.S. Department of State on the Expansion of Access to the Central American Minors Program (June 15, 2021), available at: *https://www.dhs.gov/news/2021/06/15/joint-statement-us-department-homeland-security-and-us-department-state-expansion.*

[31] U nonimmigrant status (U visa) is available to certain victims of qualifying crimes who have suffered mental or physical abuse and are helpful to law enforcement or government officials in the investigation or prosecution of criminal activity. INA sec. 101(a)(15)(U); 8 U.S.C. 1101(a)(15)(U); 8 CFR 214.14.

[32] 82 FR 38926.

[33] *See, e.g., https://www.dps.texas.gov/section/driver-license/driver-license-fees* (last viewed February 15, 2023).

irregular migration, to cut out the role of smugglers, and to promote family unity. The Departments have concluded that further program improvements will help achieve all of these goals, as well as those laid out in E.O. 14010: to increase lawful pathways to the United States, discourage irregular migration, and promote family unity.

USRAP Authority and Procedures

State, through PRM, has overall responsibility for management of the USRAP in close coordination with DHS' USCIS and the Department of Health and Human Services' Office of Refugee Resettlement. According to section 207(a)(3) of the Immigration and Nationality Act (INA), ''admissions shall be allocated among refugees of special humanitarian concern to the United States in accordance with a determination made by the President after appropriate consultation.[34] Individuals of special concern for consideration for potential refugee resettlement are determined through the USRAP priority system (note: in the context of USRAP, the term ''priority'' refers only to how an individual or group gains access to the program and does not establish any priority over other types of cases):

Priority 1: Cases referred by designated entities, such as the United Nations Refugee Agency, by virtue of their circumstances and apparent need for resettlement;

Priority 2: Groups of special concern designated by the Department of State as having access to the program by virtue of their circumstances and apparent need for resettlement;

Priority 3: Cases granted access for purposes of family reunification.

The Reports to Congress on Proposed Refugee Admissions for Fiscal Years 2015, 2016, 2017 and the February 12, 2021, Report to Congress on the Proposed Emergency Determination on Refugee Admissions for Fiscal Year 2021 each included a direct-access Priority 2 designation for certain lawfully present parents in the United States to request USRAP access for their unmarried children in El Salvador, Guatemala, or Honduras. The subsequent Report to Congress for Proposed Refugee Admissions for Fiscal Year 2022 expanded upon this language and extended eligibility for those who can request USRAP access to include legal guardians (in addition to parents) pursuant to any of the previous categories of qualifying lawful presence, as well as to parents and legal guardians with pending asylum applications or pending U visa petitions filed prior to May 15, 2021. It is important to note that USRAP access by means of the above priority systems in no way implies or guarantees that an applicant will ultimately be resettled as a refugee in the United States. That decision will be made by a USCIS officer who will interview and adjudicate the individual claim consistent with the requirements of the INA.

Parole Authority

The Immigration and Nationality Act (INA or Act) provides the Secretary of Homeland Security with the discretionary authority to parole noncitizens ''into the United States temporarily under such conditions as [the Secretary] may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.'' [35] Parole is not an admission of the individual to the United States.[36] A parolee remains an ''applicant for admission'' during the period of parole in the United States.[37] DHS may set the duration of the parole based on the purpose for granting the parole request.[38] DHS may terminate parole in its discretion at any time.[39] Individuals who are paroled into the United States generally may apply for employment authorization.[40]

Under the enhanced parole component of the CAM Program, the Secretary of Homeland Security will exercise, on a case-by-case basis, this discretionary parole authority to determine whether certain qualified children who are nationals of El Salvador, Guatemala, and Honduras, as well as certain family members of those children, may join their qualifying parents or legal guardians in the United States for a temporary period of three years.[41]

Consistent with prior implementation of the CAM Program, each parole request will be considered on its own merit, on a case-by-case basis, consistent with the statute, regulations, and applicable guidance to determine whether there is a significant public benefit or urgent humanitarian reason for the parole and whether under the totality of the circumstances the individual warrants a favorable exercise of discretion, taking into account all positive and negative factors.

A three-year parole period is consistent with other family reunification parole processes, such as the Filipino World War II Veterans Parole Program,[42] Haitian Family Reunification Parole Program,[43] and DHS's Family Reunification Task Force parole policy.[44] When established in 2014, the parole component of the CAM Program provided for a two-year period of parole. Upon further consideration of the safety and stability needs for children, DHS expanded the parole period to three years in July 2021. A three-year period of parole is appropriate for CAM parolees, for the following reasons:

First, the period of parole needs to be sufficiently long to make it a preferable

[34] INA sec. 207(d)(1) and (e): with respect to the admission of refugees and allocation of refugee admissions, discussions in person by designated Cabinet-level representatives of the President with members of the Committees on the Judiciary of the Senate and of the House of Representatives to review the refugee situation or emergency refugee situation, to project the extent of possible participation of the United States therein, to discuss the reasons for believing that the proposed admission of refugees is justified by humanitarian concerns or grave humanitarian concerns or is otherwise in the national interest, and to provide such members with the following information: (1) A description of the nature of the refugee situation; (2) A description of the number and allocation of the refugees to be admitted and an analysis of conditions within the countries from which they came; (3) A description of the proposed plans for their movement and resettlement and the estimated cost of their movement and resettlement; (4) An analysis of the anticipated social, economic, and demographic impact of their admission to the United States; (5) A description of the extent to which other countries will admit and assist in the resettlement of such refugees; (6) An analysis of the impact of the participation of the United States in the resettlement of such refugees on the foreign policy interests of the United States; and (7) Such additional information as may be appropriate or requested by such members.

[35] INA sec. 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A); *see also* 6 U.S.C. 202(4) (charging the Secretary with the responsibility for ''[e]stablishing and administering rules . . . governing the granting of visas or other forms of permission, including parole, to enter the United States to'' noncitizens and individuals who are not ''lawfully admitted for permanent residence in the United States'').

[36] INA secs. 101(a)(13)(B), 212(d)(5)(A); 8 U.S.C. 1101(a)(13)(B), 1182(d)(5)(A).

[37] INA sec. 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A); *see* 8 CFR 1.2 (defining ''arriving alien''), 1001.1(q) (same).

[38] INA sec. 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A).

[39] 8 CFR 212.5(e).

[40] 8 CFR 274a.12(c)(11). Also, although individuals who are paroled for a period of one year or more are considered to be ''qualified aliens'' for purposes of eligibility for certain federal public benefits, they, like most ''qualified aliens,'' are precluded from receiving most federal means-tested public benefits for a period of five years. 8 U.S.C. 1641(b)(4).

[41] Although section 1182(d)(5) (INA 212(d)(5)) continues to refer to the Attorney General, those references are now understood to refer to the Secretary of Homeland Security. Parole authority was transferred to the Secretary of Homeland Security under the Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135. 6 U.S.C. 557; *see Clark* v. *Martinez,* 543 U.S. 371, 374 n.1 (2005). USCIS may exercise the Secretary of Homeland Security's parole authority under section 1182(d)(5) of the INA with respect to certain noncitizens located outside the United States.

[42] 81 FR 28097 (May 9, 2016).

[43] 79 FR 75581 (Dec. 18, 2014).

[44] *See https://www.dhs.gov/family-reunification-task-force.*

alternative to the status quo, in which smugglers are responsible for the lives of child migrants entering the United States irregularly. While a two-year parole period may be sufficient to meet the significant public benefit or urgent humanitarian need in some parole processes, consideration of additional factors relevant to child migrants weighs in favor of three years, as children, and their parents, need stability. A three-year period of parole provides children a meaningful opportunity to reunite with their parents or legal guardians and stabilize that relationship, while a shorter period of parole would unnecessarily increase uncertainty for children, which can disrupt a child's emotional and educational development. In addition, DHS also recognizes that children may require more time than adults to seek humanitarian relief or other immigration benefits for which they may be eligible, given the heightened impact that trauma and separation from family can have on children. DHS thus believes that a parole period of three years balances these considerations and is sufficient to encourage potential beneficiaries to seek to utilize the CAM Program to reunify safely and lawfully rather than migrating irregularly.

Second, a three-year parole period provides sufficient time for a parent or legal guardian who is pursuing or has acquired a lawful immigration status to seek derivative immigration status for their children paroled into the United States through the CAM Program. This is critical; it helps ensure that children can benefit from derivative status for which they may ultimately be eligible.

Unlike any other parole processes, the parole component of the CAM Program is intended specifically and primarily as a lawful pathway for children to enter the United States and reunite with family members. While adults may be paroled into the United States through the parole component of the CAM Program, that is only permitted if they relate to a qualifying child. Therefore, the duration of the parole period should be tailored to the needs of the children expected to be the main participants in the process.

Justification and Reasoning

As noted above, each parole determination in this process will be made on an individualized, case-by-case basis to determine whether urgent humanitarian reasons or a significant public benefit exists to authorize parole, and whether each individual merits a favorable exercise of discretion. Several common factors listed below are likely to support findings of urgent humanitarian reasons or significant public benefit for the CAM population and will be considered in CAM parole adjudications.

Support Family Unity

Consistent with the goal of promoting family unity, as laid out in section 3(b)(ii) of E.O. 14010, the parole component of the CAM Program serves a significant public benefit by providing a safe, lawful, and orderly pathway for children to reunite with parents and legal guardians on a case-by-case basis. Parents or legal guardians who are granted certain immigration benefits may petition for their children to receive immigrant visas, but those processes take time and may include a lengthy wait for visa availability. Children whose parents or legal guardians have pending applications or petitions for immigration benefits, such as a U petition or asylum, may have even longer waits—even if the parents or legal guardians have viable protection claims—during which time the family unit is often separated. The CAM parole process allows eligible children, and certain other family members, to reunify in the United States for a set period of time with the qualifying parent or legal guardian who is already in a qualifying immigration category or who has a pending application for lawful status—thus promoting family unity and protecting against prolonged separations.

By facilitating more timely, orderly, and safe family reunification, the CAM parole process improves the well-being of these families. Additionally, by facilitating such reunification temporarily through a safe, legal, and orderly pathway, it promotes the integration of CAM arrivals by incorporating them into networks already built by family members who have been legally living in the United States. This, in turn, provides families an opportunity to have stable financial foundations, housing and transportation, and school and childcare options. The CAM Program will facilitate the ability for parents, legal guardians, and beneficiaries to engage in these activities, allowing them to better integrate into the community and strengthen family ties.[45]

Provide a Safe, Lawful, and Orderly Alternative to Irregular Migration

Providing a safe, lawful, and orderly way for minors to reunite with their parents or guardians, serves a significant public benefit by helping to reduce the number of individuals who undertake irregular and unsafe migration in the absence of a viable alternative. While the USG works to address the root causes of irregular migration, the enhanced CAM Program will complement existing lawful alternatives to irregular migration.

In recent years, the deteriorating humanitarian situation in NCA countries has driven an increasing number of people to migrate to the United States. In the past several years, emigration from NCA countries has accounted for a significant proportion of individuals seeking to irregularly migrate to the United States. In FY 2021, irregular migrants from NCA countries constituted 40 percent of all individuals encountered at the SWB.[46] Economic insecurity, food insecurity, climate change, gang violence, corruption, and sexual, gender-based, and domestic violence, coupled with the desire to reunite with family members already in the United States, are driving child migrants from NCA countries to the United States.[47] A joint report by the United Nations Children's Fund (UNICEF) and the United Nations Refugee Agency (UNHCR) published in December 2020 noted that families in NCA countries reported an increased vulnerability to persecution following the onset of the COVID pandemic.[48] The

[45] Providing this alternative lawful pathway to the United States is consistent with family-based immigration to the United States, such as the ability of U.S. citizens and lawful permanent residents to petition for certain relatives to be admitted to the United States as lawful permanent residents. *See* INA sec. 204(a)(1)(A)–(D). Permitting a broader set of noncitizens present in the United States to file an AOR so that their children may be considered for refugee status and, if not eligible, for parole, is consistent with the limitations Congress has established with respect to family-based immigration pathways. *See* INA secs. 201(b)(2), (c); 202; 203(a). As stated above, unlike lawful permanent residence, parole is not an immigration status. It is temporary by nature, does not allow for derivative benefits for family members (although certain qualifying family members of the CAM program participants may be considered for parole on their own merit), and does not provide a pathway to citizenship. Because parole is not comparable to lawful permanent resident status, CAM parole does not expand upon or change Congress' determinations as to who can sponsor certain relatives for a permanent immigration status in the United States.

[46] Southwest Land Border Encounters, U.S. Customs and Border Protection, available at: *https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters* (last modified Aug. 3, 2022).

[47] Central America's Turbulent Northern Triangle, Council on Foreign Relations, available at: *https://www.cfr.org/backgrounder/central-americas-turbulent-northern-triangle* (last updated July 1, 2021); U.S. Strategy for Addressing the Root Causes of Migration in Central America, National Security Council (July 2021), available at: *https://www.whitehouse.gov/wp-content/uploads/2021/07/Root-Causes-Strategy.pdf.*

[48] Report: Families on the Run; UNHCR and UNICEF, available at: *https://familiesontherun.org.*

report also found that, of children interviewed who traveled without accompanying family members, violence was a central reason for their displacement.[49] Without an alternative, instability and uncertainty in their home countries, combined with their desire to reunify with family in the United States after prolonged separation, may fuel the desire for children to undertake irregular and unsafe migration.

Therefore, the Administration anticipates that children in the CAM Program's eligible population may, when facing no alternative, seek reunification through irregular migration. Indeed, in the course of resuming to process certain CAM parole cases under the *S.A.* v. *Trump* Final Judgment and Order for Permanent Injunction agreement and related settlement agreement, DHS learned that a significant number of CAM parole beneficiaries whose conditional approvals of parole had been rescinded in 2017 had already found their way to the United States to reunify with their parents, doing so via irregular—and likely dangerous—means. DHS has also encountered other groups of individuals who may, when facing no alternative, seek family reunification through irregular migration. For example, DHS has encountered individuals with approved family-based immigrant visa petitions who nonetheless determined they could not wait for an immigrant visa to become immediately available before traveling to the United States.

Protecting Children From Smuggling Networks

The CAM Program, including the CAM parole process, serves a significant public benefit by providing a safe, orderly, and lawful alternative for qualifying children and family members who might otherwise be subject to exploitation at the hands of smuggling networks, in a quest to be reunited with family in the United States.

Transnational criminal organizations (TCOs) engaged in human smuggling along the route from the NCA to the United States earn hundreds of millions to billions of dollars each year from smuggling activities associated with irregular migration.[50] TCOs exploit irregular migration for financial gain, either by charging migrants to cross their territory, forcing migrants to carry contraband as they cross the SWB between POEs, or forcing and coercing migrants into sex or labor trafficking. Child and adolescent migrants are particularly vulnerable to human trafficking and other severe forms of harm, particularly while traveling alone or having been separated from their families.[51] Once in the United States, children who entered the country via irregular migratory routes are at higher risk of exploitation than those who entered through regular pathways.[52]

By providing a safe, orderly, and lawful alternative to irregular migratory routes that funnel money into the hands of TCOs, the continued implementation and expansion of the CAM Program, including the CAM parole process, serves a significant public benefit, thereby supporting the USG's longstanding commitment to anti-trafficking efforts.[53]

Reduce Strain on Limited U.S. Resources at the Southwest Border

Increases in irregular migration from NCA countries have strained DHS' processing and holding capacity at the SWB. In response to increases in irregular migration, DHS has taken a series of actions. Largely since FY 2021, DHS has built and now operates 10 soft-sided processing facilities. CBP obligated $669.3 million to stand up, sustain, and operate these facilities in FY 2022. It has detailed 3,770 officers and agents from CBP and U.S. Immigration and Customs Enforcement (ICE) to the SWB. In FY 2022, DHS had to utilize its above threshold reprogramming authority to identify approximately $281 million from elsewhere in the Department to address SWB needs, to include facilities, transportation, medical care, and personnel costs. The Federal Emergency Management Agency has spent $260 million in FY 2021 and FY 2022 on grants to non-governmental organizations and state and local entities through the Emergency Food and Shelter Program—Humanitarian to assist with the reception and onward travel of irregular migrants arriving at the SWB. This spending is in addition to $1.4 billion in FY 2022 appropriations that were designated SWB enforcement and processing capacities.[54]

In FY 2021, DHS encountered a significant number of UC and dedicated a significant number of resources to respond to the surge. In partnership with the U.S. Department of Health and Human Services (HHS), DHS took steps to identify and create significant efficiencies processing UC at the SWB. Among other things, DHS assisted HHS to significantly expand its emergency influx shelter capacity; established an interagency Movement Coordination Cell to streamline operations in support of the timely transfer of UC from DHS to HHS custody; provided hundreds of USCIS officers to help interview and vet potential sponsors; and activated the DHS volunteer workforce, through which approximately 300–400 volunteers across the country assisted CBP and HHS with oversight and logistics at any given time.

While this whole-of-government effort led to processing UC more efficiently, the number of UC encounters from NCA countries has continued to increase and place a significant toll on USG resources. In all cases, UC must be held separately from adults and cared for by CBP officials while awaiting transfers to the Office of Refugee Resettlement (ORR). CBP must interview each child, attempt to contact the child's parents, and create a record of referral for HHS, which must be quite detailed and requires significant resources to create.[55] ICE generates Notices to

[49] Report: Families on the Run; UNHCR and UNICEF, available at: *https://familiesontherun.org.*

[50] Human Smuggling and Associated Revenues: What Do or Can We Know About Routes from Central America to the United States, Homeland Security Operational Analysis Center (2019), available at: *https://www.rand.org/content/dam/rand/pubs/research_reports/RR2800/RR2852/RAND_RR2852.pdf.*

[51] Migrants and Their Vulnerability to Human Trafficking, Modern Slavery and Forced Labor, Minderoo Foundation's Walk Free initiative and the International Organization for Migration, accessible at: *https://publications.iom.int/system/files/pdf/migrants_and_their_vulnerability.pdf.*

[52] Migrants and Their Vulnerability to Human Trafficking, Modern Slavery and Forced Labor, Minderoo Foundation's Walk Free initiative and the International Organization for Migration, available at: *https://publications.iom.int/system/files/pdf/migrants_and_their_vulnerability.pdf.*

[53] National Action Plan to Combat Human Trafficking (Dec. 2021), available at: *https://www.whitehouse.gov/wp-content/uploads/2021/12/National-Action-Plan-to-Combat-Human-Trafficking.pdf;* White House Briefing Room, Fact Sheet: The National Action Plan to Combat Human Trafficking (Dec. 3, 2021) (''As we continue to address the acute and long-term drivers of irregular migration, we must ensure our legal immigration pathways provide safe alternatives.''), available at: *https://www.whitehouse.gov/briefing-room/statements-releases/2021/12/03/fact-sheet-the-national-action-plan-to-combat-human-trafficking-nap/.*

[54] DHS Plan for Southwest Border Security and Preparedness, DHS Memorandum for Interested Parties, Alejandro N. Mayorkas, Secretary of Homeland Security (Apr. 26, 2022), available at: *https://www.dhs.gov/sites/default/files/2022-04/22_0426_dhs-plan-southwest-border-security-preparedness.pdf.*

[55] ORR requests the following information from the referring agency: (1) How the referring agency made the determination that the minor is a UC; (2) Health related information including, but not limited to, if the UC is pregnant or parenting and whether there are any known physical or mental health concerns; (3) Whether the child has any medication or prescription information, including how many days' supply of the medication will be provided with the child or youth when transferred into ORR custody; (4) Biographical and biometric information, such as name, gender, alien number,

Appear and must assign the child to a juvenile coordinator. Once the child is in HHS custody, ORR grantees and contractors provide housing, education, medical care, and counseling services while staff work with potential sponsors who are typically parents, legal guardians, or other relatives to complete necessary paperwork and vetting before the sponsor can be approved and a child is released to the proposed sponsor. Ultimately, nearly 40 percent of UC from CAM countries are processed and released by HHS to their parents or legal guardians.

Resettling as a refugee or paroling a child and their eligible family members through the CAM Program, on a case-by-basis, serves a significant public benefit because it is significantly less resource-intensive than processing an unaccompanied minor encountered at or near the border, who is subject to resource-intensive processing and care by a combination of CBP, ICE, and HHS' Office of Refugee Resettlement (ORR). While processing requests for access to the USRAP via the CAM Program, including refugee claims and review for parole on a case-by-case basis, draws on State as well as DHS resources within USCIS and CBP, this work involves different parts of DHS and requires fewer resources as compared to processing inadmissible noncitizens encountered at or near the SWB. Ultimately, the CAM Program provides a safe, legal, and streamlined alternative to irregular migration, and can reunite these children with their families without the cost and strain associated with the care, custody, and processing of UC encountered at the SWB.

Foreign Affairs Considerations

Promoting a safe, orderly, legal, and humane migration strategy throughout the Western Hemisphere has been a top foreign policy priority for the Administration. This is reflected in three policy-setting documents mentioned above that call for a comprehensive, regional approach to migration: the Root Causes Strategy, the CMMS, and the Los Angeles Declaration.

The Root Causes Strategy identifies factors leading to irregular migration and states the importance of discouraging irregular migration and providing opportunities for youth to feel connected to their families and local communities. Its long-term implementation plan includes regional collaboration to ''safely and humanely manage migration.'' [56] The CMMS shares similarly aligned strategies to ''strengthen cooperative efforts to manage safe, orderly, and humane migration,'' and it identifies goals that include addressing humanitarian needs and enhancing access to legal migration pathways when individuals need to migrate for safety or stability. The CMMS acknowledges that the humanitarian situation in NCA countries demands an immediate response in addition to more long-term approaches, and its strategy includes restarting and continuously considering of ways to expand the CAM Program.[57]

The Los Angeles Declaration specifically lays out the goal of collectively ''expand[ing] access to regular pathways for migrants and refugees.'' [58] Countries that have endorsed the Los Angeles Declaration are committed to implementing programs and policies to promote stability and assistance for communities of destination, origin, transit, and return. These countries commit to respect and ensure the human rights of all migrants and persons in need of international protection, taking actions to stop migrant smuggling by targeting the criminals involved in these activities, and providing increased regular pathways and protections for migrants residing in or transiting through countries in the Western Hemisphere. As stated above, these commitments include that of the Administration to increase refugee resettlement from the Americas to the United States by up to as many as 20,000 over the course of Fiscal Years 2023 and 2024.

The CAM Program, including the CAM parole process, serves a significant public benefit because it helps achieve the goals of these three documents by providing a lawful pathway for certain eligible minors and their family members to safely, orderly, and humanely enter the United States as refugees or parolees rather than taking a dangerous irregular journey.

Process Improvements and Updates

In 2021, the CAM Program was reopened as part of a ''comprehensive regional migration management strategy.'' [59] The CAM Program reopened in two phases and aimed to reinstitute and improve upon the previous versions.[60] The first phase focused on processing eligible applications that were suspended and closed in 2017, and the second phase allowed for new applications and expanded access through eligibility requirements. The opportunity now exists to introduce enhancements to further unify families and protect children from the dangers of irregular migration.

The following changes better support the CAM Program:

1. New Procedures for USCIS Parole Determinations for CAM (Under 18)

USCIS is instituting new procedures regarding certain minor children issued a travel document under the CAM parole process that enables the beneficiary to travel to the United States and seek parole from CBP at a U.S. port of entry.

This FRN notifies the public that, in certain limited cases where the qualifying individual, such as a stepparent, who filed the AOR for a minor child is not that child's biological or adoptive parent or legal guardian, USCIS will, if needed, gather additional information to evaluate whether the child has a biological or adoptive parent or legal guardian in the United States, to verify that individual's relationship to the child, and to confirm their intention to remain available in the United States to provide for the child's care and physical custody if the child

date of birth, country of birth and nationality, date(s) of entry and apprehension, place of entry and apprehension, manner of entry, and the UC's current location; (5) Any information concerning whether the child or youth is a victim of trafficking or other crimes; (6) Whether the UC was apprehended with a sibling or other relative; (7) Identifying information and contact information for a parent, legal guardian, or other related adult providing care for the child or youth prior to apprehension, if known; (8) If the UC was apprehended in transit to a final destination, what the final destination was and who the child or youth planned to meet or live with at that destination, if known; (8) Whether the UC is an escape risk, and if so, the escape risk indicators; (9) Any information on a history of violence, juvenile or criminal background, or gang involvement known or suspected, risk of danger to self or others, State court proceedings, and probation; and (10) Any special needs or other information that would affect the care and placement for the child or youth. ORR Unaccompanied Children Program Policy Guide, available at: *https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-1#1.3.*

[56] U.S. Strategy for Addressing the Root Causes of Migration in Central America, available at: *https://www.whitehouse.gov/wp-content/uploads/2021/07/Root-Causes-Strategy.pdf.*

[57] Collaborative Migration Management Strategy, available at: *https://www.whitehouse.gov/wp-content/uploads/2021/07/Collaborative-Migration-Management-Strategy.pdf?utm_medium=email&utm_source=govdelivery.*

[58] Los Angeles Declaration on Migration and Protection, available at: *https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/10/los-angeles-declaration-on-migration-and-protection/.*

[59] Restarting the Central American Minors Program, U.S. Department of State (Mar. 10, 2021), available at: *https://www.state.gov/restarting-the-central-american-minors-program/.*

[60] Restarting the Central American Minors Program, U.S. Department of State (Mar. 10, 2021), available at: *https://www.state.gov/restarting-the-central-american-minors-program/.*

were paroled into the United States. USCIS will share this information with CBP as part of CAM parole processing in these limited cases. Absent new information or circumstances, CBP may rely upon the information gathered by USCIS about the biological or adoptive parent's or legal guardian's availability to provide for the child's care and physical custody in the United States. This will advance the program's goal of reuniting these children with their families by facilitating direct reunification of minor beneficiaries with their U.S.-based relatives in all appropriate instances.

2. Ensuring Fairness for Those Impacted by 2017 Policy Actions

Phase one of the reopening of the CAM Program in 2021 focused on applications that were suspended or closed without an interview when the program was terminated. However, Phase One did not include all CAM Program AORs for which: USCIS interviewed before February 2018, considered eligibility for refugee status, and either refrained from assessing parole eligibility or did not issue a Form I–512L, Authorization for Parole of an Alien into the United States, due to policy decisions in response to directives in the since-revoked E.O. 13767.[61] USCIS is committed to exercising its discretion to ensure fairness for this group of children and their qualifying family members who were not afforded a parole determination or an opportunity to complete parole processing. As a result, they will now be able to pursue parole as a beneficiary of the CAM Program. USCIS will verify eligibility, issue requests for evidence and interview notices if necessary, and determine parole on a case-by-case basis.

3. Evidence of Financial Support

In the past, at the time of AOR submission, domestic resettlement agencies collected Form I–134, Affidavit of Support, from qualifying parents or legal guardians who filed AORs that included certain categories of add-on family members, in the event that those individuals were ultimately found ineligible for refugee status and recommended for parole. Ongoing processing efficiency reviews concluded that the submission of the I–134 at the time of AOR submission slowed intake and created delays. For that reason, in April 2022, the USG decided that the Form I–134, now called the Declaration of Financial Support, would only be requested at the point that an individual was denied refugee status and subsequently considered for parole. This change immediately improved AOR intake capacity, but the Form I–134 continues to create confusion for program participants, leading to delays in processing as families gather documentation of sufficient income or financial resources to complete the form, which is only in English. Collection of the Form I–134, however, is not the sole means of providing evidence of sufficient financial support during the parole period. Therefore, to improve operational efficiency for initial CAM parole considerations where evidence of financial support is required, USCIS will allow financial supporters to provide a sworn statement as an alternative to completing Form I–134, and USCIS may request supporting documentation as needed. (Applications for re-parole under CAM for beneficiaries already in the United States are separate from CAM parole initial processing and will still require a Form I–134 for case processing.)

4. Adjusting Eligibility Date and Criteria

On June 15, 2021, DHS and State jointly announced the second phase of the CAM Program reopening, which included extended eligibility to request access to the CAM Program as an additional part of a ''multi-pronged approach to address the challenges of irregular migration throughout North and Central America.'' [62] Eligibility for completing AORs to request access to USRAP for their qualifying children was extended to parents or legal guardians with pending asylum applications or who were victims of crime with pending U visa petitions,[63] filed before May 15, 2021. This eligibility date was established as a cutoff to prevent frivolous filings solely for the purpose of gaining access to the CAM Program. This date will be updated to extend eligibility to qualifying parents and legal guardians with pending applications for asylum or U visa petitions filed on or before April 11, 2023. Additionally, requestor eligibility will now extend to parents or legal guardians with pending applications for T nonimmigrant status [64] filed on or before April 11, 2023. New applications consistent with these new dates and categories of eligibility are contingent upon the approval of an updated Form DS–7699.

The previous termination of the CAM Program left many families in limbo mid-process, often with unrecoverable expenditures for DNA testing and medical exams, and no safe pathway for their children to travel to the United States. As a result, families lost trust in the CAM Program. With these new procedures, the USG seeks to repair that trust and create goodwill. It will also serve the objectives provided in the Justification and Reasoning section above to allow more individuals access to the CAM Program, while the updated eligibility date will limit eligibility to filings already in existence, thereby safeguarding against frivolous asylum, U, or T visa applications or petitions. Expanding access to the CAM Program in this way and allowing victims of human trafficking to also seek reunification with their children, will serve a larger segment of a vulnerable population who will benefit from this process.[65]

Consideration of Alternatives

The Administration has considered alternative approaches, including ending the parole component of the CAM Program, continuing to operate it as currently constituted, making some or all of the changes described in this notice, or further expanding eligibility as described in greater detail below, including the benefits and drawbacks associated with each path. As stated throughout this notice, the updates to the parole component of the CAM Program with the changes announced

[61] E.O. 13767 stated that ''T[t]he Secretary shall take appropriate action to ensure that parole authority under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) is exercised only on a case-by-case basis in accordance with the plain language of the statute, and in all circumstances only when an individual demonstrates urgent humanitarian reasons or a significant public benefit derived from such parole.'' However, at no point did the Secretary determine that the CAM parole program was inconsistent with or an improper use of this parole authority.

[62] Joint Statement by the U.S. Department of Homeland Security and U.S. Department of State on the Expansion of Access to the Central American Minors Program (June 15, 2021), available at: *https://www.dhs.gov/news/2021/06/15/joint-statement-us-department-homeland-security-and-us-department-state-expansion.*

[63] If parents or legal guardians are successful in their cases, they may petition for their children to join them in the United States. The CAM Program offers children an option to await results with their parents or legal guardians in the United States, rather than waiting while separated from them.

[64] T nonimmigrant status (T visa) is an immigration benefit that enables certain qualifying victims of a severe form of trafficking in persons, who generally must assist law enforcement, to remain in the United States. INA sec. 101(a)(15)(T); 8 U.S.C. 1101(a)(15)(T).

[65] Data suggests that expanding the U visa eligibility date may offer CAM Program access to the families of more than 3,000 minor derivatives, and including pending T visa applicants may provide CAM Program access for the families of more than 300 minor beneficiaries. The numerical impact of changing the eligibility date for pending asylum applicants is less precise to predict, although there are tens of thousands of individuals with pending asylum cases filed after May 15, 2021 from CAM countries that might have minor children and could benefit from the CAM Program.

herein provides many more benefits than drawbacks. The Administration has determined that the updates to the CAM parole process benefits the United States in support of overall U.S. migration management strategies. The USG acknowledges that those benefits may be accompanied by potential costs, including those that some states may argue they incur for schools, social services, health care, driver's licenses, and similar services, and the Administration has decided to proceed with this notice and its implementation.[66]

As mentioned above, on August 16, 2017, the Acting Secretary of Homeland Security announced the termination of the parole component of the CAM Program through an FRN that characterized the termination as a ''discretionary change in policy'' to stop automatically considering for parole those found ineligible for refugee status under USRAP processing, accessed via the CAM Program. In other words, the change was the result of a new policy choice, and not a perceived inconsistency of the program with the parole statute or regulations.

When the United States decided to restart the CAM Program in 2021, it decided, as a matter of policy, to include an option for case-by-case consideration for parole for CAM Program beneficiaries. While considering subsequent improvements to the CAM Program for this Notice, the Administration evaluated several additional provisions. It considered whether to remove parole and decided that to meet the goals of providing safety and stability for children whose parents and legal guardians have immigration status or pending cases in the United States, parole needed to remain an option for CAM Program beneficiaries for the urgent humanitarian and significant public benefit reasons described above. The Administration considered including an advance parole provision for CAM parole process beneficiaries in the United States that need to depart and seek parole back into the United States. It also determined that CAM parole process beneficiaries may apply for advance parole in the same manner and under the same eligibility criteria as other individuals and additional guidance is not necessary. Additionally, the Administration considered expanding eligibility by eliminating eligibility dates for pending asylum, T visa, and U visa applicants and petitioners, and also considered announcing eligibility dates that would take effect at a later date, with a future form revision. The Administration has decided on eligibility dates that will take immediate effect based on this notice's publication date because immediate effectiveness forwards the policy objectives described throughout this notice and reserves additional changes for possible future revisions or enhancements. Finally, the Administration considered expanding the CAM Program to allow additional family members to qualify as beneficiaries. It has decided not to expand in this way due to challenges in verifying extended family relationships and a determination that the current eligible beneficiaries are closely connected to children and sufficient to provide the stability and support children need.

The parole component of the CAM Program offers an additional safe, lawful, and orderly alternative to irregular migration for the eligible population, and promotes family unity. The CAM parole process also helps to relieve pressure on the SWB, reduces the strain on U.S. Government resources, and saves lives. This enhanced CAM parole process may further discourage irregular migration and allow children to safely reunite with their families in the United States.

Additional information about the CAM Program, including the parole component, is available on the USCIS website at: *www.uscis.gov.*

Administrative Procedure Act (APA)

This process is exempt from notice-and-comment rulemaking and delayed effective date requirements on multiple grounds and is therefore amenable to immediate issuance and implementation.

First, the Departments are merely adopting a general statement of policy,[67] *i.e.,* a ''statement[ ] issued by an agency to advise the public prospectively of the manner in which the agency proposes to exercise a discretionary power.'' [68] As section 212(d)(5)(A) of the INA, 8 U.S.C. 1182(d)(5)(A), provides, parole decisions are made by the Secretary of Homeland Security ''in his discretion.''

Second, even if this process were considered to be a legislative rule that would normally be subject to requirements for notice-and-comment rulemaking and a delayed effective date, the process is exempt from such requirements because it involves a foreign affairs function of the United States.[69] Courts have held that this exemption applies when the rule in question ''is clearly and directly involved in a foreign affairs function.'' [70] In addition, although under the APA invocation of this exemption from notice-and-comment rulemaking does not require the agency to show that notice-and-comment procedures may result in ''definitely undesirable international consequences,'' [71] some courts have required such a showing. This process satisfies both standards.

As described above, this process is a key component of regional migration strategies and is responsive to requests that the United States expand lawful pathways. The CMMS of 2021 identifies intra-governmental Federal strategies to address regional migration, including expanding the CAM Program. The following year, the United States was able to focus on cooperative strategies with foreign partners. In the Ninth Summit of the Americas in June 2022, countries in the Western Hemisphere, including the United States, made significant commitments in connection with the Los Angeles Declaration, including expanded access to regular pathways. As part of efforts to promote access to regular pathways, DHS and State have expanded refugee processing in Central America.[72] Therefore, the

[66] Estimating the fiscal effects associated with CAM parole would be extremely challenging, especially due to State and local governments' control over their budgets. A 2017 National Academies of Sciences, Engineering, and Medicine (NAS) Report, authorized by an expert panel of immigration economists, canvassed studies of the fiscal impacts of immigration as a whole, and it described such analysis as extremely challenging and dependent on a range of assumptions. The Economic and Fiscal Consequences of Immigration, NAS (2017), *https://www.nap.edu/catalog/23550/the-economic-and-fiscal-consequences-of-immigration,* at 28. The fiscal impacts of CAM parole to State and local governments would vary based on a range of factors, such as the characteristics of the CAM parolee population within a particular jurisdiction at a particular time and local economic conditions and local rules governing eligibility for public services. These costs will depend on choices made by States and will be location specific and, therefore, difficult to quantify let alone predict. Moreover, any estimate would also need to account for the fact that minors who would migrate irregularly to the United States in the absence of the availability of CAM parole would likely also incur these costs. DHS also notes the small size of the CAM parolee population relative to any given jurisdiction's overall population. In short, DHS acknowledges that though CAM parole may result in some indirect fiscal effects on State and local governments (both positive and negative), such effects would be extremely challenging to quantify fully and would vary based on a range of factors, including policy choices made by such governments.

[67] 5 U.S.C. 553(b)(A); *id.* 553(d)(2).

[68] *Lincoln* v. *Vigil,* 508 U.S. 182, 197 (1993) (quoting *Chrysler Corp.* v. *Brown,* 441 U.S. 281, 302 n.31 (1979)).

[69] 5 U.S.C. 553(a)(1).

[70] *Mast Indus.* v. *Regan,* 596 F. Supp. 1567, 1582 (C.I.T. 1984) (cleaned up).

[71] *See, e.g., Rajah* v. *Mukasey,* 544 F.3d 427, 437 (2d Cir. 2008).

[72] The United States continues these efforts by pursuing the use of new technologies and processes

Continued

parole component of the CAM Program contributes to the broader USG strategy of providing lawful pathways to individuals who may otherwise be driven to travel to the United States through irregular means due to instability in their home countries and their desire to reunite with family members already in the United States.

Immediate implementation of the process announced in this notice also supports DHS discussions and negotiations about migration management and is fully aligned with larger and important foreign policy objectives of this Administration. Prompt implementation will advance the Administration's foreign policy goals by demonstrating U.S. partnership and commitment to the shared goals of addressing migration through the hemisphere, both of which are essential to maintaining strong relationships in the region.

Alejandro N. Mayorkas,

Secretary of Homeland Security.

Antony J. Blinken,

Secretary of State.

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BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7070–N–19]

30-Day Notice of Proposed Information Collection: Capital Needs Assessment of Public Housing; OMB Control No.: 2528–New Collection

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* May 11, 2023.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *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: Anna Guido, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Anna Guido at *PaperworkReduction ActOffice@hud.gov,* telephone 202–402–5535 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.* Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on September 7, 2022 at 87 FR 54709.

A. Overview of Information Collection

Title of Information Collection: Capital Needs Assessment of Public Housing.

OMB Approval Number: 2528–New; pending.

Type of Request: New collection.

Form Number: N/A.

Description of the need for the information and proposed use: The Office of Policy Development and Research at the U.S. Department of Housing and Urban Development (HUD) is proposing the collection of information for the *Capital Needs Assessment of Public Housing.*

Public housing serves the housing needs of low- and very-low-income households, including needy families, the elderly, and the disabled. In the United States, public housing is owned and managed by public housing authorities (PHAs), which are units of state and local government. Public housing is nonetheless heavily subsidized and regulated by HUD's Office of Public and Indian Housing through the Operating Fund, Capital Fund, and other means. The capital needs of public housing have a direct bearing on HUD's Capital Fund budget and its support to PHAs for using alternative means of financing to meet those needs.

The number of public housing developments and units in the United States and the number of PHAs that own and manage public housing developments and units have changed over time. According to the most recent HUD data, there are 2,780 PHAs that own and manage 940,330 units in 6,523 public housing developments.

The public housing Capital Fund provides funds for the capital and management activities of PHAs as authorized under section 9 of the Housing Act of 1937 (42 U.S.C. 1437g) (the Act). Capital needs are defined by section 9(d)(1) of the Act, as codified at 24 CFR part 905, with Section 200 listing eligible activities. These activities include, among others, the development, financing, and modernization of public housing, vacancy reduction, nonroutine maintenance, and planned code compliance. This work is intended to bring each PHA's projects up to applicable modernization and energy conservation standards.

This **Federal Register** Notice provides an opportunity to comment on the information collection for the capital needs assessment (CNA) of public housing.

After OMB approval of the Paperwork Reduction Act package, HUD and its contractor will administer a web-based survey to a sample of approximately 300 PHAs to collect data on their CNA estimates, their practices to arrive at those estimates, and their use of those estimates.

After analyzing the data from the first survey of PHAs, HUD and its contractor will administer a second web-based survey of another 500 PHAs. This survey will ask many of the same questions as the first survey. Both surveys will provide data that, when combined with HUD's other data sources, will be used to estimate the capital needs of public housing following an iterative and duplicable approach.

Both surveys also include questions about the processes that PHAs use to assess their capital needs. Based on responses to those questions, the study will assess PHAs' processes to see how they compare to in-person data collection methods used in previous CNAs and industry best practices.

The purpose of this assessment is to better understand if a non-inspection-

to facilitate and expand remote case processing capabilities. It is also seeking to continue increasing USRAP processing capacity in Central America.

based approach can yield reliable and valid results that are comparable to those in the past studies, if not better.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response *	Annual cost
First PHA Survey	300	1	300	0.75	225	$38.18	$8,590.50
Second PHA Survey	500	1	500	0.75	375	$38.18	$14,317.50
Total	800	1	800	1.5	600	$76.36	$22,908.00

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

(5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Anna P. Guido,

Department Reports Management Officer, Office of Policy Development and Research, Chief Data Officer.

[FR Doc. 2023–07533 Filed 4–10–23; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R4–ES–2023–0037; FXES11140400000–223–FF04EF4000]

Receipt of Enhancement of Survival Permit Applications in Support of Quail Country Programmatic Candidate Conservation Agreement With Assurances for North Florida and Southwest Georgia; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of two separate applications, one each from the Florida Fish and Wildlife Conservation Commission (FWC) and the Georgia Department of Natural Resources (GADNR), for enhancement of survival permits under the Endangered Species Act. The FWC and GADNR have each applied for a separate permit associated with the implementation of the Quail Country Programmatic Candidate Conservation Agreement with Assurances (CCAA) for 12 species in North Florida and Southwest Georgia. Successful implementation of the CCAA is expected to enhance the habitat of the species and protect their habitats from destruction and degradation. We request public comment on the applications, which include the CCAA, and on the Service's preliminary determination that the proposed permitting actions may be eligible for a categorical exclusion pursuant to the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations, the Department of the Interior's (DOI) NEPA regulations, and the DOI Departmental Manual. To make this preliminary determination, we prepared a draft environmental action statement and low-effect screening form, both of which are also available for public review. We invite comment from the public and local, State, Tribal, and Federal agencies.

DATES: We must receive your written comments on or before May 11, 2023.

ADDRESSES:

Obtaining Documents: You may obtain copies of the documents online in Docket No. FWS–R4–ES–2023–0037 at *https://www.regulations.gov.*

Submitting Comments: If you wish to submit comments on any of the documents, you may do so in writing by one of the following methods:

- *Online: https://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R4–ES–2023–0037.
- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS–R4–ES–2023–0037; U.S. Fish and Wildlife Service, MS: JAO/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Michele Elmore, by U.S. mail (see **ADDRESSES**), by telephone 706–544–6428, or via email at *michele_elmore@fws.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: We, the Fish and Wildlife Service (Service), announce receipt of an application from the Florida Fish and Wildlife Conservation Commission (FWC) and the Georgia Department of Natural Resources (GADNR) (collectively, applicants) for enhancement of survival permits associated with a candidate conservation agreement with assurances (CCAA) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*).

The applications address the potential take of 12 species via implementation of the CCAA on eligible non-Federal lands in Gadsden, Jackson, Jefferson, Leon, Madison, Taylor, and Wakulla Counties, Florida, as well as in Baker, Brooks, Calhoun, Colquitt, Crisp, Decatur, Dodge, Dooly, Dougherty, Grady, Lee, Macon, Marion, Miller, Mitchell, Pulaski, Schley, Sumter, Talbot, Taylor, Terrell, Thomas, Tift, Turner, Seminole, Webster, Wilcox, and Worth Counties,

Georgia (collectively ''Quail Country''). Covered species include the eastern diamondback rattlesnake (*Crotalus adamanteus*), Florida pine snake (*Pituophis melanoleucus mugitus*), frosted elfin (*Callophrys irus*), gopher frog (*Lithobates (Rana) capito*), gopher tortoise (*Gopherus polyphemus*), Henslow's sparrow (*Ammodramus henslowii*), monarch butterfly (*Danaus plexippus*), southeastern American kestrel (*Falco sparverius paulus*), southeastern pocket gopher (*Geomys pinetis*), southern hognose snake (*Heterodon simus*), striped newt (*Notophthalmus perstriatus*), and a raptor, the swallow-tailed kite (*Elanoides forficatus*) (collectively, ''covered species'').

The CCAA was developed to facilitate collaboration between private property owners and State and Federal agencies to benefit the covered species on enrolled lands in accordance with the Service's CCAA policy (81 FR 95164; December 27, 2016) and regulations (50 CFR 17.22(d) and 50 CFR 17.32(d)). Tall Timbers Research Station and Land Conservancy will act as a cooperator under this CCAA. Successful implementation of the CCAA is expected to enhance and protect the habitat of the covered species from destruction and degradation, which are the most common threats to the species. This CCAA is unique in that some of the covered species are listed by the FWC as State endangered, threatened, species of special concern, or rare species. Typically, a CCAA and an enhancement of survival permit would provide an enrolled non-Federal property owner with Federal regulatory assurances any CCAA-covered species that become federally listed under the ESA in the future. In this case, an enrolled property owner would not only receive assurances from the Service in the event of Federal listing, but also regulatory assurances from the FWC for species that are already State listed in Florida [Rule 68A–27.007(2)(c), F.A.C.].

The applicants have requested a term of 30 years for the permits, with the possibility of extension if requested by the applicants prior to permit expiration. We request public comment on the applications, which include the applicants' CCAA, and on the Service's preliminary determination that the proposed permitting actions may qualify for a categorical exclusion pursuant to the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations (40 CFR 1501.4), the Department of the Interior (DOI) NEPA regulations (43 CFR 46), and the DOI Departmental Manual (516 DM 8.5(C)(2)). To make this preliminary determination, we prepared a draft environmental action statement and low-effect screening form, both of which are also available for public review.

Candidate Conservation Agreements With Assurances

Under a CCAA, participating property owners voluntarily undertake management activities on their lands to remove or reduce threats and enhance, restore, or maintain habitat benefiting species that may warrant listing under the ESA. CCAAs encourage private and other non-Federal property owners to implement conservation efforts for candidate and at-risk species on their lands by assuring they will not be subjected to increased property use restrictions should the species become listed as ''threatened'' or ''endangered'' under the ESA in the future. Application requirements and issuance criteria for CCAAs are found in 50 CFR 17.22(d) and 17.32(d).

National Environmental Policy Act Compliance

The issuance of these permits is a Federal action that triggers the need for compliance with NEPA. The Service has made a preliminary determination that the proposed permit issuance is eligible for categorical exclusion under NEPA, based on the following criteria: (1) Implementation of the CCAA would result in minor or negligible adverse effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the CCAA would result in minor or negligible adverse effects on other environmental values or resources; and (3) impacts of the CCAA, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result over time in significant cumulative adverse effects to environmental values or resources. To make this determination, we used our low-effect screening form, which is also available for public review.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment, including your personal identifying information, may be made available to the public. While you may request that we withhold your personal identifying information, we cannot guarantee that we will be able to do so.

Next Steps

The Service will evaluate the applications and the comments to determine whether to issue the requested permits. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take of the species. After considering the preceding and other matters, we will determine whether the permit issuance criteria of section 10(a)(1)(A) of the ESA have been met. If met, the Service will issue a permit to each of the applicants (Georgia PER0119056 and Florida PER0119117) for incidental take of the covered species in accordance with the CCAA.

Authority

The Service provides this notice under section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22 and 17.32) and NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1500–1508 and 43 CFR 46).

Peter Maholland,

Field Supervisor, Georgia Ecological Services Field Office.

[FR Doc. 2023–07532 Filed 4–10–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–FAC–2022–N053; FF09F42300 FVWF97920900000 053]

Sport Fishing and Boating Partnership Council; Call for Nominations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Call for nominations.

SUMMARY: The Secretary of the Interior and the Secretary of Commerce (Secretaries) seek nominations for individuals to be considered for membership on the Sport Fishing and Boating Partnership Council.

DATES: Email submissions must be received by May 11, 2023.

ADDRESSES: Please email nominations to Tom McCann, Designated Federal Officer, Sport Fishing and Boating Partnership Council, at *thomas_mccann@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Tom McCann, Designated Federal Officer, via email at *thomas_mccann@fws.gov,* or by telephone at 703–358–2056. 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 Secretaries seek nominations for individuals to be considered for membership on the Council. The Council advises the Secretary of the Interior and the Secretary of Commerce, through the Designated Federal Officer, on aquatic conservation and restoration endeavors in fresh, estuarine, and marine environments that benefit recreational fishery resources, enhance recreational boating, and encourage partnerships among industry, the public, and government to advance these efforts. The Council conducts its operations in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. appendix 2). The Council functions solely as an advisory body. This call for nominations will fill 16 members' terms.

Council Duties

The Council's duties are solely advisory and include:

a. Providing advice that will assist the Secretaries in compliance with the Fish and Wildlife Act of 1956, the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable statutes;

b. Fulfilling responsibilities established by Executive Order 12962, as modified by Executive Order 13474:

1. Monitoring specific Federal activities affecting aquatic systems and the recreational fisheries they support, and

2. Reviewing and evaluating the relation of Federal policies and activities to the status and conditions of recreational fishery resources;

c. Providing advice that will assist the Secretaries in fulfilling responsibilities established by the Infrastructure Investment and Jobs Act of 2021, including, but not limited to:

1. Studying the impact of derelict vessels and identifying recyclable solutions for recreational vessels, and

2. Reviewing the study from the Comptroller General of the United States that documents the impacts of nonmotorized vessels on waterway access points and the use of funding sources to improve access issues and provide nonmotorized boating safety programs, and identifying potential recommendations for the Secretaries based on that study;

d. Recommending policies or programs to increase public awareness and support for the Sport Fish Restoration and Boating Trust Fund;

e. Recommending policies or programs that foster conservation, stewardship, and ethical practices in recreational fishing and boating;

f. Recommending policies or programs to address climate change and strengthen climate resilience by protecting and restoring aquatic ecosystems and supporting biodiversity while maintaining or enhancing fishing and boating opportunities;

g. Recommending policies or programs to stimulate and expand angler and boater participation in the conservation and restoration of aquatic resources;

h. Recommending policies and programs to stimulate recreational fishing and boating opportunities for all Americans, and to remove barriers to access for youth, veterans, urban residents, and other underrepresented communities; and

i. Advising how the Secretaries can foster communication, education, and coordination among government, industry, anglers, boaters, and the public.

Council Makeup

The Council may consist of no more than 19 members, including ex officio members. Non-voting ex officio members include:

1. The Director of the U.S. Fish and Wildlife Service;

2. The Director of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration; and

3. The President of the Association of Fish and Wildlife Agencies.

The Secretaries will select the remaining members from among, but not limited to, the organization/interests listed below. Appointed members must be senior-level representatives of their organizations and must have the ability to represent their designated constituencies.

1. State fish and wildlife resource management agencies (two members, one a director of a coastal State, and one a director of an inland State),

2. Saltwater and freshwater recreational fishing organizations,

3. Recreational boating organizations,

4. Recreational fishing and boating industries,

5. Recreational fishery resources conservation organizations,

6. Tribal resource management organizations,

7. Aquatic resource outreach and education organizations, and

8. Recreational fishing and/or boating diversity-based organizations.

Members will be appointed on a staggered term basis for terms that are not to exceed 3 years.

Members of the Council serve without compensation. However, while away from their homes or regular places of business, Council and subcommittee members engaged in Council or subcommittee business that the Designated Federal Official approves may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by 5 U.S.C. 5703, in the same manner as persons employed intermittently in Federal Government service.

Nomination Method and Eligibility

Nominations should include a resume that provides contact information and a description of the nominee's qualifications that would enable the Department of the Interior and the Department of Commerce to make an informed decision regarding the candidate's suitability to serve on the Council. Send nominations to the Designated Federal Officer at the email provided in **ADDRESSES**.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your nomination, you should be aware that your entire nomination—including your personal identifying information—may be made publicly available at any time. While you can ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 5 U.S.C. appendix 2.

David A. Miko,

Acting Assistant Director, Fish and Aquatic Conservation, U.S. Fish and Wildlife Service.

[FR Doc. 2023–07600 Filed 4–10–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_UT_FRN_MO4500169717]

Notice of Public Meetings, Utah Resource Advisory Council, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act, the Federal Advisory Committee Act, and the Federal Lands Recreation Enhancement Act, the U.S. Department of the Interior, Bureau of Land Management's (BLM) Utah Resource Advisory Council (RAC) will meet as indicated below.

DATES: The Utah RAC will hold meetings on August 15, 2023, with a

field tour on August 16, 2023; and November 14, 2023, with a field tour on November 15, 2023. Each meeting will be held in person, with an option for virtual participation on the first day. All meetings will occur from 8 a.m. to 4:30 p.m. The meetings are open to the public.

ADDRESSES: The August 15 meeting will be held at the BLM Utah Green River District Office, 170 South 500 East, Vernal, UT 84078. The August 16 field tour will visit John Jarvie Historic Ranch, Browns Park, Utah. The November 14 meeting will be held at Edge of the Cedars State Park Museum, 660 West 400 North, Blanding, UT 84511. The November 15 field tour will visit Bears Ears National Monument. The agenda and in-person or virtual meeting access information will be posted on the Utah RAC web page 30 days before each meeting at *https://www.blm.gov/get-involved/resource-advisory-council/near-you/utah/RAC.* Participants wishing to virtually attend the meeting should register 24 hours in advance of the start time. Written comments to address the Utah RAC may be sent to the BLM Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, UT 84101, or via email to *BLM_UT_External_Affairs@blm.gov* with the subject line ''Utah RAC Meeting.''

FOR FURTHER INFORMATION CONTACT: Angela Hawkins, Public Affairs Specialist, BLM Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, UT 84101; phone (435) 781–2774; or email *ahawkins@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. Please contact us for reasonable accommodations to participate.

SUPPLEMENTARY INFORMATION: The Utah RAC provides recommendations to the Secretary of the Interior, through the BLM, on a variety of public lands issues. Agenda topics for the August meeting include updates and overview of BLM district and state planning efforts, and other issues as appropriate. Agenda topics for the November meeting include updates and overview of BLM district and statewide planning efforts and other issues as appropriate. The August 16 field tour will commence at 8 a.m. Field tour participants will meet at the BLM Utah Green River District Office. The November 15 field tour will commence at 8 a.m. Field tour participants will meet at the Edge of the Cedars State Park Museum. Members of the public are welcome on field tours but must provide their own transportation and meals. Individuals who plan to attend the field tour must RSVP at least one week in advance of the field tour with the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Additional details about the field tour will be posted to the Utah RAC web page at least two weeks prior to the tour date. A 30-minute public comment period will be from 3 p.m. to 3:30 p.m. on August 15 and November 14. Depending on the number of people wishing to comment, the amount of time for individual oral comments may be limited. Written comments may also be submitted to the BLM Utah State Office at the address listed in the **ADDRESSES** section of this notice. All comments received will be provided to the Utah RAC members.

Public Disclosure of Comments:

Before including your address, phone number, email address, or other personal identifying information in your comment, 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.

Detailed minutes for the Utah RAC meeting will be maintained in the BLM Utah State Office and will be available for public inspection and reproduction during regular business hours within 90 days following the meeting. Minutes will also be posted to the Utah RAC web page.

Meeting Accessibility/Special Accommodations: Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodations. We ask that you contact the person listed in the (see **FOR FURTHER INFORMATION CONTACT**) section of this notice at least 7 business days prior to the meeting to give the Department of the Interior sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

(Authority: 43 CFR 1784.4–2.)

Lance C. Porter,

Acting State Director.

[FR Doc. 2023–07595 Filed 4–10–23; 8:45 am]

BILLING CODE 4331–25–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_NV_FRN_MO4500169110]

Notice of Competitive Offer and Notice of Segregation for Solar Energy Development on Public Land, Nye County, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM), Pahrump Field Office will accept competitive bids on four parcels of public lands in Nye County, Nevada, for photovoltaic solar energy development: two parcels located within the Amargosa Valley Solar Energy Zone offered for lease, and two parcels to determine preferred right-of-way applicants. The BLM also announces the segregation of the two parcels of public lands outside the Amargosa Valley Solar Energy Zone from appropriation under the public land laws, including the Mining Law, but not the Mineral Leasing or Material Sales Acts, for a period of 2 years from the date of publication of this notice, subject to valid existing rights. This segregation will facilitate the orderly administration of the public lands while the BLM considers potential solar development on the two described parcels.

DATES: The BLM will hold the competitive live auction on June 27, 2023, at 10:00 a.m. local time for the two parcels located in the Amargosa Solar Energy Zone, and at 1:00 p.m. local time for the remaining two parcels.

The segregation for the lands identified in this notice is effective on April 11, 2023.

ADDRESSES: The auction will be held at the BLM Southern Nevada District Office, 4701 North Torrey Pines Drive, Las Vegas, Nevada 89130.

FOR FURTHER INFORMATION CONTACT: Beth Ransel, Supervisory Project Manager, at (702) 515–5000 or *BLM_NV_SND_EnergyProjects@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 BLM Pahrump Field Office has received a high level of interest in development of

solar energy projects in the northwest area of the Pahrump Field Office, including numerous expressions of interest and submittal of fifteen applications for proposed solar energy development projects. In response to this interest, the BLM is proceeding with a competitive offering for four parcels of public land in Nye County, Nevada: two parcels for lease within the Amargosa Valley Solar Energy Zone, and two parcels to determine preferred right-of-way applicants.

Information: Parcel A and Parcel B

The BLM is conducting a competitive process to lease two parcels of land described as Parcel A and Parcel B, consisting of approximately 7,226 acres of public lands in the Amargosa Valley Solar Energy Zone (N–98822). The parcels are legally described as follows:

Parcel A

Mount Diablo Meridian, Nevada

T. 13 S., R. 47 E.
Sec. 35, NE¼NE¼SW¼, N½NW¼NE¼SW¼, SE¼NW¼NE¼SW¼, SE¼NE¼SW¼, NE¼SE¼SW¼, and SE¼;
Sec. 36, NE¼NE¼NW¼, S½NW¼NW¼, S½NW¼, and S½, those portions lying southwesterly of the southwesterly boundary of right-of-way CC–018078 (U.S. Hwy. 95).
T. 14 S., R. 47 E., unsurveyed.
Sec. 8, NE¼NE¼ and E½SE¼NE¼;
Sec. 9, N½, N½SW¼, N½SW¼SW¼, N½SW¼SW¼SW¼, SE¼SW¼SW¼SW¼, SE¼SW¼SW¼, SE¼SW¼, and SE¼;
Sec. 10, 11, 13, and 14, those portions lying southwesterly of the southwesterly boundary of right-of-way CC–018078 (U.S. Hwy. 95);
Sec. 15;
Sec. 16, NE¼, NE¼NW¼, NE¼NW¼NW¼, N½SE¼NW¼NW¼, SE¼SE¼NW¼NW¼, SE¼NW¼, N½NE
SW¼, SE¼NE¼SW¼, and SE¼;
Sec. 21, NE¼NE¼, E½NW¼NE¼, and SE¼NE¼;
Sec. 22, N½;
Sec. 23, N½;
Sec. 24, W½NE¼, and NW¼, those portions lying southwesterly of the southwesterly boundary of right-of-way CC–018078 (U.S. Hwy. 95):

The areas described contain approximately 3,775 acres, more or less, based on GIS information.

Parcel B

Mount Diablo Meridian, Nevada

T. 14 S., R. 47 E., unsurveyed.
Sec. 21, E½NE¼SE¼;
Sec. 22, N½SW¼, N½SW¼SW¼, SE¼SW¼SW¼, SE¼SW¼, and SE¼;
Sec. 23, S½;
Sec. 24, SW¼, and W½SE¼, those portions lying southwesterly of the southwesterly boundary of right-of-way CC–018078 (U.S. Hwy. 95);
Sec. 25, W½NE¼ and W½;
Sec. 26;
Sec. 27, NE¼, NE¼NW¼, NE¼NW¼NW¼, N½SE¼NW¼, SE¼SE¼NW¼, NE¼NE¼SW¼, N½SE¼, N½SW¼SE¼, SE¼SW¼SE¼, and SE¼SE¼;
Sec. 34, NE¼NE¼, NE¼NW¼NE¼, and E½SE¼NE¼;
Sec. 35, N½, N½SW¼, NE¼SW¼SW¼, SE¼SW¼, and SE¼;
Sec. 36, NW¼, N1/2SW¼, SW¼SW¼, and N½SE¼SW¼, and SW¼SE¼SW¼.
T. 15 S., R. 47 E., unsurveyed.
Sec. 1, NW¼NW¼NW¼;
Sec. 2, N½NE¼NE¼, SW¼NE¼NE¼, NW¼NE¼, N½SW¼NE¼, N½NE¼NW¼, and SE¼NE¼NW¼.

The areas described contain approximately 3,451 acres, more or less, based on GIS information.

Any lease issued will be subject to the terms and conditions specified in 43 CFR 2809.18, any additional requirements identified in the site-specific environmental review documentation, and the following project-specific stipulations:

1. The lessee will be required to comply with all policies, procedures, and requirements identified in the Record of Decision for the Programmatic Environmental Impact Statement for Solar Energy Development in Six Southwestern States (2012) (Solar PEIS).

2. The lessee will be required to comply with and apply all applicable programmatic design features, including those design features specifically identified for the Amargosa Valley Solar Energy Zone, in accordance with the Las Vegas Resource Management Plan, as amended by the Solar PEIS.

3. The lessee will be required to comply with the Las Vegas Resource Management Plan, as amended.

4. A notice to proceed for ground disturbing activities will not be authorized until site-specific resource surveys and National Environmental Policy Act of 1969 compliance are completed.

5. A notice to proceed will not be authorized until a Regional Mitigation Strategy for the Amargosa Valley Solar Energy Zone has been completed and identified mitigation-related fee payments have been made. Funding for the strategy will be provided by all leaseholders within the Amargosa Valley Solar Energy Zone.

6. Site specific mitigation measures (including payment of mitigation-related fees), required plans, and best management practices will be attached as conditions of approval for each activity authorized on a lease.

7. The lessee will be required to pay mitigation-related fees, including those that will be identified through development of the Regional Mitigation Strategy.

8. The lessee will be required to comply with all local, State, and Federal laws and requirements, including but not limited to, the Endangered Species Act, the National Historic Preservation Act, the Migratory Bird Treaty Act, and the Bald and Golden Eagle Protection Act, and will be required to obtain all other required permits for the project.

In accordance with 43 CFR 2809.17(b), ''We may offer the lease to the next highest qualified bidder if the successful bidder does not execute the lease. . . .'' The competitively offered leases are included in the bid package posted at: *https://eplanning.blm.gov/eplanning-ui/project/2019939/510;* lease language will not be modified prior to issuance, unless otherwise required by law. If the successful bidder fails to execute the lease, it will be considered a default and BLM will follow default procedures as described in this Notice.

Information: Parcel 1 and Parcel 2

The BLM is conducting a competitive process to determine preferred applicants to submit right-of-way applications and plans of development for two parcels of land described as Parcel 1 and Parcel 2, consisting of approximately 16,449 acres of public lands. The parcels are legally described as follows—

Parcel 1 (N–101259)

Mount Diablo Meridian, Nevada

T. 15 S., R. 49 E.,
Secs. 20, 21, and 22;
Sec. 23, SW¼NE¼, S½NW¼, and S½;
Sec. 24, SW¼ and S½SE¼, those portions lying westerly of the westerly boundary of right-of-way NVCC–0018323 (State Route 373);
Sec. 25, that portion lying westerly of the westerly boundary of right-of-way NVCC–0018323 (State Route 373);
Secs. 26 thru 29;

Sec. 32, NE¼, NE¼NW¼, and NE¼SE¼;
Secs. 33, 34, and 35;
Sec. 36, that portion lying westerly of the westerly boundary of right-of-way NVCC–0018323 (State Route 373).
T. 16 S., R. 49 E.,
Sec. 1, that portion lying westerly of the westerly boundary of right-of-way NVCC–0018323 (State Route 373);
Secs. 2 and 3;
Sec. 4, NE¼, NE¼NW¼, and NE¼SE¼.

The area described contains 10,129 acres, more or less, according to the BLM National PLSS CadNSDI, and the official plats of the surveys of the said lands, on file with the BLM.

Parcel 2 (N–101257)

Mount Diablo Meridian, Nevada

T. 16 S., R. 48 E.,
Sec. 1;
Sec. 2, E½;
Sec. 11, E½;
Sec. 12;
Sec. 13, N½NE¼, SW¼NE¼, W½, and NW¼SE¼;
Sec. 14, W½NE¼ and W½.
T. 16 S., R. 49 E.,
Sec. 5, W½;
Secs. 6 and 7;
Sec. 8, W½ and SE¼;
Sec. 9, SW¼SW¼;
Sec. 16, NE¼NE¼, S½NE¼, W½, and SE¼;
Sec. 17;
Sec. 18, N½NE¼ and N½NW¼.

The area described contains 6,320 acres, according to the official plats of the surveys of the said lands, on file with the BLM.

The competitive offering for Parcel 2 includes a restriction limiting the solar field area (arrays) proposed in the application filed by the Preferred Applicant, as shown on the map located in the bid package found at *https://eplanning.blm.gov/eplanning-ui/project/2019939/510.* The application submitted by the preferred applicant for Parcel 2, if any, may not propose solar field siting (arrays) outside of the specified area.

Within 30 days of being identified as the successful bidder, the successful bidder must submit a right-of-way application that conforms with all application requirements found at 43 CFR 2804.12, including payment of the required application fee. Within 60 days of being identified as the successful bidder, the successful bidder must submit a plan of development that conforms with the BLM's Solar Energy Plan of Development template. The preferred right-of-way applicant will be required to reimburse the United States for the cost of processing an application consistent with the requirements of the regulations at 43 CFR 2804.14. The cost recovery fees are based on the amount of time the BLM estimates it will take to process the right-of-way application and issue a decision. The BLM will begin processing the right-of-way application once the cost recovery fees are received as required by the regulations. Processing of the right-of-way application will be done in accordance with applicable law, regulations, and policy. Additional fees may be required as part of approval of a right-of-way grant, including mitigation-related fees.

In accordance with 43 CFR 2804.30(g), ''Grant approval is not guaranteed by winning the subject bid and is solely at the BLM's discretion.''

Auction Information

As provided for in 43 CFR 2804.30(b) and 2809.13(a), bidding will occur in a competitive auction conducted in-person. The auction will be open to the public if there is sufficient room capacity, and the event may be live-streamed. More information will be made available at *https://eplanning.blm.gov/eplanning-ui/project/2019939/510.* Interested bidders are required to pre-register no later than two weeks prior to the scheduled auction to allow sufficient time for the BLM to verify qualifications. Under the requirements of 43 CFR 2803.10, qualified bidders must be:

- An individual, association, corporation, partnership, or similar business entity, or a Federal agency, or State, Tribal, or local government;
- Technically and financially able to construct, operate, maintain, and terminate the use of the public lands being applied for; and
- Of legal age and authorized to do business in Nevada.

Technical and financial capability may be demonstrated by:

- Providing documentation of any successful experience in construction, operation, and maintenance of a similar sized solar facility on either public or non-public lands; and
- Providing documentation on the availability of sufficient capitalization to carry out development, including the preliminary study stage of the project and the environmental review and clearance process.

Pre-registered bidders will be confirmed and assigned a bidder number before the auction commences. Complete details and frequently asked questions on the screening and bidding process can be found online at: *https://eplanning.blm.gov/eplanning-ui/project/2019939/510.*

The BLM has determined a minimum acceptable bid for each parcel. The minimum bid represents ten percent of the rent value of the land for one year under the BLM's solar rental schedule and an administrative fee of approximately $3.00 per acre to cover the BLM's costs of preparing and conducting the competitive offer. The minimum bid amount was rounded up to the nearest thousand dollar value. Minimum bids for the four parcels are: Parcel A—$17,000; Parcel B—$16,000; Parcel 1—$45,000; Parcel 2—$28,000. The competitive offer will start at the minimum bid and bidders may raise with subsequent bonus bids. The bonus bid consists of any dollar amount that a bidder wishes to bid in addition to the minimum bid. The bidder with the highest total bid (minimum and bonus bid) at the close of the auction will be declared the successful bidder for the parcel. If you are the successful bidder, the BLM will offer you a lease (Parcels A or B) or select you as the preferred right-of-way applicant (Parcel 1 or 2) only if you: (1) satisfy the qualifications in 43 CFR 2803.10; (2) make the required payments listed in this Notice; and (3) do not have any trespass action pending against you for any activity on BLM-administered lands or have any unpaid debts owed to the Federal Government.

If you are the successful bidder, payment of the minimum bid and at least 20 percent of the winning bonus bid must be submitted to the BLM Southern Nevada District Office by the close of business on the day following the auction. Within 15 calendar days after the auction, you must pay the balance of the bonus bid, and for Parcels A and B the successful bidder must also submit the first 12 months acreage rent (rent payment will be applied to first 12 months acreage rent if you become the lessee).

If no bids are received for a parcel, the BLM may choose to make the lands available through the non-competitive application process found in 43 CFR 2803, 2804, and 2805, or by competitive process at a later date.

Any required payments must be submitted by personal check, cashier's check, certified check, bank draft (wire transfer or ACH), or money order, or by other means deemed acceptable by the BLM, payable to the Department of the Interior—Bureau of Land Management. The administrative fee portion of the minimum bid will be retained by the agency to recover administrative costs for conducting the competitive bid and

related processes. The remainder of the minimum bid and bonus bid will be deposited with the U.S. Treasury. Neither amount will be returned or refunded to the successful bidder(s) under any circumstance.

Only interests in issued right-of-way grants or leases are assignable under the regulations at 43 CFR 2807.21. The interest acquired by the successful bidder or preferred applicant from this auction may not be assigned or sold to another party prior to the issuance of a right-of-way grant or lease. The successful bidder may, however, continue to pursue their application if the successful bidder becomes a wholly owned subsidiary of a new third party.

Section 50265(b)(1) of the Inflation Reduction Act (codified at 43 U.S.C. 3006(b)(1)) conditions the issuance of rights-of-way for wind or solar energy development on public lands on (1) the BLM having held an onshore oil and gas lease sale during the 120-day period before the issuance of the wind or solar energy development right-of-way on public lands, and (2) the BLM having offered—in the one-year period preceding the date of the issuance of the wind or solar lease or grant—the lesser of 2 million acres or 50 percent of the oil and gas acreage for which expressions of interest had been submitted in that year. For Parcels A and B, the BLM will ensure compliance with these provisions prior to issuing the solar development right-of-way lease to the successful bidder, if any. For Parcels 1 and 2, the BLM will ensure compliance with these provisions prior to issuance of solar energy development right-of-way grants, should solar development be approved in the future.

Default Procedures

If the requirements listed in this Notice are not satisfied by the successful bidder as described, it will be considered default, and the BLM will keep all money that has been submitted and will not offer that bidder a right-of-way lease (Parcels A and B) or identify that bidder as the preferred ROW applicant (Parcels 1 and 2). In that event, the BLM may identify the next highest bidder as the successful bidder (then follow procedures in this Notice for the successful bidder) or re-offer the lands through another competitive process.

If a bidder is the apparent successful bidder with respect to multiple parcels and that bidder fails to meet the requirements described in this Notice resulting in default on any single parcel, the BLM will cancel all parcels to that bidder and will keep all money that has been submitted.

Segregation—Parcel 1 and Parcel 2

Regulations found at 43 CFR 2091.3–1(e) and 2804.25(f) allow the BLM to segregate public lands for potential rights-of-way when initiating a competitive process for solar energy development from the operation of the public land laws, including the Mining Law, by publication of a **Federal Register** notice. The BLM uses this authority to preserve its ability to approve, approve with modifications, or deny proposed rights-of-way and to facilitate the orderly administration of the public lands. This segregation is subject to valid existing rights, including existing mining claims located before this segregation notice. Licenses, permits, cooperative agreements, or discretionary land use authorizations of a temporary nature that would not impact lands identified in this notice may be allowed with the approval of a BLM authorized officer during the segregation period. As provided in the regulations, the segregation of lands described in this notice as Parcel 1 and Parcel 2 will not exceed 2 years from the date of publication unless extended for an additional 2 years through publication of a new notice in the **Federal Register**. The segregation period will terminate and the land will automatically reopen to appropriation under the public land laws, including the mining law, at the earliest of the following dates: upon issuance of a decision by the authorized officer granting, granting with modifications, or denying the application for a right-of-way; without further administrative action at the end of the segregation provided for in the **Federal Register** notice initiating the segregation; or upon publication of a **Federal Register** notice terminating the segregation. Upon termination of the segregation of these lands, all lands subject to this segregation would automatically reopen to appropriation under the public land laws, including the mining law.

Joseph Varner,

Acting Field Manager—Pahrump Field Office.

[FR Doc. 2023–07568 Filed 4–10–23; 8:45 am]

BILLING CODE 4331–21–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1357]

Certain Electronic Anti-Theft Shopping Cart Wheels, Components Thereof and Systems Containing the Same; 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 March 8, 2023, under section 337 of the Tariff Act of 1930, as amended, on behalf of Gatekeeper Systems, Inc. of Foothill Ranch, California. The complaint 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 electronic anti-theft shopping cart wheels, components thereof, and systems containing the same by reason of the infringement of certain claims of U.S. Patent No. 8,463,540 (''the '540 Patent''), U.S. Patent No. 9,091,551 (''the '551 Patent''), U.S. Patent No. 9,637,151 (''the '151 Patent''), U.S. Patent No. 11,230,313 (''the '313 Patent''), and U.S. Patent No. 11,358,621 (''the '621 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 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: Katherine Hiner, Office of Docket Services, U.S. International Trade Commission, telephone (202) 205–1802.

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 April 5, 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 claims 1, 2, 6–9, 11, 12, 14, 19, 22, 35, 41, 44, 45, and 47 of the '540 patent; claims 6, 8, 10, 13, 14, 17, 18, 21, and 22 of the '551 patent; claim 15 of the '151 patent; claims 1, 8, 13, and 23 of the '313 patent; and claims 1, 13, 15, 20, and 25 of the '621 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: ''anti-theft tracking systems for shopping carts that include (1) a wheel assembly that includes a braking mechanism and transceivers for transmitting and receiving RF signals; (2) a transmitter placed at a store checkout area for transmitting RF signals to the wheel assembly; and (3) a transceiver placed at a store exit for transmitting and receiving RF signals to and from the wheel assembly'';

(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 complainant is: Gatekeeper Systems, Inc., 90 Icon, Foothill Ranch, CA 92610

(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: Rocateq International B.V., Ebweg 2, Barendrecht, 2991LT, The Netherlands; Rocateq USA, LLC, 551 5th Street, Unit D/2, San Fernando, CA 91340; Zhuhai Rocateq Technology Company Ltd. D, 3rd Floor 1# Factory 8, Chuang Xin Liu Road Xiangzhou District, Zhuhai, Guangdong, 519085 China

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

The Office of Unfair Import Investigations will not be participating as a party in this investigation.

Responses to the complaint and the notice of institution 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 complainant of the complaint and the notice of institution of investigation. Extensions of time for submitting responses to the complaint and the notice of institution 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: April 5, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–07523 Filed 4–10–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1270]

Certain Casual Footwear and Packaging Thereof; Notice of a Commission Determination To Review in Part a Final Initial Determination Finding No Violation; Request for Written Submissions on the Issues Under Review, Remedy, Bonding, and the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (''Commission'') has determined to review in part a final initial determination (''ID'') issued by the presiding administrative law judge (''ALJ'') finding no violation of section 337 and to solicit briefing from the parties on the issues under review, as well as briefing from the parties, interested government agencies, and any other interested parties on the issues of remedy, bonding, and the public interest.

FOR FURTHER INFORMATION CONTACT: Carl P. Bretscher, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2382. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on July 9, 2021, based on a complaint filed by Crocs, Inc. of Broomfield, Colorado (''Crocs''). 86 FR 36303–304 (July 9, 2021). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), in the importation into the United States, sale for importation, or sale in the United States after importation of certain casual footwear and packaging thereof by reason of infringement, false designation of origin, and dilution of one of more of U.S. Trademark Registration Nos. 5,149,328; 5,273,875 (collectively, the ''3D Marks''); and 3,836,415 (''the Word Mark'') (all collectively, ''the Asserted Marks''). *Id.* The complaint alleges that a domestic industry exists, and that the threat or effect of certain alleged violations is to destroy or substantially injure an industry in the United States. *Id.*

The Commission's notice of investigation named numerous respondents, including: Hobby Lobby Stores, Inc. of Oklahoma City, Oklahoma (''Hobby Lobby''); Quanzhou ZhengDe Network Corp. d/b/a Amoji of

Quanzhou, Fujian Province, China (''Amoji''); Skechers USA, Inc. of Manhattan Beach, California (''Skechers''); SG Footwear Meser Grp. Inc. a/k/a S. Goldberg & Co. of Hackensack, New Jersey (''SG Footwear''); Cape Robbin Inc. of Pomona, California (''Cape Robbin''); Dr. Leonard's Healthcare Corp. d/b/a Carol Wright of Edison, New Jersey (''Dr. Leonard's''); Fullbeauty Brands Inc. d/b/a Kingsize of New York, New York (''Fullbeauty''); Legend Footwear, Inc. d/b/a/Wild Diva of City of Industry, California (''Wild Diva''); Fujian Huayuan Well Import and Export Trade Co., Ltd. of Fuzhou, Fujian Province, China (''Fujian''); Yoki Fashion International LLC of New York, New York (''Yoki''); Bijora, Inc. d/b/a Akira of Chicago, Illinois (''Akira''); Hawkins Footwear, Sports, Military & Dixie Store of Brunswick, Georgia (''Hawkins''); Shoe-Nami Inc. of Gretna, Louisiana (''Shoe-Nami''); PW Shoes, Inc. a/k/a P&W of Maspeth, New York (''PW''); 718Closeouts of Brooklyn, New York (''718Closeouts''); Crocsky of Austin, Texas (''Crocsky''); Hobibear Shoes and Clothing Ltd. of Brighton, Colorado (''Hobibear''); Ink Tee of Los Angeles, California (''Ink Tee''); Maxhouse Rise Ltd. of Hong Kong, China (''Maxhouse''); La Modish Boutique of West Covina, California (''La Modish''); Loeffler Randall Inc. of New York, New York (''Loeffler Randall''); Star Bay Group Inc. of Hackensack, New Jersey (''Star Bay''); and Royal Deluxe Accessories, LLC of New Providence, New Jersey (''Royal Deluxe''). The Office of Unfair Import Investigations (''OUII'') is also participating as a party.

On November 17, 2021, the Commission amended the complaint and notice of investigation to add certain new respondents, including Orly Shoe Corp. of New York, New York (''Orly''); Mould Industria de Matrizes Ltda. d/b/a/Boaonda of Brazil (''Boaonda''); Dongguan Eastar Footwear Enterprises Co., Ltd. of Guangzhou City, China (''Eastar''); KGS Sourcing Ltd. of Hong Kong, China (''KGS''); Fujian Wanjiaxin Industrial Developing, Inc. a/k/a Fujian Wanjiaxin Light Industrial Developing, Inc. of Quanzhou City, China (''Wanjiaxin''); Jinjiang Anao Footwear Co., Ltd. (''Anao''); Walmart Inc. of Bentonville, Arkansas (''Walmart''); and Huizhou Xinshunzu Shoes Co., Ltd. of Huizhou City, China (''Huizhou''), and to terminate the investigation with respect to Crocsky, Hobibear, and Ink Tee. Order No. 30 (Oct. 21, 2021), *unreviewed by* Comm'n Notice (Nov. 17, 2021).

The Commission subsequently terminated the investigation with respect to various respondents on the basis of settlement agreements or consent orders. *See* Order No. 12 (Aug. 11, 2021) (terminating Skechers), *unreviewed by* Comm'n Notice (Aug. 24, 2021); Order No. 16 (Aug. 26, 2021) (SG Footwear) and Order No. 17 (Aug. 26, 2021) (Cape Robbin), *unreviewed by* Comm'n Notice (Sept. 24, 2021); Order No. 20 (Sept. 1, 2021) (Dr. Leonard's), *unreviewed by* Comm'n Notice (Sept. 29, 2021); Order No. 22 (Sept. 9, 2021) (Fullbeauty) and Order No. 23 (Sept. 9, 2021) (Wild Diva), *unreviewed by* Comm'n Notice (Oct. 7, 2021); Order No. 24 (Sept. 17, 2021) (Fujian), *unreviewed by* Comm'n Notice (Oct. 7, 2021); Order No. 25 (Sept. 22, 2021) (Yoki), *unreviewed by* Comm'n Notice (Oct. 7, 2021); Order No. 26 (Sept. 28, 2021) (Akira), *unreviewed by* Comm'n Notice (Oct. 27, 2021); Order No. 27 (Oct. 6, 2021) (Hawkins), *unreviewed by* Comm'n Notice (Oct. 29, 2021); Order No. 32 (Nov. 1, 2021) (Shoe-Nami) and Order No. 33 (Nov. 1, 2021) (PW), *unreviewed by* Comm'n Notice (Nov. 29, 2021); Order No. 34 (Nov. 10, 2021) (718 Closeouts), *unreviewed by* Comm'n Notice (Dec. 6, 2021); Order No. 39 (Jan. 11, 2022) (Eastar), *unreviewed by* Comm'n Notice (Feb. 4, 2022); Order No. 46 (March 3, 2022) (Maxhouse, Wanjiaxin), *unreviewed by* Comm'n Notice (March 18, 2022); Order No. 49 (March 15, 2022) (Boaonda), *unreviewed by* Comm'n Notice (April 1, 2022); Order No. 54 (April 22, 2022) (Royal Deluxe), *unreviewed by* Comm'n Notice (May 17, 2022); Order No. 56 (May 6, 2022) (Loeffler Randall), *unreviewed by* Comm'n Notice (May 27, 2022); Order No. 81 (Sept. 28, 2022) (Walmart), *unreviewed by* Comm'n Notice (Oct. 20, 2022). The Commission also terminated the investigation with respect to KGS for good cause. Order No. 40 (Feb. 1, 2022), *unreviewed by* Comm'n Notice (Feb. 22, 2022).

On June 10, 2022, the Commission found respondents La Modish, Star Bay, Huizhou, and Anao (''Defaulting Respondents'') were in default and waived their rights to appear, to be served with documents, and to contest the allegations in this investigation, pursuant to 19 CFR 210.16(b), 210.17(h). Order No. 58 (May 20, 2022), *unreviewed by* Comm'n notice (June 10, 2022).

On September 13–16, 2022, the ALJ held an evidentiary hearing. On September 30, 2022, Crocs, OUII, and the participating respondents (Orly, Hobby Lobby, and Amoji) filed their respective initial post-hearing briefs. On October 7, 2022, the parties filed their post-hearing reply briefs.

On January 9, 2023, the ALJ issued the subject ID finding no violation of section 337 because: (1) Crocs failed to prove that any of Respondents infringes the 3D Marks; (2) Crocs failed to prove that Orly or Hobby Lobby infringes the Word Mark; (3) Crocs did not prove that any of Respondents has falsely designated the origin (source) of their accused products or caused unfair competition; (4) Crocs did not prove that any of the Respondents diluted any of the Asserted Marks, either by blurring or tarnishment; (5) the 3D Marks are invalid for lack of secondary meaning; and (6) Crocs waived its infringement contentions against Defaulting Respondents. ID at 71–72, 83–86, 148–49. The ID also finds that Crocs has satisfied both the technical and economic prongs of the domestic industry (''DI'') requirement, and it takes no position on injury. *Id.* at 130, 149. The ID further finds that Respondents failed to prove the 3D Marks are invalid as functional or the Word Mark is invalid as generic, and it takes no position on Respondents' ''fair use'' defense. *Id.* at 128–29, 149.

On January 23, 2023, Crocs filed a petition for review of the ID's findings. On the same date, Respondents Orly and Hobby Lobby (''the Orly Respondents'') filed a contingent petition for review of certain findings should the Commission determine to review the ID. Amoji did not join in the Orly Respondents' contingent petition for review or file a petition of its own.

On January 31, 2023, Respondents Orly, Hobby Lobby, and Amoji filed a joint response to Crocs' petition for review, and Crocs filed its response to the Orly Respondents' contingent petition for review. On the same date, OUII filed a response to both of the petitions for review.

Having reviewed the record in this investigation, including the final ID, the parties' petitions, and responses thereto, the Commission has determined to review the ID in part with respect to the ID's findings regarding: (1) Crocs's infringement contentions against the lined versions of Orly's Gators were untimely and waived; (2) the 3D Marks lack secondary meaning, including application of the presumption of validity; (3) Crocs waived its infringement contentions with respect to the Defaulting Respondents; (4) subject matter jurisdiction; (5) likelihood of confusion; (6) false designation of origin; (7) dilution; and (8) the technical and economic prongs of domestic industry. The Commission has determined not to review the remaining findings in the ID.

The parties are asked to provide additional briefing on the following issues under review:

(A) Explain whether the evidence of record demonstrates that the shoes that were allegedly the subject of Orly's first sale practiced the 3D Marks in question, and whether they were the same as the Orly ''Gator'' shoes presently at issue. Explain whether Orly's sales activities satisfies the requirements of a ''first sale'' in this context and its implications for the presumption of validity of the Asserted Marks and the burden of proof. Explain whether the evidence is sufficient to overcome the presumption of validity, if applicable.

(B) Explain whether the infringement contention presented in Crocs' pre-hearing and post-hearing briefs provided sufficient notice and information that Crocs was accusing the lined version of the accused Orly Gator products of infringement. Identify any significant, relevant similarities or differences between the lined and unlined versions of the Orly Gator products for purposes of infringement.

The parties are requested to brief only the discrete issues identified above, with reference to the applicable law and evidentiary record. The parties are not to brief any other issues on review, which have already been adequately presented in the parties' previous filings.

In connection with the final disposition of this investigation, the statute authorizes issuance of: (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease-and-desist orders that could result in the respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843, Comm'n Op. at 7–10 (December 1994).

The statute requires the Commission to consider the effects of any remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and/or cease-and-desist order would have on: (1) the public health and welfare; (2) competitive conditions in the U.S. economy; (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation; and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission's action. *See* Presidential Memorandum of July 21, 2005. 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: Parties to this investigation are requested to file written submissions on the issues identified above in this notice. In addition, the parties, interested government agencies, and any other interested parties are requested to file written submissions on the issues of remedy, the public interest, and bonding. Such initial submissions should include views on the recommended determination by the ALJ on remedy and bonding.

In its initial submission, Complainant is requested to identify the remedy sought, and both Complainant and OUII are requested to submit proposed remedial orders for the Commission's consideration. Complainant is also requested to provide the HTSUS subheadings under which the accused products are imported. Complainant is further requested to supply the names of known importers of the Respondents' products at issue in this investigation. Complainant is also requested to identify and explain, from the record, articles that it contends are ''packaging of'' the subject products, and thus potentially covered by the proposed remedial orders, if imported separately from the subject products. *See* 86 FR 36303–304. Failure to provide this information may result in waiver of any remedy directed to ''packaging of'' the subject products, in the event any violation may be found.

The parties' written submissions and proposed remedial orders must be filed no later than the close of business on April 19, 2023. Reply submissions must be filed no later than the close of business on April 26, 2023. Opening submissions are limited to 50 pages. Reply submissions are limited to 30 pages. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (Mar. 19, 2020). Submissions should refer to the investigation number (''Inv. No. 337–TA–1270'') in a prominent place on the cover page and/or first page. (*See Handbook for Electronic Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The Commission vote for this determination took place on April 5, 2023.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of

Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: April 5, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–07530 Filed 4–10–23; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Asim A. Hameedi, M.D.; Decision and Order

On May 19, 2022, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to Asim A. Hameedi, M.D. (Registrant). Request for Final Agency Action (RFAA), Exhibit (RFAAX) A (OSC), at 1, 3. The OSC proposed the revocation of Registrant's Certificate of Registration No. BH6407919 at the registered address of 213–18 Union Turnpike, Bayside, New York 11364. *Id.* at 1–2. The OSC alleged that Registrant's registration should be revoked and any applications should be denied because Registrant has been ''excluded from participation in all Federal health care programs pursuant to 42 U.S.C. 1320a–7(a).'' *Id.* at 1 (citing 21 U.S.C. 824(a)(5)).

The Agency makes the following findings of fact based on the uncontroverted evidence submitted by the Government in its RFAA dated January 3, 2023.[1] [2]

Findings of Fact

By letter dated February 28, 2022, the Department of Health and Human Services (HHS), Office of Inspector General notified Registrant that he was ''exclude[ed] from participation in all Federal health care programs, as defined in section 1128B(f) of the Social Security Act (Act), for a minimum period of 11 years.'' RFAAX C, at 1. The HHS letter explained that Registrant's exclusion was ''due to [his] felony conviction (as defined in section 1128(i) of the Act) in the United States District Court for the Southern District of New York, of a criminal offense related to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct, in connection with the delivery of a health care item or service, or with respect to any act or omission in a health care program (other than Medicare and a State health care program) operated by, or financed in whole or in part, by any Federal, State or local government agency.'' *Id.* (citing 42 U.S.C. 1320a–7(a)(3) [3]). *Id.* Registrant's exclusion went into effect on March 20, 2022. RFAAX D.

Discussion

Pursuant to 21 U.S.C. 824(a)(5), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (CSA) ''upon a finding that the registrant . . . has been excluded (or directed to be excluded) from participation in a program pursuant to section 1320a–7(a) of Title 42.'' Here, the undisputed record evidence demonstrates that HHS mandatorily excluded Registrant from federal health care programs under 42 U.S.C. 1320a–7(a)(3). RFAAX C, at 1. Accordingly, the Agency will sustain the Government's allegation that Registrant has been excluded from participation in a program pursuant to section 1320a–7(a) of Title 42 and find that the Government has established that a ground exists upon which a registration could be revoked pursuant to 21 U.S.C. 824(a)(5).

Sanction

Where, as here, the Government has established grounds to revoke Registrant's registration, the burden shifts to the registrant to show why he can be entrusted with the responsibility carried by a registration. *Garret Howard Smith, M.D.,* 83 FR 18,882, 18,910 (2018). When a registrant has committed acts inconsistent with the public interest, he must both accept responsibility and demonstrate that he has undertaken corrective measures. *Holiday CVS, L.L.C., dba CVS Pharmacy Nos 219 and 5195,* 77 FR 62,316, 62,339 (2012) (internal quotations omitted). Trust is necessarily a fact-dependent determination based on individual circumstances; therefore, the Agency looks at factors such as the acceptance of responsibility, the credibility of that acceptance as it relates to the probability of repeat violations or behavior, the nature of the misconduct that forms the basis for sanction, and the Agency's interest in deterring similar acts. *See, e.g., Robert Wayne Locklear, M.D.,* 86 FR 33,738, 33,746 (2021).

Here, Registrant did not request a hearing, submit a corrective action plan, respond to the OSC, or otherwise avail himself of the opportunity to refute the Government's case. As such, Registrant has made no representations as to his future compliance with the CSA nor demonstrated that he can be entrusted with registration. Where, in section 824(a)(5) cases, the registrant offers no mitigating evidence upon which the Administrator can analyze the facts, the Agency has consistently held that revocation is warranted. *Washington Bryan, M.D.,* 86 FR 71,924, 71,926 (2021).

The evidence presented by the Government clearly shows that Registrant has been mandatorily excluded from participation in federal health care programs. Accordingly, the Agency will order the revocation of Registrant's registration.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. BH6407919 issued to Asim A. Hameedi, M.D. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1) (formerly 823(f)), I hereby deny any pending application to renew or modify this registration, as well as any other pending application of Asim A. Hameedi, M.D., for registration in New York. This Order is effective May 11, 2023.

Signing Authority

This document of the Drug Enforcement Administration was signed on April 4, 2023, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2023–07507 Filed 4–10–23; 8:45 am]

BILLING CODE 4410–09–P

[1] The RFAA was submitted on February 3, 2022.

[2] Based on a Declaration from a DEA Diversion Investigator, the Agency finds that the Government's service of the OSC on Registrant was adequate. RFAAX B, at 2. Further, based on the Government's assertions in its RFAA, the Agency finds that more than thirty days have passed since Registrant was served with the OSC and Registrant has neither requested a hearing nor submitted a written statement. RFAA, at 2; *see also* 21 CFR 1301.43.

[3] 42 U.S.C. 1320a–7(a)(3) provides that exclusion is mandatory where, as here, an individual has a felony conviction related to health care fraud.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 23–11]

Tiffani D. Shelton, D.O.; Decision and Order

On October 25, 2022, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to Tiffani D. Shelton, D.O. (Respondent). OSC, at 1, 3. The OSC proposed the revocation of Respondent's registration [1] because Respondent is ''without authority to prescribe, administer, dispense, or otherwise handle controlled substances in the State of Florida—the state in which [she is] registered with DEA.'' *Id.* at 2.

Respondent requested a hearing; [2] thereafter, the Government filed and the Administrative Law Judge (hereinafter, ALJ) granted a Motion for Summary Disposition recommending the revocation of Respondent's registration. RD, at 5–6. Respondent did not file exceptions to the RD. Having reviewed the entire record, the Agency adopts and hereby incorporates by reference the entirety of the ALJ's rulings, findings of fact, conclusions of law, and recommended sanction and summarizes and expands upon portions thereof herein.

Findings of Fact

On July 19, 2022, Respondent entered into a voluntarily agreement to withdraw from the practice of medicine in Florida. RD, at 6; ALJX 6, Exhibit B. According to Florida online records, of which the Agency takes official notice, Respondent's Florida medical license is listed as ''VOLUN. WITHDRAW,'' indicating that ''[l]licensee may not practice in Florida while the licensee is under a voluntary withdrawal agreement with the department.'' [3] Florida Department of Health License Verification, *https://mqa-internet.doh.state.fl.us/MQASearchServices/* (last visited date of signature of this Order). Accordingly, the Agency finds that Respondent is not currently licensed to engage in the practice of medicine in Florida, the state in which she is registered with the DEA.

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (CSA) ''upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.'' With respect to a practitioner, the DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *See, e.g., James L. Hooper, M.D.,* 76 FR 71371 (2011), *pet. for rev. denied,* 481 F. App'x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.,* 43 FR 27616, 27617 (1978).[4]

According to Florida statute, ''A practitioner, in good faith and in the course of his or her professional practice only, may prescribe, administer, dispense, mix, or otherwise prepare a controlled substance.'' Fla. Stat. section 893.05(1)(a) (2022). Further, a ''practitioner'' as defined by Florida statute includes ''a physician licensed under chapter 458.'' [5] *Id.* at section 893.02(23).

Here, the undisputed evidence in the record is that Respondent currently lacks authority to practice medicine in Florida. RD, at 8. As discussed above, a person must be a licensed practitioner to dispense a controlled substance in Florida. *Id.* Thus, because Respondent lacks authority to practice medicine in Florida and, therefore, is not authorized to handle controlled substances in Florida, Respondent is not eligible to maintain a DEA registration. *Id.* Accordingly, the Agency will order that Respondent's DEA registration be revoked.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. FS5332818 issued to Tiffani D. Shelton. D.O. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1), I hereby deny any pending applications of Tiffani D. Shelton, D.O., to renew or modify this registration, as well as any other pending application of Tiffani D. Shelton, D.O., for additional registration in Florida. This Order is effective May 11, 2023.

Signing Authority

This document of the Drug Enforcement Administration was signed on April 4, 2023, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this

[1] Certificate of Registration No. FS5332818 at the registered address of 5017 Glenn Drive, New Port Richey, Florida. *Id.* at 1.

[2] The Government argued that the Respondent's request for a hearing was untimely; Respondent argued that the OSC was not properly served and, in the alternative, that the request for a hearing was timely. Administrative Law Judge Exhibit (ALJX) 6, at 3–4; ALJX 7. The ALJ determined, among other things, that Respondent was properly served and that there was good cause to accept the request for a hearing as timely filed. Order Granting the Government's Motion for Summary Disposition, and Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge (Recommended Decision or RD), at 2–5.

[3] Under the Administrative Procedure Act, an agency ''may take official notice of facts at any stage in a proceeding—even in the final decision.'' United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. 556(e), ''[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.'' Accordingly, Respondent may dispute the Agency's finding by filing a properly supported motion for reconsideration of findings of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by email to the other party and to Office of the Administrator, Drug Enforcement Administration at *dea.addo.attorneys@dea.gov.*

[4] This rule derives from the text of two provisions of the CSA. First, Congress defined the term ''practitioner'' to mean ''a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . ., to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.'' 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that ''[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.'' 21 U.S.C. 823(g)(1) (this section, formerly section 823(f), was redesignated as part of the Medical Marijuana and Cannabidiol Research Expansion Act, Pub. L. 117–215, 136 Stat. 2257 (2022)). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, the DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper,* 76 FR at 71371–72; *Sheran Arden Yeates, M.D.,* 71 FR 39130, 39131 (2006); *Dominick A. Ricci, M.D.,* 58 FR 51104, 51105 (1993); *Bobby Watts, M.D.,* 53 FR 11919, 11920 (1988); *Frederick Marsh Blanton,* 43 FR at 27617.

[5] Chapter 458 regulates medical practice and applies to Respondent; it defines a ''physician'' as a person who is licensed to practice medicine in this state.'' *Id.* at section 458.305(4).

document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2023–07498 Filed 4–10–23; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Richard Washinsky, M.D.; Decision and Order

On August 11, 2022, the Drug Enforcement Administration (hereinafter, DEA or Government) issued an Order to Show Cause and Immediate Suspension of Registration (hereinafter, OSC/ISO) to Richard Washinsky, M.D., (hereinafter, Registrant) of Las Vegas, Nevada. Request for Final Agency Action (hereinafter, RFAA), Exhibit (hereinafter, RFAAX) 2, at 1. The OSC/ISO informed Registrant of the immediate suspension of his DEA Certificate of Registration, Control No. BW3227318, pursuant to 21 U.S.C. 824(d), alleging that Registrant's continued registration constitutes '' 'an imminent danger to the public health or safety.' '' *Id.* The OSC/ISO also proposed the revocation of Registrant's registration, alleging that Registrant has ''committed such acts as would render [his] registration inconsistent with the public interest'' and that Registrant is ''without authority to handle controlled substances in the State of Nevada, the state in which [he is] registered with DEA.'' [1] *Id.* at 1, 3 (citing 21 U.S.C. 824(a)(4), 823(g)(1),[2] 824(a)(3)).

The Agency makes the following findings of fact based on the uncontroverted evidence submitted by the Government in its RFAA dated February 6, 2023.[3]

I. Findings of Fact

On March 2, 2022, the Nevada State Board of Pharmacy issued an Order on Show Cause Hearing that immediately suspended Registrant's Nevada controlled substance license. RFAAX 3, Attachment C, at 1–2. On September 7, 2022, the Nevada State Board of Pharmacy issued a Stipulation and Order on Second Order to Show Cause that revoked Registrant's Nevada controlled substance license.[4] RFAAX 3, Attachment F, at 1–2. According to Nevada's online records, of which the Agency takes official notice, Registrant's Nevada controlled substance license is still revoked.[5] Nevada State Board of Pharmacy License Verification, *https://bop.nv.gov/resources/ALL/License_Verification* (last visited date of signature of this Order). Accordingly, the Agency finds that Registrant is not licensed to handle controlled substances in Nevada, the state in which he is registered with the DEA.

The Agency further finds that the Government's evidence shows that Registrant continued to prescribe controlled substances after his Nevada controlled substance license was suspended, with Registrant issuing at least three prescriptions for controlled substances from at least March 4, 2022, through at least July 15, 2022. RFAAX 5, at 3–6, 9–12.

II. Discussion

A. 21 U.S.C. 824(a)(3): Loss of State Authority

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the CSA ''upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.'' With respect to a practitioner, the DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *See, e.g., James L. Hooper, M.D.,* 76 FR 71,371 (2011), *pet. for rev. denied,* 481 F. App'x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.,* 43 FR 27,616, 27,617 (1978).[6]

According to Nevada statute, ''[e]very practitioner or other person who dispenses any controlled substance within this State or who proposes to engage in the dispensing of any controlled substance within this State shall obtain biennially a registration issued by the [State Board of Pharmacy] in accordance with its regulations.'' Nev. Rev. Stat. § 453.226(1) (2022). Further, Nevada statute defines a ''practitioner'' as a ''physician . . . who holds a license to practice his or her profession in this State and is registered pursuant to [the Uniform Controlled Substances Act].'' *Id.* at § 453.123(1). Finally, under Nevada statute, ''dispense'' means ''to deliver a controlled substance to an ultimate user, patient or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling or compounding necessary to prepare the substance for that delivery.'' *Id.* at § 453.056(1).

Here, the undisputed evidence in the record is that Registrant's Nevada

[1] The registered address of Registrant's DEA Certificate of Registration, Control No. BW3227318, is 9010 West Cheyenne Avenue, Las Vegas, Nevada 89129. *Id.* at 2.

[2] Effective December 2, 2022, the Medical Marijuana and Cannabidiol Research Expansion Act, Public Law 117–215, 136 Stat. 2257 (2022) (Marijuana Research Amendments or MRA), amended the Controlled Substances Act (CSA) and other statutes. Relevant to this matter, the MRA redesignated 21 U.S.C. 823(f), cited in the OSC, as 21 U.S.C. 823(g)(1). Accordingly, this Decision cites to the current designation, 21 U.S.C. 823(g)(1), and to the MRA-amended CSA throughout.

[3] Based on the Declarations from two DEA Group Supervisors, the Agency finds that the Government's service of the OSC/ISO on Registrant was adequate. RFAAX 3, at 2–3; RFAAX 4, at 1–2. Further, based on the Government's assertions in its RFAA, the Agency finds that more than thirty days have passed since Registrant was served with the OSC/ISO and Registrant has neither requested a hearing nor submitted a corrective action plan and therefore has waived any such rights. RFAA, at 3; *see also* 21 CFR 1301.43 and 21 U.S.C. 824(c)(2).

[4] The September 7, 2022 Stipulation Order further states ''[Registrant] may not possess (except pursuant to the lawful order of a practitioner), administer, prescribe or dispense a controlled substance until . . . the Board reinstates his certificate of registration.'' *Id.,* at 2–3.

[5] Under the Administrative Procedure Act, an agency ''may take official notice of facts at any stage in a proceeding—even in the final decision.'' United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. 556(e), ''[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.'' Accordingly, Registrant may dispute the Agency's finding by filing a properly supported motion for reconsideration of findings of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by email to the other party and to Office of the Administrator, Drug Enforcement Administration at *dea.addo.attorneys@dea.gov.*

[6] This rule derives from the text of two provisions of the CSA. First, Congress defined the term ''practitioner'' to mean ''a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.'' 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that ''[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.'' 21 U.S.C. 823(g)(1). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, the DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper,* 76 FR at 71,371–72; *Sheran Arden Yeates, M.D.,* 71 FR 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.,* 58 FR 51,104, 51,105 (1993); *Bobby Watts, M.D.,* 53 FR 11,919, 11,920 (1988); *Frederick Marsh Blanton,* 43 FR at 27,617.

controlled substance license is revoked. As discussed above, a physician must hold a controlled substance registration to dispense a controlled substance in Nevada. Accordingly, the Agency finds that Registrant is unauthorized to handle controlled substances in Nevada, the state in which he is registered with the DEA, and is therefore not eligible to maintain a DEA registration. Accordingly, the Agency will order that Registrant's registration be revoked.

B. 21 U.S.C. 823(g)(1): The Five Public Interest Factors

Section 304(a) of the CSA provides that ''[a] registration . . . to . . . dispense a controlled substance . . . may be suspended or revoked by the Attorney General upon a finding that the registrant . . . has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section.'' 21 U.S.C. 824(a). In making the public interest determination, the CSA requires consideration of the following factors:

(A) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(B) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(C) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(D) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(E) Such other conduct which may threaten the public health and safety.

21 U.S.C. 823(g)(1).

The DEA considers these public interest factors in the disjunctive. *Robert A. Leslie, M.D.,* 68 FR 15,227, 15,230 (2003). Each factor is weighed on a case-by-case basis. *Morall* v. *Drug Enf't Admin.,* 412 F.3d 165, 173–74 (D.C. Cir. 2005). Any one factor, or combination of factors, may be decisive. *David H. Gillis, M.D.,* 58 FR 37,507, 37,508 (1993).

While the Agency has considered all of the public interest factors in 21 U.S.C. 823(g)(1),[7] the Government's evidence in support of its *prima facie* case for revocation of Registrant's registration is confined to Factors A, B, and D. *See* RFAA, at 9–11. Moreover, the Government has the burden of proof in this proceeding. 21 CFR 1301.44.

Here, the Agency finds that the Government's evidence satisfies its *prima facie* burden of showing that Registrant's continued registration would be ''inconsistent with the public interest.'' 21 U.S.C. 824(a). The Agency further finds that Registrant failed to provide sufficient evidence to rebut the Government's *prima facie* case.

1. Factor A

In determining the public interest under Factor A, the Agency considers the recommendation of the appropriate state licensing board. Here, the state licensing board has taken disciplinary actions resulting in a loss of state authority, and one of those actions involved a matter that is a bases for the DEA OSC. *See Kenneth Harold Bull, M.D.,* 78 FR 62,666, 62,672 (2013); *see also George M. Douglass, M.D.,* 87 FR 67,497, 67,498 (2022); *John O. Dimowo,* 85 FR 15,800, 15,809 (2020). Specifically, the record shows that the Nevada State Board of Pharmacy revoked Registrant's state controlled substance license following a June 14, 2022 Second Order to Show Cause, which alleged that on March 4, 2022, Registrant prescribed a controlled substance even though his controlled substance license had been immediately suspended two days prior. RFAAX 3, Attachment F, at 2, 21.

In this matter, the Government has presented evidence establishing that Registrant issued three controlled substances prescriptions after his state controlled substance license was suspended: the March 4, 2022, prescription that resulted in the revocation of Registrant's state controlled substance license, and two others issued after the date of the Second Order to Show Cause. RFAAX 5, at 3–6, 9–12. The Nevada State Board of Pharmacy revoked Registrant's Nevada controlled substance license with less record evidence than is available here, and Registrant's Nevada controlled substance license has not since been restored. As such, the Agency finds that Factor A weighs against Registrant's continued registration.

2. Factors B and D

Evidence is considered under Public Interest Factors B and D when it reflects compliance (or non-compliance) with laws related to controlled substances and experience dispensing controlled substances. *See Kareem Hubbard, M.D.,* 87 FR 21,156, 21,162 (2022). In the current matter, the Government has alleged that Registrant has violated both federal and Nevada state law regulating controlled substances. RFAAX 2 (OSC/ISO), at 3. According to the CSA's implementing regulations, a lawful controlled substance order or prescription is one that is ''issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.'' 21 CFR 1306.04(a). Further, Nevada law prohibits the dispensing of controlled substances without a Nevada controlled substance license. Nev. Rev. Stat. § 453.226(1) (2022).

Here, the record demonstrates that Registrant issued at least three controlled substance prescriptions after his Nevada controlled substance license was suspended, conduct in clear violation of Nevada law, which renders Registrant's prescribing outside the usual course of professional practice. As such, the Agency sustains the Government's allegations that Registrant violated 21 CFR 1306.04(a) and Nev. Rev. Stat. § 453.226(1).

In sum, the Agency finds that Factors A, B, and D weigh in favor of revocation of Registrant's registration and thus finds Registrant's continued registration to be inconsistent with the public interest in balancing the factors of 21 U.S.C. 823(g)(1).

III. Sanction

Where, as here, the Government has established grounds to revoke Registrant's registration, the burden shifts to the registrant to show why he can be entrusted with the responsibility carried by a registration. *Garret Howard Smith, M.D.,* 83 FR 18,882, 18,910 (2018). When a registrant has committed acts inconsistent with the public interest, he must both accept responsibility and demonstrate that he has undertaken corrective measures. *Holiday CVS, L.L.C., dba CVS Pharmacy Nos 219 and 5195, 77* FR 62,316, 62,339 (2012) (internal quotations omitted). Trust is necessarily a fact-dependent determination based on individual circumstances; therefore, the Agency looks at factors such as the acceptance of responsibility, the credibility of that acceptance as it relates to the probability of repeat violations or behavior, the nature of the misconduct

[7] As to Factor C, there is no evidence in the record that Registrant has been convicted of an offense under either federal or state law ''relating to the manufacture, distribution, or dispensing of controlled substances.'' 21 U.S.C. 823(g)(1)(C). However, as Agency cases have noted, there are a number of reasons why a person who has engaged in criminal misconduct may never have been convicted of an offense under this factor, let alone prosecuted for one. *Dewey C. MacKay, M.D.,* 75 FR 49,956, 49,973 (2010). Agency cases have therefore found that ''the absence of such a conviction is of considerably less consequence in the public interest inquiry'' and is therefore not dispositive. *Id.* As to Factor E, the Government's evidence fits squarely within the parameters of Factors A, B, and D and does not raise ''other conduct which may threaten the public health and safety.'' 21 U.S.C. 823(g)(1)(E). Accordingly, Factor E does not weigh for or against Registrant.

that forms the basis for sanction, and the Agency's interest in deterring similar acts. *See, e.g., Robert Wayne Locklear, M.D.,* 86 FR 33,738, 33,746 (2021).

Here, Registrant did not request a hearing, submit a corrective action plan, respond to the OSC/ISO, or otherwise avail himself of the opportunity to refute the Government's case. As such, Registrant has made no representations as to his future compliance with the CSA nor demonstrated that he can be entrusted with registration. Moreover, the evidence presented by the Government clearly shows that Registrant violated the CSA and the Agency has found that Registrant is ineligible to maintain a DEA registration. *See supra* at II.A. Accordingly, the Agency will order the revocation of Registrant's registration.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. BW3227318 issued to Richard Washinsky, M.D. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1), I hereby deny any pending applications of Richard Washinsky, M.D., to renew or modify this registration, as well as any other pending application of Richard Washinsky, M.D., for additional registration in Nevada. This Order is effective May 11, 2023.

Signing Authority

This document of the Drug Enforcement Administration was signed on April 4, 2023, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2023–07514 Filed 4–10–23; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Emed Medical Company LLC and Med Assist Pharmacy; Decision and Order

On September 15, 2022, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) proposing to revoke the registrations of and deny any pending applications of Emed Medical Company LLC and Med Assist Pharmacy (collectively Registrants).[1] Request for Final Agency Action (RFAA), Exhibit (RFAAX) 38 (OSC), at 1, 2, 3, 7. The OSC alleged that Registrants materially falsified multiple applications for registration and renewal. *Id.* at 2–6 (citing 21 U.S.C. 824(a)(1)).

The Agency makes the following findings of fact based on the uncontroverted evidence submitted by the Government in its RFAA dated February 10, 2023.[2]

I. Findings of Fact

a. Relationship Between Registrants

The OSC was addressed to both Emed Medical Company LLC and Med Assist Pharmacy. RFAAX 38, at 1. The Agency finds that for the purposes of this matter, Registrants are one and the same. The Missouri ''Registration of Fictitious Name'' documentation provides that Emed Medical Company LLC is the sole owner of Med Assist Pharmacy and identifies Eric Bailey, who is the sole owner and operator of Emed Medical Company LLC, as the point of contact. RFAAX 2; RFAAX 7, at 2. Further, both Agency records and publicly available Missouri records show that Registrants share a registered address and share a President/contact, Eric Bailey. RFAAX 1, at 2–3; RFAAX 3; RFAAX 4; RFAAX 5, at 1–2; RFAAX 6; RFAAX 34, at 1–2.

b. Registrants' Falsified Applications

At all times relevant to this matter (July 2007 through August 2022), the DEA ''Application for Registration Under Controlled Substances Act of 1970'' (Application) asked as a question regarding liability information: ''3. Has the applicant ever surrendered (for cause) or had a state professional license or controlled substance registration revoked, suspended, denied, restricted, or placed on probation, or is any such action pending?'' RFAAX 18, at 1; *see also* RFAAX 19–33, 37.

As part of a settlement agreement with the Missouri State Board of Pharmacy, Eric Bailey, signing on behalf of Emed Medical Products,[3] agreed that Emed's license as a wholesale distributor would be placed on probation for two years beginning on or about January 17, 2003. RFAAX 7, at 1, 6, 9.[4] Despite clear evidence of having had their wholesale distributor license placed on probation, Registrants answered ''No'' to liability question 3 for their initial application with DEA on July 7, 2007, and on each of the sixteen subsequent applications submitted by Registrants annually between 2008 and 2022. RFAAX 18–33, 37.

Moreover, the following events occurred but were never disclosed by Registrants in response to liability question 3 on any of their applications.[5] *See* RFAAX 18–33, 37. On January 28, 2013, the State Board of Pharmacy of South Carolina temporarily suspended Emed Medical Company's pharmacy permit. RFAAX 10, at 1. Further, on January 22, 2019, the State Board of Pharmacy of South Carolina permanently revoked Emed Medical Company's pharmacy permit as a result of, among other things, a criminal

[1] The OSC proposed to revoke Emed Medical Company LLC's Certificate of Registration No. RE0357271 at the registered address of 11551 Adie Road, Maryland Heights, Missouri 63043, and Med Assist Pharmacy's Certificate of Registration No. FM2022008 at the registered address of 11551 Adie Road, Maryland Heights, Missouri 63043.

[2] Based on a Declaration from a DEA Diversion Investigator, the Agency finds that the Government's service of the OSC on Registrants was adequate. RFAAX 39, at 2. Further, based on the Government's assertions in its RFAA, the Agency finds that more than thirty days have passed since Registrants were served with the OSC and Registrants have neither requested a hearing nor submitted a corrective action plan and therefore have waived any such rights. RFAA, at 10; *see also* 21 U.S.C. 824(c)(2); 21 CFR 1301.43.

[3] The record shows that in Missouri, Emed Medical Company does business as Emed Medical Products. RFAAX 16, at 1; (*compare* the registration numbers in RFAAX 7, at 2 *with* RFAAX 16, at 2).

[4] The agreement settled an allegation that Mr. Bailey purchased medication through Emed for his personal use rather than for distribution. *Id.* at 2–3.

[5] On September 14, 2012, Eric Bailey, on behalf of Emed Medical Company, entered into a Consent Agreement with the Maine Board of Pharmacy. RFAAX 9, at 1, 3. The Consent Agreement stated that ''Emed Medical Company admit[ed] to failing to disclose disciplinary action to the Board for [its] initial Wholesaler application,'' and that based on that information, ''the Board voted to preliminarily deny Emed Medical Company's application for licensure as a Wholesaler.'' *Id.* at 1, 2. However, the Consent Agreement also stated that because Emed Medical Company executed the Consent Agreement, ''the Board [would] not deny Emed Medical Company's application . . . and [would] approve the application.'' *Id.* at 2. In the current matter, because there are various other grounds for revocation, the Agency does not have to determine whether the Maine Board of Pharmacy's vote to preliminarily deny was required to be disclosed on Registrants' DEA applications under the circumstances. This information is included here as background information.

conviction.[6] RFAAX 14, at 1, 3. On August 8, 2019, the State of Ohio Board of Pharmacy permanently revoked Emed Medical Company's license as a wholesale distributor of dangerous drugs. RFAAX 15, at 4–5; *see also id.* at 6–9 (May 3, 2019, letter proposing to revoke Emed Medical Company's license). Finally, on December 28, 2020, Registrants entered into settlement agreements with the Missouri Board of Pharmacy that placed both Emed Medical Products' drug distributor permit and Med Assist Pharmacy's pharmacy permit on probation for three years beginning on or about January 23, 2021. RFAAX 16, at 6, 9; RFAAX 35, at 5, 9.

In sum, despite numerous periods of probation, suspension, and revocation in multiple state jurisdictions, Registrants answered ''No'' to liability question 3 on each of the seventeen applications they submitted prior to issuance of the OSC. *See* RFAAX 18–33, 37. As such, the Agency finds that Registrants' answers were clearly false because Registrants, on multiple occasions, had their state controlled substance registrations or licensures placed on probation, suspended, and/or revoked for cause.

II. Discussion

The Administrator may suspend or revoke a registration if a registrant materially falsified an application for registration. 21 U.S.C. 824(a)(1). Here, Registrants provided false information to liability question 3 on each of their seventeen applications—falsely responding that they had never had a state controlled substance registration placed on probation, suspended, and/or revoked for cause. *See* RFAAX 18–33, 37. Agency decisions have repeatedly held that false responses to the liability questions on an application for registration are material. *E.g., Crosby Pharmacy and Wellness,* 87 FR 21,212, 21,214 (2022); *Frank Joseph Stirlacci, M.D.,* 85 FR 45,229, 45,234–35 (2020). Accordingly, the Agency finds that the Government has established grounds to revoke Registrants' registrations and to deny any pending applications of Registrants.

[6] On March 12, 2015, Eric Bailey plead guilty to conspiracy to commit mail and wire fraud after allowing Emed Medical Products' license to be used by a criminal codefendant and facilitating the writing of funds for shipment of pharmaceuticals. RFAAX 12, at 1, 9–10; *see also* RFAAX 11; RFAAX 13. In the current matter, the OSC does not allege that Registrants' failure to disclose this criminal conviction in response to liability question 4 on their various DEA applications constitutes additional incidents of material falsification; instead, these facts are provided as background only and are immaterial to the Agency's decision.

III. Sanction

Where, as here, the Government has established grounds to revoke a registration or deny an application, the burden shifts to the registrants to show why they can be entrusted with the responsibility carried by a registration. *Garret Howard Smith, M.D.,* 83 FR 18,882, 18,910 (2018) (citing *Samuel S. Jackson,* 72 FR 23,848, 23,853 (2007)). The issue of trust is necessarily a fact-dependent determination based on the circumstances presented by the individual registrant; therefore, the Agency looks at factors, such as the acceptance of responsibility and the credibility of that acceptance as it relates to the probability of repeat violations or behavior and the nature of the misconduct that forms the basis for sanction, while also considering the Agency's interest in deterring similar acts. *See Arvinder Singh, M.D.,* 81 FR 8,247, 8,248 (2016).

Here, Registrants did not avail themselves of the opportunity to refute the Government's case or demonstrate why they can be entrusted with registration. Moreover, Registrants repeated their misconduct for years, rendering it particularly egregious. Accordingly, the Agency will order the sanctions requested by the Government, as contained in the Order below.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1) and 824(a)(2), I hereby revoke Emed Medical Company LLC's DEA Certificate of Registration No. RE0357271 and Med Assist Pharmacy's DEA Certificate of Registration No. FM2022008. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1), I hereby deny any pending applications of Emed Medical Company LLC or Med Assist Pharmacy to renew or modify their registrations, as well as any other pending application(s) that they may have for addition registration in Missouri. This Order is effective May 11, 2023.

Signing Authority

This document of the Drug Enforcement Administration was signed on April 4, 2023, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2023–07512 Filed 4–10–23; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Thomas W. Stinson, III, M.D.; Decision and Order

On November 21, 2022, the Drug Enforcement Administration (hereinafter, DEA or Government) issued an Order to Show Cause (hereinafter, OSC) to Thomas W. Stinson, III, M.D. (hereinafter, Registrant). Request for Final Agency Action (hereinafter, RFAA), Exhibit (hereinafter, RFAAX) 2, at 1, 3. The OSC proposed the revocation of Registrant's Certificate of Registration No. AS7987348 at the registered address of 400 W Cummings Park, STE 1825, Woburn, MA 01801. *Id.* at 1. The OSC alleged that Registrant's registration should be revoked because Registrant is ''currently without authority to handle controlled substances in the Commonwealth of Massachusetts, the state in which [he is] registered with DEA.'' *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).

The Agency makes the following findings of fact based on the uncontroverted evidence submitted by the Government in its RFAA dated March 6, 2023.[1]

Findings of Fact

On August 4, 2022, the Massachusetts Board of Registration in Medicine issued an Order of Temporary Suspension that immediately suspended Registrant's Massachusetts medical license. RFAAX 3, Attachment C, at 1. Due to the suspension of Registrant's Massachusetts medical license, on August 17, 2022, the Massachusetts Drug Control Program issued a letter to Registrant terminating Registrant's

[1] Based on the Declaration from a DEA Diversion Investigator, the Agency finds that the Government's service of the OSC on Registrant was adequate. RFAAX 3, at 2–3. Further, based on the Government's assertions in its RFAA, the Agency finds that more than thirty days have passed since Registrant was served with the OSC and Registrant has neither requested a hearing nor submitted a corrective action plan and therefore has waived any such rights. RFAA, at 2–3; RFAAX 3, at 3; *see also* 21 CFR 1301.43 and 21 U.S.C. 824(c)(2).

Massachusetts controlled substance registration (hereinafter, MCSR). RFAAX 3, Attachment D.[2]

According to Massachusetts online records, of which the Agency takes official notice, Registrant's MCSR is terminated.[3] Massachusetts Health Professions License Verification Site, *https://madph.mylicense.com/verification* (last visited date of signature of this Order).[4] Accordingly, the Agency finds that Registrant is not authorized to handle controlled substances in Massachusetts, the state in which he is registered with the DEA.

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (hereinafter, CSA) ''upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.'' With respect to a practitioner, the DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *See, e.g., James L. Hooper, M.D.,* 76 FR 71371 (2011), *pet. for rev. denied,* 481 F. App'x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.,* 43 FR 27616, 27617 (1978).[5]

According to the Massachusetts Controlled Substances Act, ''every person who manufactures, distributes or dispenses, or possesses with intent to manufacture, distribute or dispense any controlled substance within the commonwealth shall . . . register with the commissioner of public health, in accordance with his regulations . . . .'' Mass. Gen. Laws. ch. 94C, § 7(a) (2022). Further, ''[a] prescription for a controlled substance may be issued only by a practitioner who is: (1) authorized to prescribe controlled substances; and (2) registered pursuant to the provisions of [the Massachusetts Controlled Substances Act].'' *Id.* at § 18(a).

Here, the undisputed evidence in the record is that Registrant lacks authority to handle controlled substances in Massachusetts because Registrant's MCSR was terminated. As already discussed, a practitioner must hold a valid controlled substance registration to dispense a controlled substance in Massachusetts. Thus, because Registrant lacks state authority to handle controlled substances, Registrant is not eligible to maintain a DEA registration. Accordingly, the Agency will order that Registrant's DEA registration be revoked.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. AS7987348 issued to Thomas W. Stinson, III, M.D. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1), I hereby deny any pending applications of Thomas W. Stinson, III, M.D., to renew or modify this registration, as well as any other pending application of Thomas W. Stinson, III, M.D., for additional registration in Massachusetts. This Order is effective May 11, 2023.

Signing Authority

This document of the Drug Enforcement Administration was signed on April 4, 2023, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2023–07508 Filed 4–10–23; 8:45 am]

BILLING CODE 4410–09–P

[2] The letter states that Registrant ''is no longer authorized to prescribe, distribute, possess, dispense, or administer controlled substances in the Commonwealth of Massachusetts.'' *Id.* Moreover, on February 2, 2023, the Massachusetts Board of Registration in Medicine issued a Final Decision and Order revoking Registrant's Massachusetts medical license. RFAAX 3, Attachment E, at 1, 6.

[3] Under the Administrative Procedure Act, an agency ''may take official notice of facts at any stage in a proceeding—even in the final decision.'' United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. 556(e), ''[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.'' Accordingly, Registrant may dispute the Agency's finding by filing a properly supported motion for reconsideration of findings of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by email to the other party and to the DEA Office of the Administrator, Drug Enforcement Administration at *dea.addo.attorneys@dea.gov.*

[4] Further, Registrant's Massachusetts medical license is revoked. Massachusetts Board of Registration in Medicine Physician License Verification Site, *https://findmydoctor.mass.gov* (last visited date of signature of this Order).

[5] This rule derives from the text of two provisions of the CSA. First, Congress defined the term ''practitioner'' to mean ''a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.'' 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that ''[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.'' 21 U.S.C. 823(g)(1) (this section, formerly § 823(f), was redesignated as part of the Medical Marijuana and Cannabidiol Research Expansion Act, Pub. L. 117–215, 136 Stat. 2257 (2022)). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, the DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper,* 76 FR at 71371–72; *Sheran Arden Yeates, M.D.,* 71 FR 39130, 39131 (2006); *Dominick A. Ricci, M.D.,* 58 FR 51104, 51105 (1993); *Bobby Watts, M.D.,* 53 FR 11919, 11920 (1988); *Frederick Marsh Blanton,* 43 FR at 27617.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 23–3]

Donn Bullens, J.R., N.P.; Decision and Order

On September 7, 2022, the Drug Enforcement Administration (hereinafter, DEA or Government) issued an Order to Show Cause (hereinafter, OSC) to Donn Bullens, Jr., N.P. (hereinafter, Registrant). Request for Final Agency Action (hereinafter, RFAA), Exhibit (hereinafter, RFAAX) 2 (OSC), at 1, 3. The OSC proposed the revocation of Registrant's Certificate of Registration No. MB4611744 at the registered address of 227 Babcock Street, Brookline, MA 02446. *Id.* at 1. The OSC alleged that Registrant's registration should be revoked because Registrant is ''currently without authority to handle controlled substances in the Commonwealth of Massachusetts, the state in which [he is] registered with DEA.'' *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).

The Agency makes the following findings of fact based on the uncontroverted evidence submitted by

the Government in its RFAA dated February 22, 2023.[1]

Findings of Fact

On September 7, 2021, the Massachusetts Drug Control Program issued a letter to Registrant accepting Registrant's voluntary surrender of his Massachusetts controlled substance registration (hereinafter, MCSR). RFAAX 3, Attachment D.[2] According to Massachusetts online records, of which the Agency takes official notice, Registrant's MCSR was voluntarily surrendered and is expired.[3] Massachusetts Health Professions License Verification Site, *https://madph.mylicense.com/verification* (last visited date of signature of this Order).[4] Accordingly, the Agency finds that Registrant is not authorized to handle controlled substances in Massachusetts, the state in which he is registered with the DEA.

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (hereinafter, CSA) ''upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.'' With respect to a practitioner, the DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *See, e.g., James L. Hooper, M.D.,* 76 FR 71371 (2011), *pet. for rev. denied,* 481 F. App'x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.,* 43 FR 27616, 27617 (1978).[5]

According to the Massachusetts Controlled Substances Act, ''every person who manufactures, distributes or dispenses, or possesses with intent to manufacture, distribute or dispense any controlled substance within the commonwealth shall . . . register with the commissioner of public health, in accordance with his regulations . . . .'' Mass. Gen. Laws. ch. 94C, § 7(a) (2022). Further, ''[a] prescription for a controlled substance may be issued only by a practitioner who is: (1) authorized to prescribe controlled substances; and (2) registered pursuant to the provisions of [the Massachusetts Controlled Substances Act].'' *Id.* at § 18(a).

Here, the undisputed evidence in the record is that Registrant lacks authority to handle controlled substances in Massachusetts because Registrant voluntarily surrendered his MCSR and his MCSR has expired. As already discussed, a practitioner must hold a valid controlled substance registration to dispense a controlled substance in Massachusetts. Thus, because Registrant lacks state authority to handle controlled substances, Registrant is not eligible to maintain a DEA registration. Accordingly, the Agency will order that Registrant's DEA registration be revoked.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. MB4611744 issued to Donn Bullens, Jr., N.P. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1), I hereby deny any pending applications of Donn Bullens, Jr., N.P., to renew or modify this registration, as well as any other pending application of Donn Bullens, Jr., N.P., for additional registration in Massachusetts. This Order is effective May 11, 2023.

Signing Authority

This document of the Drug Enforcement Administration was signed on April 4, 2023, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2023–07501 Filed 4–10–23; 8:45 am]

BILLING CODE 4410–09–P

[1] On November 1, 2022, Registrant represented that he was not served with the OSC until October 21, 2022, and requested a thirty-day extension to determine whether to request a hearing. RFFAX 4, at 1. On November 7, 2022, the Government filed a Notice of Filing of Evidence Regarding Proof of Service agreeing that Registrant had not been served with the OSC until October 21, 2022 and thus that Registrant's extension request was timely. *Id.* On November 7, 2022, Administrative Law Judge Teresa A. Wallbaum (hereinafter, the ALJ) issued an Order Granting in Part [Registrant's] Extension Request to File a Request for Hearing that gave Registrant until 2:00 p.m. on December 5, 2022 to file a Request for Hearing. *Id.* at 1, 3. On December 6, 2022, the ALJ issued an Order Terminating Proceedings, indicating that, as of December 6, 2022, Registrant had not filed anything with the tribunal. RFAAX 5, at 1.

[2] The letter states, ''[u]pon receipt of this letter, you are no longer authorized to prescribe, distribute, possess, dispense or administer controlled substances in Massachussets.'' *Id.* On September 9, 2021, Registrant signed the letter to confirm that he had received it and had voluntarily surrendered his MCSR as of that date. *Id.* Further, on September 9, 2021, the Massachusetts Board of Registration in Nursing issued an Order of Summary Suspension and Notice of Hearing that suspended both Registrant's Massachusetts registered nurse license and Registrant's Massachusetts certified nurse practitioner authorization. RFAAX 3, Attachment E, at 1 and 4.

[3] Under the Administrative Procedure Act, an agency ''may take official notice of facts at any stage in a proceeding—even in the final decision.'' United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. 556(e), ''[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.'' Accordingly, Registrant may dispute the Agency's finding by filing a properly supported motion for reconsideration of findings of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by email to the other party and to the DEA Office of the Administrator, Drug Enforcement Administration at *dea.addo.attorneys@dea.gov.*

[4] Further, both Registrant's Massachusetts registered nurse license and Registrant's Massachusetts certified nurse practitioner authorization are listed as suspended and expired. *Id.*

[5] This rule derives from the text of two provisions of the CSA. First, Congress defined the term ''practitioner'' to mean ''a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.'' 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that ''[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.'' 21 U.S.C. 823(g)(1) (this section, formerly § 823(f), was redesignated as part of the Medical Marijuana and Cannabidiol Research Expansion Act, Pub. L. 117–215, 136 Stat. 2257 (2022)). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, the DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper,* 76 FR at 71371–72; *Sheran Arden Yeates, M.D.,* 71 FR 39130, 39131 (2006); *Dominick A. Ricci, M.D.,* 58 FR 51104, 51105 (1993); *Bobby Watts, M.D.,* 53 FR 11919, 11920 (1988); *Frederick Marsh Blanton,* 43 FR at 27617.

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (BJA) Docket No. 1811]

Meeting of the Global Justice Information Sharing Initiative Federal Advisory Committee

AGENCY: Office of Justice Programs (OJP), Justice.

ACTION: Notice of meeting

SUMMARY: This is an announcement of a meeting of the Global Justice Information Sharing Initiative (Global) Federal Advisory Committee (GAC) to discuss the Global Initiative, as described at *https://bja.ojp.gov/program/it/global.* This meeting will be held in Grand Ballroom at the Bureau of Justice Assistance, 810 7th Street NW, Washington, DC 20531.

DATES: The meeting will take place on Wednesday, May 17, 2023, from 8:30 a.m.–3:30 p.m. ET.

ADDRESSES: This meeting will be held in Grand Ballroom room at the Office of Justice Programs, 810 7th Street NW, Washington, DC 20531, and hosted by the Bureau of Justice Assistance. Approved observers will receive an invitation and instructions for entering the building.

FOR FURTHER INFORMATION CONTACT: Mr. David P. Lewis, Global Designated Federal Official (DFO), Bureau of Justice Assistance, Office of Justice Programs, 810 7th Street, Washington, DC 20531; Phone (202) 616–7829 [note: this is not a toll-free number]; Email: *david.p.lewis@usdoj.gov.*

SUPPLEMENTARY INFORMATION: This meeting is open to the public, however, members of the public who wish to attend this meeting must register with Mr. David P. Lewis at least (7) days in advance of the meeting. Access to the meeting room will not be allowed without prior authorization. All attendees will be required to sign-in and go through security before they will be admitted to the meeting.

Anyone requiring special accommodations should notify Mr. Lewis at least seven (7) days in advance of the meeting.

Purpose: The GAC will act as the focal point for justice information systems integration activities in order to facilitate the coordination of technical, funding, and legislative strategies in support of the Administration's justice priorities.

The GAC will guide and monitor the development of the Global information sharing concept. It will advise the Assistant Attorney General, OJP; the Attorney General; the President (through the Attorney General); and local, state, tribal, and federal policymakers in the executive, legislative, and judicial branches. The GAC will also advocate for strategies for accomplishing a Global information sharing capability. Interested persons whose registrations have been accepted may be permitted to participate in the discussions at the discretion of the meeting chairman and with approval of the Global DFO.

David P. Lewis,

Global DFO, Senior Policy Advisor, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice.

[FR Doc. 2023–07599 Filed 4–10–23; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Reemployment Services and Eligibility Assessments (RESEA) Implementation Study

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Chief Evaluation Office (CEO)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before May 11, 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.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Nicole Bouchet by telephone at 202–693–0213, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The Chief Evaluation Office of the U.S. Department of Labor has contracted with Abt Associates and its partners—the Urban Institute, Capital Research Corporation, and the National Association of State Workforce Agencies—to conduct a five-year evaluation to develop strategies to support the evidence requirements for the Reemployment Services and Eligibility Assessment program that were enacted as part of the Bipartisan Budget Act of 2018 (Pub. L. 115–123). This data collection activity a reinstatement of a previously approved and completed data collection effort. The survey has been administered three times in prior years to state workforce agencies and this will be the fourth wave of the survey. Results from earlier waves documented different changes states were undertaking, particularly during different phases of COVID. Because all other data collection activities have been completed, the burden has decreased to reflect the change. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on January 19, 2023 (88 FR 3439).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–CEO.

Title of Collection: Reemployment Services and Eligibility Assessments (RESEA) Implementation Study.

OMB Control Number: 1290–0029.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 17.

Total Estimated Number of Responses: 17.

Total Estimated Annual Time Burden: 13 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nicole Bouchet,

Senior PRA Analyst.

[FR Doc. 2023–07511 Filed 4–10–23; 8:45 am]

BILLING CODE 4510–26–P

LEGAL SERVICES CORPORATION

Notice to LSC Grantees of Application Process for Making 2023 Mid-Year and 2024 Basic Field Fund Subgrants

AGENCY: Legal Services Corporation.

ACTION: Notice of application dates and format for applications for approval to make 2023 mid-year and 2024 Basic Field Grant fund subgrants.

SUMMARY: The Legal Services Corporation (LSC) is the national organization charged with administering Federal funds provided for civil legal services to low-income people. LSC hereby announces the submission dates for applications to make 2023 mid-year and 2024 Basic Field Grant fund subgrants. LSC is also providing information about where applicants may locate subgrant application questions and directions for providing the information required to apply for a subgrant.

DATES: See **SUPPLEMENTARY INFORMATION** section for application dates.

ADDRESSES: Legal Services Corporation—Office of Compliance and Enforcement, 3333 K Street NW, Third Floor, Washington, DC 20007–3522.

FOR FURTHER INFORMATION CONTACT: Megan Lacchini, Office of Compliance and Enforcement at *lacchinim@lsc.gov* or (202) 295–1506 or visit the LSC website at *http://www.lsc.gov/grants-grantee-resources/grantee-guidance/how-apply-subgrant.*

SUPPLEMENTARY INFORMATION: Under 45 CFR part 1627, LSC must publish, on an annual basis, ''notice of the requirements concerning the format and contents of the application annually in the **Federal Register** and on LSC's website.'' 45 CFR 1627.4(b). This Notice and the publication of the Subgrant Application on LSC's website satisfy § 1627.4(b)'s notice requirement for the Basic Field Grant program. Only current or prospective recipients of LSC Basic Field Grants may apply for approval to subgrant these funds.

Applications for approval to make 2023 mid-year and calendar year 2024 Basic Field Grant fund subgrants will be available on or around April 14, 2023. An applicant must apply to make a mid-year subgrant of LSC Basic Field Grant funds through GrantEase at least 45 days before the subgrant's proposed effective date. 45 CFR 1627.4(b)(2). An applicant must apply to make calendar year subgrants of 2024 Basic Field Grant funds through GrantEase in conjunction with its application(s) for 2024 Basic Field Grant funding. 45 CFR 1627.4(b)(1). The deadline for 2024 Basic Field Grant funding application submissions is June 1, 2023.

All applicants must provide answers to the application questions in GrantEase and upload the following documents:

- A draft subgrant agreement (with the required terms provided in LSC's Subgrant Agreement Template); and
- A subgrant budget (using LSC's Subgrant Budget Template).

Applicants seeking to subgrant to a new subrecipient that is not a current LSC grantee, or to renew a subgrant with an organization that is not a current LSC grantee in a year in which the applicant is required to submit a full funding application, must also upload:

- The subrecipient's accounting manual;
- The subrecipient's most recent audited financial statements;
- The subrecipient's current cost allocation policy (if not in the accounting manual); and
- The recipient's 45 CFR part 1627 Policy (required under 45 CFR 1627.7).

A list of subgrant application questions, the Subgrant Agreement Template, and the Subgrant Budget Template are available on LSC's website at *http://www.lsc.gov/grants-grantee-resources/grantee-guidance/how-apply-subgrant.*

LSC encourages applicants to use LSC's Subgrant Agreement Template as a model subgrant agreement. If the applicant does not use LSC's Template, the proposed agreement must include, at a minimum, the substance of the provisions of the Template.

Once submitted, LSC will evaluate the application and provide applicants with instructions on any needed modifications to the submitted documents or Draft Agreement provided with the application. The applicant must then upload a final and signed subgrant agreement through GrantEase by the date requested.

As required by 45 CFR 1627.4(b)(3), LSC will inform applicants of its decision to disapprove or approve an application for a 2023 mid-year subgrant no later than the subgrant's proposed effective date. As required by 45 CFR 1627.4(b)(1)(ii), LSC will inform applicants of its decision to disapprove or approve a 2024 calendar-year subgrant no later than the date LSC informs applicants of LSC's 2024 Basic Field Grant funding decisions.

Authority: 42 U.S.C. 2996g(e).

Dated: April 6, 2023.

Stefanie Davis,

Senior Associate General Counsel for Regulations.

[FR Doc. 2023–07596 Filed 4–10–23; 8:45 am]

BILLING CODE 7050–01–P

OFFICE OF MANAGEMENT AND BUDGET

Initial Proposals for Updating OMB's Race and Ethnicity Statistical Standards—Extension of Public Comment Period

AGENCY: Office of Information and Regulatory Affairs, Office of Management and Budget, Executive Office of the President.

ACTION: Notice of extension of public comment period.

SUMMARY: On January 27, 2023, the Office of Management and Budget (OMB) published a notice and request for comments entitled ''Initial Proposals for Updating OMB's Race and Ethnicity Statistical Standards.'' OMB is extending the public comment period announced in that notice, which currently closes on April 12, 2023, by 15 days. The comment period will now remain open until April 27, 2023, to allow additional time for the public to review and comment on the initial proposals.

DATES: With the extension provided by this notice, comments on the ''Initial Proposals for Updating OMB's Race and Ethnicity Statistical Standards,'' 88 FR 5375, must be provided in writing to OMB no later than April 27, 2023, to ensure consideration during the final decision-making process.

ADDRESSES: Please submit comments via *https://www.regulations.gov,* a Federal website that allows the public to find, review, and submit comments on documents that agencies have published in the **Federal Register** and that are open for comment. Simply type ''OMB–2023–0001'' in the Comment or Submission search box, click Go, and

follow the instructions for submitting comments.

Comments submitted in response to OMB's January 27, 2023, notice are subject to the Freedom of Information Act and may be made available to the public. For this reason, please do not include any information of a confidential nature, such as sensitive personal information or proprietary information. If you submit your email address, it will be automatically captured and included as part of the comment that is placed in the public docket. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

Electronic Availability: This document is available on the internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bob Sivinski, Chair, Interagency Technical Working Group on Race and Ethnicity Standards, New Executive Office Building, 725 17th St. NW, Washington, DC 20503, phone: 1 (202) 395–1205, email address: *Statistical_Directives@omb.eop.gov.*

SUPPLEMENTARY INFORMATION:

Rationale. Based on consideration of requests received from stakeholders, which are available for the public to view in the docket on *www.regulations.gov* for OMB's January 27, 2023 notice, OMB is extending the public comment period announced in that notice for an additional 15 days. Therefore, the public comment period will close on April 27, 2023.

Docket. OMB has established a docket for the January 27, 2023 notice under Docket ID No. OMB–2023–0001.

Instructions. You can submit comments by visiting *www.regulations.gov.* Type ''OMB–2023–0001'' in the Comment or Submission search box, click Go, and follow the instructions for submitting comments.

Richard L. Revesz,

Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 2023–07617 Filed 4–7–23; 8:45 am]

BILLING CODE 3110–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NOTICE: 23–029]

Name of Information Collection: Contractor and Subcontractor Compensation Plans

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, 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.

DATES: Comments are due by June 12, 2023.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 60 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 60-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 instrument(s) and instructions should be directed to Bill Edwards-Bodmer, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546, 757–864–3292, or *b.edwards-bodmer@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

NASA contracts and subcontracts over $500,000 may require submission of a total compensation plan explaining proposed salaries, wages, and fringe benefits.

II. Methods of Collection

NASA uses electronic methods to collect information from collection respondents.

III. Data

Title: Contractor and Subcontractor Compensation Plans.

OMB Number: 2700–0077.

Type of review: Reinstatement.

Affected Public: Individuals.

Estimated Annual Number of Activities: 371.

Estimated Number of Respondents per Activity: 1.

Annual Responses: 371.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 742.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) 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 automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

William Edwards-Bodmer,

NASA PRA Clearance Officer.

[FR Doc. 2023–07591 Filed 4–10–23; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Document Number NASA–23–021; Docket Number–NASA–2023–0001]

Request for Information on Advancing Racial Equity and Support for Underserved Communities in NASA Procurements and Federal Financial Assistance

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Request for information (RFI).

SUMMARY: The National Aeronautics and Space Administration (NASA) is issuing this Request for Information (RFI) to receive input from the public on the barriers and challenges that prevent members of underserved communities (as defined in Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, and Executive Order 14091, Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government) from participating in NASA's procurements, grants, and cooperative agreements. With this RFI, NASA is seeking for the public to provide specific feedback on the procurement, grant, and cooperative agreement regulations, policies, practices, and processes that deter

entities from pursuing opportunities for NASA procurements, grants, and cooperative agreements. NASA will review inputs received and may use this information to evaluate, implement, modify, expand, and streamline procurements, grants, cooperative agreements, regulations, policies, practices, and processes to remove systemic inequitable barriers and challenges facing members of underserved communities.

DATES: Comments are requested on or before 60 days after publication of this RFI. Comments received after this date will be considered for future advisory, communication, and outreach efforts to the extent practicable.

ADDRESSES:

- Comments must be identified with the Agency's name and Docket Number NASA–2023–0001 and may be sent to NASA via the *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. All public comments received are subject to the Freedom of Information Act and will be posted in their entirety at *https://www.regulations.gov/,* including any personal and/or business confidential information provided. Do not include any information you would not like to be made publicly available.
- *Mail:* Comments submitted in a manner other than the one listed above, including emails or letters sent to NASA Headquarters Office of Procurement (OP) officials may not be accepted.
- *Hand Delivery:* Please note that NASA cannot accept any comments that are hand-delivered or couriered. In addition, NASA cannot accept comments contained on any form of digital media storage devices, such as CDs/DVDs and USB drives. If you cannot submit your comment by using *http://www.regulations.gov,* please contact (Cheryl Robertson, 202–358–0667 or *hq-op-deia@mail.nasa.gov*) for alternate instructions.

FOR FURTHER INFORMATION CONTACT: Issues regarding submissions or questions about this RFI should be sent to Cheryl Robertson, 202–358–0667, or *hq-op-deia@mail.nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

NASA is issuing a second RFI to receive input from the public specifically on NASA's procurement, grant, and cooperative agreement regulations, policies, practices, and processes. This is a follow-up to the first RFI on this subject, RFI 21–038, which was released on June 15, 2021. The intent of this RFI is to (1) to determine whether any previous conditions have changed in this area; (2) ensure new recipients of NASA procurements, grants, and/or cooperative agreements have an opportunity to comment; and (3) obtain specific suggestions on barriers and challenges that deter underserved communities from participating in NASA competitions for procurement, grant, and cooperative agreement awards. NASA will review this information and may use it to evaluate, implement, modify, expand, and streamline its procurement, grant, and cooperative agreement regulations, policies, practices, and processes to remove any systemic inequitable barriers and challenges facing underserved communities. This effort will enable NASA to further execute the President's Executive Orders 13985 and 14091, entitled ''Advancing (and Further Advancing . . .) Racial Equity and Support for Underserved Communities Through the Federal Government'' (Equity E.O.s), signed by the President on January 20, 2021, and February 16, 2023, respectively. The Equity E.O.s define the following terms noted below; these terms are used throughout this RFI:

- ''*Equity*'' means the consistent and systematic treatment of all individuals in a fair, just, and impartial manner, including individuals who belong to communities that often have been denied such treatment, such as Black, Latino, Indigenous and Native American, Asian American, Native Hawaiian, and Pacific Islander persons and other persons of color; members of religious minorities; women and girls; LGBTQI+ persons; persons with disabilities; persons who live in rural areas; persons who live in United States Territories; persons otherwise adversely affected by persistent poverty or inequality; and individuals who belong to multiple such communities.
- ''*Underserved communities*'' refers to those populations as well as geographic communities that have been systematically denied the opportunity to participate fully in aspects of economic, social, and civic life, as defined in Executive Orders 13985 and 14020.

As required by the Equity EOs, NASA established a 2022 Equity Action Plan (EAP). The NASA EAP outlines and reaffirms the Agency's strategy to successfully mitigate systemic barriers to equity. Click here to see the plan: Mission Equity | NASA. As stated in the EAP, the NASA procurement, grant, cooperative agreement structures, processes, and requirements can be perplexing. NASA's Office of Procurement (OP) continues to make changes and take actions to remove barriers and challenges that hinder prospective contractors (and contractors) and prospective recipients (and recipients) of grants and cooperative agreements in underserved communities from engaging with NASA. Furthermore, OP is determined to remove any identified barriers and challenges through the efforts outlined in the NASA Equity Action Plan under Focus Area 1, Increase Integration and Utilization of Contractors and Businesses from Underserved Communities to Expand Equity in NASA's Procurement Process, and Focus Area 2, Enhance Grants and Cooperative Agreements to Advance Opportunities, Access and Representation for Underserved Communities, to include studying barriers and challenges to remove or minimize such barriers and increasing outreach efforts to reach members of underserved communities.

The public is encouraged to provide input in response to the questions below to assist in improving the Agency's procurements, grants, cooperative agreements, and associated regulations, policies, practices, and processes. Specifically, members of underserved communities are requested to share their perceived barriers and challenges, suggestions, and ideas, so that they can become a NASA contractor or grant or cooperative agreement recipient that furthers NASA's important mission.

II. Discussion of Questions

NASA OP conducts continuous reviews of procurement, grant, and cooperative agreement regulations, policies, practices, and processes. In support of E.O.s 13985 and 14091, input is solicited from the public to better understand and identify the systemic barriers and challenges facing members of underserved communities to access and participate in NASA contracts, grants, and cooperative agreements. The information and input from this RFI will assist OP in addressing any identified gaps in equity and determine how best to advance equity in the procurement and grant-making (including cooperative agreements) process to members of underserved communities. The following list of questions and topic areas are intended to guide the public in this effort:

Outreach/Engagement/Training

1. How and where can NASA reach contractors and/or grant and cooperative agreement recipients that are members of underserved communities more effectively? Provide specific sites, points of contact, and/or information to

support NASA outreach to these associations, organizations, or groups.

2. NASA Office of Small Business Program (OSBP) has numerous training opportunities for small businesses. The OSBP Learning Series is provided to share additional training to assist with learning how to do business with NASA. Is your entity aware of these training opportunities? What other type of specific training information does your firm need to help it do business with NASA? Are there barriers for you to attend these training opportunities? Is in-person or virtual training more appropriate or beneficial?

3. NASA uses various platforms to conduct training that will best facilitate information-sharing and the establishment of partnerships between NASA and underserved communities. Please share the names of platforms which work best and are available to reach members of underserved communities. These can be online platforms, organizations, conferences, publications, etc.

4. Provide suggestions how NASA can better collaborate with academic research institutions, particularly Historically Black Colleges and Universities (HBCU) and other Minority Serving Institutions (MSI), to advance outreach and increase the number of contract, grant, and cooperative agreement awards in these underserved communities?

5. How can NASA ensure that there is full equity in the issuance of grant and cooperative agreement awards? Please provide specific examples of NASA grant and cooperative agreement policy, process, systems, practices that may prevent full equity from being achieved in NASA's issuance of grant and cooperative agreement awards.

6. In considering how NASA announces its Notices of Funding Opportunities (NOFOs) for grant and cooperative agreement awards to be made (Via *Grants.gov*, NASA Solicitation and Proposal Integrated Review and Evaluation System [NSPIRES], the Minority Serving Institutions [MSI] exchange newsletter, etc.), where and how can NASA announce NOFOs to ensure full equity in opportunity? Please provide examples of specific websites and communication avenues.

Barrier Analysis

1. Are there any specific NASA or Federal Government regulations, policies, practices and or processes that have prevented you from submitting proposals or being awarded a contract, grant, or cooperative agreement with NASA? Please provide specific examples.

2. If you have received a NASA contract, grant, or cooperative agreement in the past, what barriers does/did your organization experience in working with NASA to implement the grant, cooperative agreement, or contract? Please provide examples of specific regulations, processes, procedures, policies, or systems that could be improved to ensure full equity in opportunity.

3. What resources could NASA provide to better assist underserved communities in identifying new opportunities to be awarded a contract, grant, or cooperative agreement with NASA, or access the Agency's programs or data?

4. What resources could NASA provide to better assist underserved communities in properly managing and executing NASA grant or cooperative agreement projects?

5. What challenges do you face when developing and implementing procedures to advance diversity and inclusion for underserved communities within your research/business?

6. Have you encountered barriers within NASA's procurement process, to include source selection evaluation process, that prevent underserved communities from receiving awards of NASA contracts? Please provide specific examples.

Diversity, Equity, Inclusion and Accessibility (DEIA)

1. NASA has amended its Federal Acquisition Regulation Supplement (NASA FAR Supplement—NFS) to include a requirement for the contractor to submit DEIA plans under certain NASA contracts.

What other DEIA suggestions (*e.g.,* requirements, training, etc.) should we investigate to ensure our contractors are diligently working to include members of underserved communities in their contract awards?

2. In response to Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, NASA has included a term and condition in its grant and cooperative agreement awards for recipients to obtain at least one quotation from a small and/or minority businesses, women's business enterprises, or labor surplus area firm when acquiring goods or services that exceed the simplified acquisition threshold (currently $250,000). What other DEIA suggestions (*e.g.,* terms and conditions, requirements, training, etc.) should NASA OP investigate to ensure its grants and cooperative agreements include members of underserved communities?

III. Written Comments

Written responses should not exceed 10 pages, inclusive of a 1-page cover page as described below. Attachments or linked resources or documents are not included in the 10-page limit. Please respond concisely, in plain language, and in narrative format. You may respond to some or all questions listed in the RFI. Please ensure your response is clear and indicate which question you are responding to. You may also include links to online material or interactive presentations, and ensure all links are publicly available. Each response should include: (1) the name of the individual(s) and/or organization responding; (2) policy suggestions that your submission and materials support; (3) a brief description of the responding individual(s) or organization's mission and/or areas of expertise; and (4) a contact for questions or other follow-up on your response. Please note that this RFI is only a planning document, and should not be construed as policy, a solicitation for proposals, or an obligation on the part of NASA or the Federal Government. Interested parties responding to this RFI may be contacted for a follow-on strategic agency assessment dialogue, discussion, event, crowdsource campaign, or competition.

IV. Review of Public Feedback

NASA may use the feedback received to help initiate strategic plans, consider reforms, and execute reports as required by the Equity E.O.s. NASA may use the public's feedback to consider reduction of administrative burdens more broadly. Again, this RFI is issued solely for information and procurement-planning purposes. Public input provided in response to this notice does not bind NASA to take any further actions, to include publishing a formal response or agreement to initiate a recommended change. NASA will consider the feedback received and may make changes or process improvements at its sole discretion.

NASA will continue to dialogue with industry and stakeholders to stay connected and engaged on barriers and challenges that impact members of underserved communities through periodic issuance of RFIs, and participation in industry and

association meetings, conferences, and other forums.

Julia B. Wise,

Director, Procurement Management and Policy Division, NASA—Headquarters, Office of Procurement.

[FR Doc. 2023–07489 Filed 4–10–23; 8:45 am]

BILLING CODE 7510–13–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, April 13, 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: April 6, 2023.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023–07618 Filed 4–7–23; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–485, OMB Control No. 3235–0547]

Proposed Collection; Comment Request: Extension: "Investor Form"

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) that the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Each year the Commission receives several thousand contacts from investors who have complaints or questions on a wide range of investment-related issues. To make it easier for the public to contact the agency electronically, the Commission's Office of Investor Education and Advocacy (''OIEA'') created an electronic form (the Investor Form) that provides drop down options to choose from in order to categorize the investor's complaint or question, and may also provide the investor with automated information about their issue. The Investor Form asks investors to provide information concerning, among other things, their names, how they can be reached, the names of the individuals or entities involved, the nature of their complaint or tip, what documents they can provide, and what, if any, actions they have taken. Use of the Investor Form is voluntary. Absent the forms, the public still has several ways to contact the agency, including telephone, facsimile, letters, and email. Investors can access the Investor Form through the consolidated Investor Complaint and Question web page.

OIEA receives approximately 30,000 contacts each year through the Investor Form. Investors who choose not to use the Investor Form receive the same level of service as those who do. The dual purpose of the form is to make it easier for the public to contact the agency with complaints, questions, tips, or other feedback and to further streamline the workflow of Commission staff that record, process, and respond to investor contacts.

The Commission uses the information that investors supply on the Investor Form to review and process the contact (which may, in turn, involve responding to questions, processing complaints, or, as appropriate, initiating enforcement investigations), to maintain a record of contacts, to track the volume of investor complaints, and to analyze trends. Use of the Investor Form is voluntary. The Investor Form asks investors to provide information concerning, among other things, their names, how they can be reached, the names of the individuals or entities involved, the nature of their complaint or tip, what documents they can provide, and what, if any, actions they have taken.

The staff of the Commission estimates that the total reporting burden for using the Investor Form is 7,500 hours. The calculation of this estimate depends on the number of investors who use the forms each year and the estimated time it takes to complete the forms: 30,000 respondents × 15 minutes = 7,500 burden hours.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to David Bottom, Chief Information Officer, Securities and Exchange Commission, c/o John R. Pezullo, 100 F St. NE, Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: April 5, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–07496 Filed 4–10–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97255; File No. SR–MSRB–2023–01]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Amendment No. 1 to Proposed Rule Change Consisting of Amendments to MSRB Rule G–40, on Advertising by Municipal Advisors, and MSRB Rule G–8, on Books and Records

April 5, 2023.

I. Introduction

On January 31, 2023, the Municipal Securities Rulemaking Board (''MSRB'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule (the ''original proposed rule change'') consisting of amendments to MSRB Rule G–40 on advertising by municipal advisors (''Rule G–40''), and MSRB Rule G–8 on books and records (''Rule G–8'').[3]

The original proposed rule change was published for comment in the **Federal Register** on February 14, 2023.[4] The Commission received two comment letters on the original proposed rule change.[5] On March 21, 2023, the MSRB granted an extension of time for the Commission to act on the filing until May 15, 2023.[6]

On April 4, 2023, the MSRB responded to the comments [7] and filed Amendment No. 1 to the original proposed rule change (''Amendment No. 1''). The text of Amendment No. 1 is available on the MSRB's website.[8] The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons.

II. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Amendment

As described further below, the MSRB filed Amendment No. 1 to respond to comments on the original proposed rule change, relating to: (1) the definition of ''testimonial;'' (2) non-client testimonials; (3) solicitor municipal advisors; (4) social media guidance; and (5) other clarifications to rule text and design.[9]

A. Definition of Testimonial

The MSRB noted that a commenter suggested that the term ''testimonial'' be defined within the rule language itself.[10] The MSRB responded, stating it would provide a definition of a ''testimonial'' in Rule G–40 to avoid confusion with the term ''testimonial'' as used in Rule 206–4(1) [11] under the Investment Advisers Act of 1940 (''Advisers Act'').[12] Specifically, the MSRB defined ''testimonial'' in amended Rule G–40(a)(iv)(G)(1) as ''a statement of a person's or entity's experience concerning the municipal advisor or concerning the municipal advisory services rendered by the municipal advisor.'' [13] Furthermore, the MSRB also removed language from the original proposed rule change referring to the ''advice, analysis, report, or other services rendered by the municipal advisor.'' [14] The MSRB concluded that replacing this language with ''municipal advisory services'' in the definition of ''testimonial'' (and elsewhere in the original proposed rule change's rule text) provided greater clarity.[15] The MSRB also made conforming numbering changes to the original proposed rule change's Rule G–40 revisions to accommodate the addition of the definition of ''testimonial'' to amended Rule G–40(a)(iv)(G)(1).[16]

The MSRB stated that the revised rule text in amended Rule G–40(a)(iv)(G)(2) provides that, if a municipal advisor's advertisement meets certain conditions, then a municipal advisor may, directly or indirectly, publish, circulate or distribute an advertisement which refers, directly or indirectly, to a testimonial.[17] The MSRB posited that this definition addresses a comment requesting that Rule G–40 include a definition of the term ''testimonial,'' but also a comment's suggestion that the rule ''include affirmative language that testimonials may be used if certain requirements are met.'' [18] The MSRB also deleted a redundant phrase later in this subsection; specifically, amended Rule G–40(a)(iv)(G)(2)(b)(iv)(''the paid testimonial must include'').[19]

B. Non-Client Testimonials

The MSRB noted that both commenters suggested that it would promote further harmonization with MSRB Rule G–21 (''Rule G–21''), on advertising by brokers, dealers, and municipal securities dealers, if municipal advisors were able to use testimonials by third parties.[20] The MSRB stated that it will amend the original proposed rule change to permit municipal advisors to use testimonials from a third party, whether a person or entity, subject to the conditions set forth in proposed Amendment No. 1.[21] The MSRB reasoned that, for example, analogous to Rule 206–4(1) [22] under the Advisers Act,[23] an advertisement of a municipal advisor that includes a testimonial would need to include a disclosure indicating whether the testimonial is from a current client or from someone who is not a current client.[24] The MSRB wrote that it agreed with the Commission's belief that this type of disclosure would provide important context for weighing the relevance of the testimonial.[25]

C. Solicitor Municipal Advisors

The MSRB stated that both commenters found the proposal to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* MSRB filing of original proposed rule change, available at *https://msrb.org/sites/default/files/2023-01/MSRB-2023-01.pdf.*

[4] Release No. 34–96840 (Feb. 8, 2023), 88 FR 9580 (Feb. 14, 2023) (''Notice''). The comment period closed on March 7, 2023.

[5] *See* Letter to Secretary, Commission, from Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated March 7, 2023 (''SIFMA Letter''); Letter to Secretary, Commission, from Susan Gaffney, Executive Director, National Association of Municipal Advisors, dated March 7, 2023 (''NAMA Letter'').

[6] *See* ''Extension of Time on File No. SR–MSRB–2023–01 to May 15, 2023,'' available at *https://msrb.org/sites/default/files/2023-03/MSRB-2023-01%20eot.pdf.*

[7] *See* Letter from Saliha Olgun, Interim Chief Regulatory Officer, MSRB, to Secretary, Commission, dated April 4, 2023, available at *https://msrb.org/sites/default/files/2023-04/MSRB-2023-01%20Comment%20Letter.pdf.*

[8] Amendment No. 1 is available at *https://msrb.org/sites/default/files/2023-04/MSRB-2023-01%20A-1.pdf.*

[9] The MSRB stated that Amendment No. 1 does not alter or impact the analysis in the original proposed rule change's burden on competition or the statutory basis sections. *See* Amendment No. 1.

[10] NAMA Letter at 1–2; *see also* Amendment No. 1.

[11] 17 CFR 275.206(4)–1(b)(1).

[12] *See* Amendment No. 1; 15 U.S.C. 80b–1–80b–2.

[13] *See* Amendment No. 1.

[14] *See id.*

[15] *See id.*

[16] The MSRB also added a cross-reference to the new definition of ''testimonial'' in the original proposed rule change's Rule G–8. *See id.*

[17] *See id.*

[18] NAMA Letter at 4; *see also id.*

[19] *See* Amendment No. 1.

[20] *See id.;* NAMA Letter and SIFMA Letter.

[21] *See* Amendment No. 1.

[22] 17 CFR 275.206(4)–1(b)(1).

[23] 15 U.S.C. 80b–1–80b–2.

[24] *See* Amendment No. 1.

[25] *See id.; see also* Release No. IA–5653 (Dec. 22, 2020) (File No. S7–21–19), 86 FR 13024 (Mar. 5, 2021) (''IA Marketing Rule Adopting Release'') at 13048.

establish a different standard for the use of testimonials by solicitor municipal advisors confusing.[26] In response, the MSRB revised the original proposed rule change to create uniformity in the criteria for the use of testimonials by all municipal advisors.[27] Specifically, the MSRB removed proposed language that would have permitted, subject to certain conditions, a solicitor municipal advisor to pay more than $1000 in total value in cash or non-cash compensation during the preceding 12 months for a testimonial.[28] Additionally, the MSRB eliminated the proposed language in the original proposed rule change in Rules G–40 and G–8 concerning additional records to be maintained by a solicitor municipal advisor related to such payments.[29] The MSRB concluded that these revisions in Amendment No.1 would prohibit any municipal advisor from providing any compensation to a person or entity, directly or indirectly, of more than $1000 in total value in cash or non-cash compensation during the preceding 12 months.[30]

D. Social Media Guidance

The MSRB wrote that both commenters suggested that the MSRB's ''FAQs regarding the Use of Social Media under MSRB Rule G–21, on Advertising by Brokers, Dealers or Municipal Securities Dealers, and MSRB Rule G–40, on Advertising by Municipal Advisors'' (''social media guidance'') [31] be updated to reflect the proposed amendments to Rule G–40.[32]

The MSRB responded by proposing to amend its social media guidance to reflect the proposed amendments to Rule G–40 (*inter alia,* allowing the use of testimonials in municipal advisor advertisements, subject to certain conditions).[33] The MSRB explained that the current social media guidance notes that, by paying for or soliciting positive comments from a third party, (i) a municipal advisor would be deemed to be entangled with those comments, and (ii) the posting of those third-party comments on the municipal advisor's social media page would be deemed to be an advertisement by the municipal advisor that contains a testimonial.[34] The MSRB stated that Amendment No.1's revisions to the social media guidance would make clear that the advertisement containing a testimonial would be permissible so long as the advertisement meets the requirements of Rule G–40 (including having the requisite disclosures).[35]

In addition, the MSRB noted that the revised social media guidance would make clear that if a municipal advisor did not pay, directly or indirectly, for a testimonial, but liked, shared, or commented on a post from a third-party, the municipal advisor would be deemed to have adopted those comments and the posting of those third party comments on the municipal advisor's social media page would be deemed an advertisement that contains a testimonial.[36] The MSRB concluded that the advertisement containing a testimonial would be permissible so long as the advertisement meets the requirements of Rule G–40 (including having the requisite disclosures).[37] The MSRB also revised the social media guidance's footnotes with updated citations and conforming numbering changes.[38]

E. Other Modifications to Rule Text

As discussed further below, the MSRB also proposed other textual changes in Amendment No. 1 to provide additional clarity and facilitate compliance.[39]

i. Language in Rule G–40 Regarding Use of a Testimonial

The MSRB stated that it revised the original proposed rule change to clarify that a municipal advisor may only use a testimonial if the person or entity providing the testimonial has the knowledge and experience to make a statement concerning their experience with the municipal advisor or with the municipal advisory services rendered by the municipal advisor.[40]

ii. Supplementary Material .03 to Rule G–40

The MSRB added Supplementary Material .03 to Rule G–40 to the original proposed rule change, stating that this revision would clarify that, in order for a requisite disclosure in an advertisement to be clear and prominent (including that a testimonial is a paid testimonial), the disclosure must be at least as prominent in the advertisement as the testimonial.[41] The MSRB also explained that this revision indicates that disclosures should appear close to the associated testimonial statement with the same prominence so that the statement and disclosures are read at the same time, rather than referring the reader to somewhere else in the advertisement to view the disclosures.[42]

III. Date of Effectiveness of the Proposed Rule Change and Amendment No. 1

As stated in the original proposed rule change, the MSRB will publish a regulatory notice no later than one month following the Commission's approval date, which will include an implementation date that shall be no later than three months following the Commission approval date.[43]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the filing as amended by Amendment No. 1 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–MSRB–2023–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–MSRB–2023–01. 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

[26] *See* NAMA Letter and SIFMA Letter; *see also* Amendment No.1.

[27] *See* Amendment No.1.

[28] *See id.*

[29] *See id.*

[30] Correspondingly, the MSRB added the phrase ''directly or indirectly'' to the original proposed rule change's Rule G–8. *See id.*

[31] These frequently asked questions (''FAQs'') were filed with the Commission for immediate effectiveness. *See* Release No. 34–85222 (Feb. 28, 2019), 84 FR 8132 (Mar. 6, 2019) (File No. SR–MSRB–2019–04). These FAQs can be found on the MSRB's website at *https://www.msrb.org/FAQs-regarding-Use-Social-Media-under-MSRB-Rule-G-21-Advertising-Brokers-Dealers-or-Municipal-0* (Aug. 23, 2019).

[32] *See* NAMA Letter and SIFMA Letter; *see also* Amendment No. 1.

[33] *See* Amendment No. 1.

[34] *See id.*

[35] *See id.*

[36] *See id.*

[37] *See id.*

[38] *See id.*

[39] *See* NAMA Letter at 4.

[40] *See* Amendment No. 1.

[41] *See* Amendment No. 1.

[42] *See id.*

[43] *See* Notice.

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. 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–MSRB–2023–01 and should be submitted on or before April 26, 2023.

For the Commission, pursuant to delegated authority.[44]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–07502 Filed 4–10–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–196, OMB Control No. 3235–0202]

Proposed Collection; Comment Request; Extension: Rule 15c2–11

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 15c2–11 (17 CFR 240.15c2–11) (''Rule''), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 15c2–11 governs the publication of quotations for securities in a quotation medium other than a national securities exchange (*i.e.,* over the counter (''OTC'') securities). The Rule is designed to prevent broker-dealers from publishing or submitting quotations for OTC securities that may facilitate a fraudulent or manipulative scheme. Subject to certain exceptions, the Rule prohibits broker-dealers from publishing any quotation for a security or, directly or indirectly, submitting any quotation for publication, in a quotation medium unless they have reviewed specified information concerning the issuer.

Based on the current structure of the market, the Commission staff believes that the recordkeeping and review requirements under Rule 15c2–11 [1] apply to 86 broker-dealers, one qualified interdealer quotation system (''Q–IDQS''), and one registered national securities association.[2] Based on information provided by the Financial Industry Regulatory Authority, Inc. (''FINRA''), the Commission staff understands that in the 2022 calendar year, 377 Form 211 applications were filed to initiate the publication or submission of quotations of OTC securities: [3] 60 of these Forms 211 concerned OTC securities of prospectus issuers, Regulation A (''Reg. A'') issuers, and reporting issuers; 258 concerned OTC securities of ''exempt foreign private issuers''; and 59 concerned OTC securities of ''catch-all issuers.'' The collection of information that is submitted to FINRA for review and approval is currently not available to the public from FINRA.

The Commission staff's estimates of the ongoing annual hour burdens associated with the information collection requirements prescribed in the Rule are summarized in the chart below.

Information collection	Total annual burden industrywide (hours)
Recordkeeping associated with the initial publication or submission of a quotation in a quotation medium	26,231
Recordkeeping when relying on an exception under paragraph (f), that paragraph (b) information is current and publicly available	64,339
Recordkeeping obligations under unsolicited quotation exception under paragraph (f)(2)	537,954
Recordkeeping obligations regarding the frequency of a priced bid or offer quotation under paragraph (f)(3)(i)(A)	95,166
Recordkeeping obligations regarding determining shell status under the proviso in paragraph (f)(3)(i)(B)	64,339
Recordkeeping obligations regarding trading suspensions under the provision in paragraph (f)(3)(i)(B)	3
Recordkeeping obligations for the exceptions under paragraph (f)(5)—Asset Test	393
Recordkeeping obligations for the exceptions under paragraph (f)(5)—ADTV Test	99,053
Recordkeeping obligations of broker-dealers relying on a Q-IDQS complying with information review requirement pursuant to paragraph (a)(1)(ii)	28
Recordkeeping obligations related to the creation of reasonable written policies and procedures under paragraph (a)(3)	20

[44] 17 CFR 200.30–3(a)(12).

[1] In 2021, Commission staff issued a no-action letter, stating that the staff of the Division of Trading and Markets would not recommend enforcement action under certain conditions for quotations of certain fixed-income securities on the over-the-counter markets to allow for an orderly and good faith transition into compliance with Rule 15c2–11, as amended in 2020. In 2022, this letter was withdrawn by the issuance of a new (but consistent) no-action letter, which provides a temporary staff position that expires on January 4, 2025. Because it is widely understood that broker-dealers and other respondents are relying on this no-action position so that they do not need to comply with the requirements of Rule 15c2–11 for fixed income securities, the estimates contained herein are made with regard to equity securities only. Burden estimates that account for fixed income securities are, therefore, subject to change.

[2] In calendar year 2022, 86 broker-dealers published quotations on OTC Markets Group's systems. The Commission staff believes that this number reasonably estimates the number of broker-dealers that would engage in activities that would subject them to Rule 15c2–11. Based on the current structure of the market for quoted OTC securities, the Commission staff believes that only one Q–IDQS would engage in activities that would subject it to Rule 15c2–11. There currently is one registered national securities association. 86 broker-dealers + 1 Q–IDQS + 1 registered national securities association = 88 respondents.

[3] A broker-dealer that initiates or resumes a quotation in an OTC equity security is subject to FINRA Rule 6432, which requires the broker-dealer to demonstrate compliance with, among other things, Rule 15c2–11 by filing Form 211. Given the alignment of this FINRA requirement and Rule 15c2–11, the Commission staff believes that the number of Forms 211 filed with FINRA in 2022 provides a reasonable baseline from which to estimate the burdens associated with the information review requirement under Rule 15c2–11.

Information collection	Total annual burden industrywide (hours)
Recordkeeping obligations of broker-dealers relying on publicly available determinations by Q–IDQSs or registered national securities associations pursuant to paragraph (d)(2)(ii)	93,003
Total Hour Burden for all Respondents	980,529

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by June 12, 2023.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: April 5, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–07495 Filed 4–10–23; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17842 and #17843; CALIFORNIA Disaster Number CA–00376]

Presidential Declaration of a Major Disaster for the State of California

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of CALIFORNIA (FEMA–4699–DR), dated 04/03/2023.

Incident: Severe Winter Storms, Straight-line Winds, Flooding, Landslides, and Mudslides.

Incident Period: 02/21/2023 and continuing.

DATES: Issued on 04/03/2023.

Physical Loan Application Deadline Date: 06/02/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 01/03/2024.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 04/03/2023, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Kern, Mariposa, Monterey, San Benito, Santa Cruz, Tulare, Tuolumne.

Contiguous Counties (Economic Injury Loans Only):

California: Alpine, Calaveras, Fresno, Inyo, Kings, Los Angeles, Madera, Merced, Mono, San Bernardino, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Stanislaus, Ventura.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	4.750
Homeowners without Credit Available Elsewhere	2.375
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	2.375
Non-Profit Organizations without Credit Available Elsewhere	2.375
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	2.375

The number assigned to this disaster for physical damage is 17842 B and for economic injury is 17843 0.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023–07541 Filed 4–10–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17860; CALIFORNIA Disaster Number CA–00375 Declaration of Economic Injury

Administrative Declaration of an Economic Injury Disaster for the State of California

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of California dated 04/05/2023.

Incident: Monterey Park Mass Shooting and Related Investigation.

Incident Period: 01/21/2023 through 01/28/2023.

DATES: Issued on 04/05/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 01/05/2024.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for economic injury

disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Los Angeles.

Contiguous Counties:

California: Kern, Orange, San Bernardino, Ventura.

The Interest Rates are:

	Percent
Businesses and Small Agricultural Cooperatives without Credit Available Elsewhere	3.305
Non-Profit Organizations without Credit Available Elsewhere	2.375

The number assigned to this disaster for economic injury is 178600.

The State which received an EIDL Declaration #17860 is California.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2023–07543 Filed 4–10–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17852 and #17853; CALIFORNIA Disaster Number CA–00380]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of California

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of CALIFORNIA (FEMA–4699–DR), dated 04/03/2023.

Incident: Severe Winter Storms, Straight-line Winds, Flooding, Landslides, and Mudslides.

Incident Period: 02/21/2023 and continuing.

DATES: Issued on 04/03/2023.

Physical Loan Application Deadline Date: 06/02/2023.

Economic Injury (EIDL) Loan Application Deadline Date: 01/03/2024.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 04/03/2023, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Calaveras, Los Angeles, Monterey, Tulare.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere	2.375
Non-Profit Organizations without Credit Available Elsewhere	2.375
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.375

The number assigned to this disaster for physical damage is 17852 B and for economic injury is 17853 0.

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2023–07542 Filed 4–10–23; 8:45 am]

BILLING CODE 8026–09–P

TENNESSEE VALLEY AUTHORITY

Meeting of the Regional Energy Resource Council

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of meeting.

SUMMARY: The TVA Regional Energy Resource Council (RERC) will hold a meeting on April 18 and 19, 2023, regarding regional energy related issues in the Tennessee Valley.

DATES: The meeting will be held at the Drury Inn in Knoxville, Tennessee, on Tuesday, April 18, 2023, from 8 a.m. to 1:30 p.m. E.T. and Wednesday, April 19, 2023, from 7:45 a.m. to 1 p.m. ET. RERC council members are invited to attend the meeting in person. The public is invited to view the meeting virtually or to attend in-person. A 1-hour public listening session will be held April 19, 2023, at 10:30 a.m. A link and instructions to view the meeting will be posted on TVA's RERC website at *www.tva.gov/rerc.*

ADDRESSES: The public is invited to view the meeting virtually or attend in person. The in-person meeting will be held at the Drury Inn, 209 Advantage Pl., Knoxville, TN 37920. Public members who wish to speak virtually must preregister by 5 p.m. E.T. on Monday, April 17, 2023, by emailing *bhaliti@tva.gov.* Anyone needing special accommodations should let the contact below know at least one week in advance.

FOR FURTHER INFORMATION CONTACT: Bekim Haliti, *bhaliti@tva.gov,* 931–349–1894.

SUPPLEMENTARY INFORMATION:

The RERC was established to advise TVA on its energy resource activities and the priorities among competing objectives and values. Notice of this meeting is given under the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2.

The meeting agenda includes the following:

Day 1—April 18

1. Welcome and Introductions
2. RERC and TVA Meeting Update
3. TVA New Nuclear Program
4. Review of Advice Questions

Day 2—April 19

5. Welcome and Review of Day 1
6. Nuclear Engineering Institute Presentation
7. PURPA ''Shall Consider'' Standards—Demand Response and Electric Vehicles
8. Public Listening Session
9. RERC Advice Statement

The RERC will hear views of citizens by providing a 1-hour public listening session starting April 19 at 10:30 a.m. ET. Persons wishing to speak must register at *bhaliti@tva.gov* by 5:00 p.m. EDT, on Monday, April 17, 2023, and will be called on during the public listening session for up to five minutes to share their views. Written comments are also invited and may be emailed to *bhaliti@tva.gov.*

Dated: March 31, 2023.

Melanie Farrell,

Vice President, External Stakeholders and Regulatory Oversight, Tennessee Valley Authority.

[FR Doc. 2023–07497 Filed 4–10–23; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on a Land Release Request at Malden Regional Airport & Industrial Park (MAW), Malden, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release of airport land.

SUMMARY: The FAA proposes to rule and invites public comment on the request to release and sell a 0.57 acre parcel of federally obligated airport property at the Malden Regional Airport & Industrial Park (MAW), Malden, Missouri.

DATES: Comments must be received on or before May 11, 2023.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Amy J. Walter, Airports Land Specialist, Federal Aviation Administration, Airports Division, ACE–620G, 901 Locust, Room 364, Kansas City, MO 64106. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to: David Blalock, Airport Manager, City of Malden Regional Airport & Industrial Park, 3077 Mitchell Drive, P.O. Box 411, Malden, MO 63863–0411, (573) 276–2279.

FOR FURTHER INFORMATION CONTACT: Amy J. Walter, Airports Land Specialist, Federal Aviation Administration, Airports Division, ACE–620G, 901 Locust, Room 364, Kansas City, MO 64106, (816) 329–2603, *amy.walter@faa.gov.* The request to release property may be reviewed, by appointment, in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release a 0.57 acre parcel of airport property at the Malden Regional Airport & Industrial Park (MAW) under the provisions of 49 U.S.C. 47107(h)(2). This is a Surplus Property Airport. The City of Malden requested a release from the FAA to sell a 0.57 acre parcel to the Dunklin County Ambulance District for commercial development. The FAA determined this request to release and sell property at the Malden Regional Airport & Industrial Park (MAW) submitted by the Sponsor meets the procedural requirements of the FAA and the release and sale of the property does not and will not impact future aviation needs at the airport. The FAA may approve the request, in whole or in part, no sooner than thirty days after the publication of this notice.

The following is a brief overview of the request:

The Malden Regional Airport & Industrial Park (MAW) is proposing the release from obligations and sale of a 0.57 acre parcel of airport property. The release of land is necessary to comply with Federal Aviation Administration Grant Assurances that do not allow federally acquired airport property to be used for non-aviation purposes. The sale of the subject property will result in the land at the Malden Regional Airport & Industrial Park (MAW) being changed from aeronautical to non-aeronautical use and release the lands from the conditions of the Airport Improvement Program Grant Agreement Grant Assurances in order to sell the land. In accordance with 49 U.S.C. 47107(c)(2)(B)(i) and (iii), the airport will receive fair market value for the property, which will be subsequently reinvested in another eligible airport improvement project for general aviation use.

Any person may inspect, by appointment, the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may request an appointment to inspect the application, notice and other documents determined by the FAA to be related to the application in person at the Malden City Hall.

Issued in Kansas City, MO, on April 5, 2023.

James A. Johnson,

Director, FAA Central Region, Airports Division.

[FR Doc. 2023–07520 Filed 4–10–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Renewed and Amended Memorandum of Understanding (MOU) Assigning Environmental Responsibilities to the State of Utah

AGENCY: Federal Highway Administration (FHWA), Utah Division Office, DOT.

ACTION: Notice of MOU renewal and amendments and request for comments.

SUMMARY: This notice announces that the FHWA and the Utah Department of Transportation (State) plan to renew and amend an existing MOU established pursuant to certain statutory authorities under which FHWA has assigned to the State FHWA's responsibility for determining whether a project is categorically excluded from preparation of an environmental assessment or an environmental impact statement under the National Environmental Policy Act of 1969 (NEPA) and for carrying out certain other responsibilities for conducting environmental reviews, consultations, and related activities for assigned projects. The public is invited to comment on any aspect of the proposed MOU, including the scope of environmental review, consultation, and other activities which are assigned.

DATES: Please submit comments by May 11, 2023.

ADDRESSES: You may submit comments by any of the methods described below.

Website: www.udot.utah.gov/go/environmental.

Fax: 1–202–493–2251.

Hand Delivery: U.S. Department of Transportation, Ground Floor Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. (EST), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Woolford, Environmental Program Manager, Federal Highway Administration, 2520 West 4700 South, Suite 9A, Salt Lake City, UT 84129. Office Hours: 7:00 a.m. to 4:30 p.m. (MST), *Edward.Woolford@dot.gov;* Mr. Brandon Weston, Environmental Services Director, Utah Department of Transportation, 4501 South 2700 West, Salt Lake City, UT 84129, Office Hours 8:00 a.m. to 5:00 p.m. (Monday through Friday) (MST), *brandonweston@utah.gov.*

Background: Section 326 of amended chapter 3 of Title 23, United States Code (23 U.S.C. 326), allows the Secretary of the United States Department of Transportation (USDOT Secretary), to assign, and a State to assume, responsibility for determining whether certain designated activities are included within classes of action that are categorically excluded from requirements for environmental assessments or environmental impact statements pursuant to regulations promulgated by the Council on Environmental Quality under part 1500 of Title 40, Code of Federal Regulations (CFR). The FHWA is authorized to act on behalf of the USDOT Secretary with respect to these matters.

In July 2008, FHWA and the State executed a MOU which assigned the responsibility to the State for determining certain designated activities as categorically excluded under section 6004(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for

Users (Pub. L. 109–59, Aug. 10, 2005). The assignments include:

1. Activities listed in 23 CFR 771.117(c); and

2. The example activities listed in 23 CFR 771.117(d).

The MOU had an initial term of 3 years, proposed revision to 5 years, and may be renewed and/or amended. The renewal/amendments are the subject of this Notice. As part of this renewal, proposed changes to the MOU include modification to terminate an existing programmatic agreement between the State and FHWA for processing proposed projects that are candidates for categorical exclusion but that are not included on the lists described in 1–2 above. The MOU assigns to the State the responsibility for conducting Federal environmental review, consultation, and other related activities for projects that are subject to the MOU with respect to the following Federal laws and Executive Orders:

1. Clean Air Act (CAA), 42 U.S.C. 7401–7671q (determinations of project-level conformity if required for the project).

2. FHWA noise regulations in 23 CFR part 772.

3. Section 7 of the Endangered Species Act of 1973, 16 U.S.C. 1531–1544, and Section 1536.

4. Marine Mammal Protection Act, 16 U.S.C. 1361.

5. Anadromous Fish Conservation Act, 16 U.S.C. 757a–757g.

6. Fish and Wildlife Coordination Act, 16 U.S.C. 661–667d.

7. Migratory Bird Treaty Act, 16 U.S.C. 703–712.

8. Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801 *et seq.*

9. Section 106 of the National Historic Preservation Act of 1966, as amended, 54 U.S.C. 306101 *et seq.*

10. Section 4(f) of the Department of Transportation Act of 1966, 23 U.S.C. 138 and 49 U.S.C. 303; and 23 CFR part 774.

11. Archeological and Historic Preservation Act of 1966, as amended, 16 U.S.C. 469–469(c).

12. American Indian Religious Freedom Act, 42 U.S.C. 1996.

13. Farmland Protection Policy Act (FPPA), 7 U.S.C. 4201–4209.

14. Clean Water Act, 33 U.S.C. 1251–1377 (Section 404, Section 401, Section 319).

15. Coastal Barrier Resources Act, 16 U.S.C. 3501–3510.

16. Coastal Zone Management Act, 16 U.S.C. 1451–1465.

17. Safe Drinking Water Act (SDWA), 42 U.S.C. 300f–300j–6.

18. Rivers and Harbors Act of 1899, 33 U.S.C. 401–406.

19. Wild and Scenic Rivers Act, 16 U.S.C. 1271–1287.

20. Emergency Wetlands Resources Act, 16 U.S.C. 3921–3931.

21. TEA–21 Wetlands Mitigation, 23 U.S.C. 103(b)(6)(m), 133(b)(11).

22. Flood Disaster Protection Act, 42 U.S.C. 4001–4128.

23. Land and Water Conservation Fund (LWCF), 16 U.S.C. 4601–4604 (known as section 6(f)).

24. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601–9675.

25. Superfund Amendments and Reauthorization Act of 1986 (SARA).

26. Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901–6992k.

27. Landscaping and Scenic Enhancement (Wildflowers), 23 U.S.C. 319.

28. Executive Orders (E.O.) Relating to Highway Projects (E.O. 11990, Protection of Wetlands; E.O. 11988, Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593, Protection and Enhancement of Cultural Resources; E.O. 13007, Indian Sacred Sites; E.O. 13175, Consultation and Coordination with Indian Tribal Governments; E.O. 13112, Invasive Species, as amended by E.O. 13751, Safeguarding the Nation from the Impacts of Invasive Species; E.O. 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government; E.O. 13990, Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis; E.O. 14008, Tackling the Climate Crisis at Home and Abroad; Other Executive Orders not listed, but related to assigned projects.

The MOU allows the State to act in the place of the FHWA in carrying out the functions described above, except with respect to government-to-government consultations with federally recognized Indian Tribes. The FHWA will retain responsibility for conducting formal government-to-government consultation with federally recognized Indian Tribes, which is required under some of the above-listed laws and E.O.s. The State also may assist FHWA with formal consultations, with consent of a Tribe, but FHWA remains responsible for the consultation.

A copy of the proposed MOU may be viewed by contacting FHWA or the State at the addresses provided above. A copy may also be viewed online at the following URL: *www.udot.utah.gov/go/environmental.*

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 326; 42 U.S.C. 4331, 4332; 23 CFR 771.117; 40 CFR 1507.3, 1508.4.

Issued on: April 5, 2023.

Ivan Marrero,

Division Administrator, Federal Highway Administration.

[FR Doc. 2023–07499 Filed 4–10–23; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Nos. FRA–2010–0028, –0029, –0039, –0042, –0043, –0045, –0048, –0049, –0051, –0054, –0056, –0057, –0058, –0059, –0060, –0061, –0062, –0064, –0065, and –0070]

Railroads' Joint Request To Amend Their Positive Train Control Safety Plans and Positive Train Control Systems

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of availability and request for comments.

SUMMARY: This document provides the public with notice that on March 22, 2023, twenty host railroads submitted a joint request for amendment (RFA) to their FRA-approved Positive Train Control Safety Plans (PTCSP) reflecting the updated PTC onboard software, I–ETMS On-Board 6.5.0 and On-Board 6.5.1. This RFA includes modifications to the associated PTC Concept of Operations and PTC System Description documents, change or addition of system safety-critical functionality, modification to target safety levels and changes to the human-machine interface which requires amendments to PTC training for train crews. The functionality changes include: updates to Train Restriction Types to address the Pipeline and Hazardous Materials Safety Administration (PHMSA) final rule which restricts operating speeds of High-Hazard Flammable Train; the addition of a new system safety critical function, PTC Suspension, that prevents the generation and enforcement of targets within the limits of a PTC Suspension area with the exception of navigation failure and synchronization errors; and updates to the onboard

display to show prompting to the train crew whenever a system fault related to braking prediction calculation exits. As this joint RFA involves requests for FRA's approval of the proposed material modifications to FRA-certified positive train control (PTC) systems, FRA is publishing this notice and inviting public comment on railroads' joint RFA to their PTCSPs.

DATES: FRA will consider comments received by May 1, 2023. FRA may consider comments received after that date to the extent practicable and without delaying implementation of valuable or necessary modifications to PTC systems.

ADDRESSES:

Comments: Comments may be submitted by going to *https://www.regulations.gov* and following the online instructions for submitting comments.

Instructions: All submissions must include the agency name and the applicable docket number. The relevant PTC docket numbers for the host railroads that filed a joint RFA to their PTCSPs are cited above and in the Supplementary Information section of this notice. For convenience, all active PTC dockets are hyperlinked on FRA's website at *https://railroads.dot.gov/research-development/program-areas/train-control/ptc/railroads-ptc-dockets.* All comments received will be posted without change to *https://www.regulations.gov;* this includes any personal information.

FOR FURTHER INFORMATION CONTACT: Gabe Neal, Staff Director, Signal, Train Control, and Crossings Division, telephone: 816–516–7168, email: *Gabe.Neal@dot.gov.*

SUPPLEMENTARY INFORMATION: In general, Title 49 United States Code (U.S.C.) Section 20157(h) requires FRA to certify that a host railroad's PTC system complies with Title 49 Code of Federal Regulations (CFR) part 236, subpart I, before the technology may be operated in revenue service. Before making certain changes to an FRA-certified PTC system or the associated FRA-approved PTCSP, a host railroad must submit, and obtain FRA's approval of, an RFA to its PTCSP under 49 CFR 236.1021.

Under 49 CFR 236.1021(e), FRA's regulations provide that FRA will publish a notice in the **Federal Register** and invite public comment in accordance with 49 CFR part 211, if an RFA includes a request for approval of a material modification of a signal and train control system. Accordingly, this notice informs the public that the twenty host railroads' recent, joint RFA to their PTCSPs is available in their respective public PTC dockets, and this notice provides an opportunity for public comment.

On March 22, 2023, the following twenty host railroads jointly submitted an RFA to their respective PTCSPs for their Interoperable Electronic Train Management Systems (I–ETMS): Alaska Railroad; The Belt Railway Company of Chicago; BNSF Railway; Caltrain; Canadian National Railway; Canadian Pacific Railway; Consolidated Rail Corporation; CSX Transportation, Inc.; Kansas City Southern Railway; Kansas City Terminal Railway; National Railroad Passenger Corporation (Amtrak); New Mexico Rail Runner Express; Norfolk Southern Railway; North County Transit District; Northeast Illinois Regional Commuter Railroad Corporation (Metra); Northern Indiana Commuter Transportation District; South Florida Regional Transportation Authority; Southern California Regional Rail Authority (Metrolink); Terminal Railroad Association of St. Louis; and Union Pacific Railroad. Their joint RFA is available in Docket Numbers FRA–2010–0028, –0029, –0039, –0042, –0043, –0045, –0048, –0049, –0051, –0054, –0056, –0057, –0058, –0059, –0060, –0061, –0062, –0064, –0065, and –0070. Interested parties are invited to comment on this RFA by submitting written comments or data. During FRA's review of these railroads' joint RFA, FRA will consider any comments or data submitted within the timeline specified in this notice and to the extent practicable, without delaying implementation of valuable or necessary modifications to PTC systems. *See* 49 CFR 236.1021; *see also* 49 CFR 236.1011(e). Under 49 CFR 236.1021, FRA maintains the authority to approve, approve with conditions, or deny these railroads' joint RFA to their PTCSPs at FRA's sole discretion.

Privacy Act Notice

In accordance with 49 CFR 211.3, FRA solicits comments from the public to better inform its decisions. DOT posts these comments, without edit, including any personal information the commenter provides, to *https://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 *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.* To facilitate comment tracking, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. If you wish to provide comments containing proprietary or confidential information, please contact FRA for alternate submission instructions.

Issued in Washington, DC.

Carolyn R. Hayward-Williams,

Director, Office of Railroad Systems and Technology.

[FR Doc. 2023–07558 Filed 4–10–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Safety Advisory 2023–02; Train Makeup and Operational Safety Concerns

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice of Safety Advisory.

SUMMARY: FRA is issuing Safety Advisory 2023–02 to emphasize significant concerns related to train makeup and to ensure that all railroads exercise due diligence and recognize the importance of taking proactive measures to address potential safety risks related to operating train builds with varying configurations, load and empty placement, distributed power arrangements, and other factors. FRA has noticed a rising trend in recent incidents where train build and makeup have been identified as a potential cause or contributing factor. In response, FRA incorporates train simulations into its investigative process when it is suspected that high in-train forces may have contributed to train accidents. To address these concerns, FRA is providing recommendations for freight railroads to improve the safety of their train build processes and practices.

FOR FURTHER INFORMATION CONTACT: Christian Holt, Staff Director, Operating Practices Division, Office of Railroad Safety, FRA, 1200 New Jersey Avenue SE, Washington, DC 20590, telephone (202) 366–0978.

SUPPLEMENTARY INFORMATION:

Significant Incidents

On March 4, 2023, in Springfield, Ohio, a Norfolk Southern Railway (NS) 210-car mixed freight train totaling 17,966 trailing tons with Distributed Power Units (DPU) experienced a derailment involving 28 cars, including 21 empty and 7 loaded cars. The train had 82 cars equipped with end-of-car cushioning devices, and 18 of those derailed. The locomotives were arranged in a 3x2x0 configuration,[1] with

[1] 3x2x0 represents 3 headend locomotives, 2 mid DPU's, 0 rear DPU's.

one headend locomotive offline. The train was traveling on an ascending 0.6% grade with a heavier part on a 0.7% downhill grade. The weight was mostly concentrated at the head and rear ends of the train. During the accident, dynamic braking was applied only to the headend locomotive consist, while the DPUs were idle, making it function like a conventional train. The derailment happened at the sag between ascending and descending grades, with short, empty rail cars designed to ship coiled steel being the first to derail. Buff forces peaked as the downhill portion of the train ran-in, causing the derailment of cars 70–72 and the subsequent pile-up. The train was classified as a Key Train,[2] with 28 loaded hazardous materials (hazmat) cars distributed throughout. No hazmat cars derailed.

On September 19, 2022, in Albers, Illinois, a NS train derailment occurred involving a 131-car mixed freight train (41 empty and 90 loaded) with a DPU and totaling 11,392 trailing tons. The first derailed car was empty and 27 cars derailed in total. Fifty-six. cars were equipped with end-of-car cushioning devices. The locomotives were arranged in a 3x0x2 configuration, and Energy Management System (EMS) was active during the incident. The derailment occurred as the train traversed a slight descending grade and a 2-degree curve. Among the train's cars, 21 were carrying hazmat. Two of these hazmat cars derailed, and their contents were released. The assigned cause for the accident was excessive lateral drawbar force on the curve due to the train's makeup.

On September 5, 2022, in Hampton, Iowa, a Union Pacific Railroad Company (UP) 165-car mixed freight train (34 empty and 131 loaded) with a total trailing weight of 18,479 tons experienced a derailment involving 44 cars. The train had 26 cars equipped with end-of-car cushioning devices and a 2x0x1 locomotive configuration. The head end of the train was ascending a 1% grade, while the rear end was descending a 1% grade during the incident. The derailment took place at the sag between the ascending and descending grades, with much of the train's weight concentrated at the head and rear ends. The train was a Key Train, carrying 26 loaded hazmat cars, of which 14 derailed and 5 released their contents. At the time of the derailment, EMS technology was operating the train. The assigned cause of the incident was excessive buffing or slack action due to train makeup.

On May 16, 2022, in Gravette, Arkansas, a Kansas City Southern Railway DPU train with a total of 125 cars (one empty and 124 loaded) with a total trailing weight of 17,113 tons experienced a derailment, which involved one car. The locomotive configuration was 2x0x3. The incident occurred while the train was moving uphill and negotiating a curve, resulting in the derailment of the single empty car on the high side of the curve. The root cause of the derailment was identified as improper train makeup.

On February 17, 2022, in Rupert, Idaho, a UP 195-car mixed freight, DPU train derailed 4 cars that consisted of 106 empty and 89 loaded cars with 14,017 trailing tons. The first car to derail was empty. The locomotives were configured as 3x1x1. The train was in the process of stopping due to a hot box detector warning. It was using dynamic braking on the head and mid locomotive consists while idling down on the rear consist as it traveled down a descending grade. The train contained five HazMat cars, but none of them derailed. Nearby residents were evacuated as a precautionary measure. The incident was attributed to improper train make-up.

On May 16, 2021, in Sibley, Iowa, a UP 159-car mixed freight train (43 empty and 116 loaded), weighing a total of 16,545 tons, with a 2x1x0 DPU configuration experienced a derailment, resulting in 47 derailed cars. The first car to derail was empty and equipped with an end-of-car cushioning device, as were 12 other derailed cars. At the time of the incident, the train navigated a grade, with the front section ascending and the rear section descending a grade steeper than 1%. Dynamic braking was used before the derailment but was switched to idle shortly before the accident. The derailment took place in a curve located in a sag between the ascending and descending grades. This Key Train contained 26 loaded hazmat cars, of which 14 derailed and 5 released their contents. As a result, the nearby town was evacuated for three days. The cause of the derailment was determined to be excessive buffing or slack action due to the train's makeup.

The analysis of the recent train accidents reveals several common characteristics and patterns:

1. Train Length: Each of the accident trains had 125 or more cars.

2. Distributed Power Units (DPUs): The fact that all accident trains featured DPUs underscores the importance of correctly utilizing and managing DPUs to enhance train handling and minimize the likelihood of accidents. While DPUs can contribute to improved train control, they should not be considered a replacement for proper train car placement and makeup.

3. Trailing Tons: All accident trains far exceeded 4,000 trailing tons, which is the maximum weight threshold established by the AAR's 1992 *Train Make-up Manual,* for considering train makeup for mixed merchandise trains with a grade less than 2.0% and maximum track curvature less than 8 degrees.

4. First Car Derailed: In each accident, the first car to derail was an empty car.

5. Train Type: Five out of the six accidents involved mixed freight trains, which typically require more complex train makeup considerations.

6. Hazmat Cars: Five out of the six accident trains contained hazmat cars, highlighting the potential risks associated with transporting hazardous materials in long, complex consists.

7. Derailed Hazmat Cars: In three of the accidents, hazmat cars were derailed, increasing the risk of hazardous material release and environmental damage.

8. Hazmat Release: Three of the accidents resulted in the release of hazardous materials, posing a threat to public safety and the environment.

9. Evacuations: Two of the accidents led to the evacuation of local populations due to the release of hazardous materials.

10. Key Trains: Three of the six accident trains were classified as Key Trains, which are trains with a higher level of potential risk due to the nature of the cargo they carry or their operational characteristics.

Technologies such as DPUs, energy management systems, and dynamic braking can be used in conjunction with proper train car placement and makeup. While these technologies can improve train handling and fuel efficiency, they cannot replace the need for correct car placement and assembly. Railroads must prioritize proper train makeup to maintain safety, prevent accidents, and optimize train performance. Further, all operating employees must be properly trained in these technologies and the handling of complex trains to ensure safe operation and minimize human error.

[2] As defined by Association of American Railroads (AAR) Circular OT–55, available at *https://public.railinc.com/sites/default/files/documents/OT-55.pdf,* a ''Key Train'' is any train with: (1) One tank car load of Poison or Toxic Inhalation Hazard1 (PIH or TIH) (Hazard Zone A, B, C, or D), anhydrous ammonia (UN1005), or ammonia solutions (UN3318); (2) 20 car loads or intermodal portable tank loads of any combination of hazardous material; or (3) One or more car loads of Spent Nuclear Fuel (SNF), High Level Radioactive Waste (HLRW).

Recommended Actions

To improve train safety and reduce the risk of accidents, FRA recommends the following best practices:

1. Review and update train makeup policies, procedures, and guidelines to ensure they are comprehensive, effective, and current.

2. Ensure that all personnel involved in train makeup decisions and operations receive appropriate training, guidance, and supervision to effectively execute train makeup policies, procedures, and guidelines to ensure safe operations.

3. Establish a system to regularly monitor and assess train makeup practices, with a focus on identifying and addressing potential safety risks.

4. Encourage open communication and collaboration among all stakeholders, including train crews, dispatchers, yardmasters, and maintenance personnel, to ensure a comprehensive understanding of train makeup factors and their potential impact on safety. Personnel should be encouraged and empowered to adhere to train makeup policies, procedures, and guidelines, even if it delays a train.

5. Develop and implement strategies to mitigate the risks associated with train build factors, such as the proper use of distributed power, train length limitations, and other operational train handling practices.

6. Enhance incident investigation procedures to specifically address train makeup factors and their potential contribution to the cause of the incident.

FRA encourages freight railroads to take actions consistent with the preceding recommendations. FRA may modify this Safety Advisory 2023–02, issue additional safety advisories, or take other appropriate action necessary to ensure the highest level of safety on the Nation's railroads, including pursing other corrective measures under its rail safety authority.

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety Chief Safety Officer.

[FR Doc. 2023–07579 Filed 4–10–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2010–0030]

Massachusetts Bay Transportation Authority's Request To Amend Its Positive Train Control System

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of availability and request for comments.

SUMMARY: This document provides the public with notice that, on March 23, 2023, the Massachusetts Bay Transportation Authority (MBTA) submitted a request for amendment (RFA) to its FRA-certified positive train control (PTC) system in order to support the reconfiguration of its underlying Automatic Train Control (ATC) system on its commuter rail network. On MBTA's South Side, the ATC System in the area is being reconfigured requiring the PTC system to be taken out of service during the reconfiguration as well as during the recommissioning of the ATC system and MBTA's Advanced Civil Speed Enforcement System II (ACSES II). FRA is publishing this notice and inviting public comment on MBTA's RFA to its PTC system.

DATES: FRA will consider comments received by May 1, 2023. FRA may consider comments received after that date to the extent practicable and without delaying implementation of valuable or necessary modifications to a PTC system.

ADDRESSES: *Comments:* Comments may be submitted by going to *https://www.regulations.gov* and following the online instructions for submitting comments.

Instructions: All submissions must include the agency name and the applicable docket number. The relevant PTC docket number for this host railroad is Docket No. FRA–2010–0030. For convenience, all active PTC dockets are hyperlinked on FRA's website at *https://railroads.dot.gov/research-development/program-areas/train-control/ptc/railroads-ptc-dockets.* All comments received will be posted without change to *https://www.regulations.gov;* this includes any personal information.

FOR FURTHER INFORMATION CONTACT: Gabe Neal, Staff Director, Signal, Train Control, and Crossings Division, telephone: 816–516–7168, email: *Gabe.Neal@dot.gov.*

SUPPLEMENTARY INFORMATION: In general, Title 49 United States Code (U.S.C.) Section 20157(h) requires FRA to certify that a host railroad's PTC system complies with Title 49 Code of Federal Regulations (CFR) part 236, subpart I, before the technology may be operated in revenue service. Before making certain changes to an FRA-certified PTC system or the associated FRA-approved PTC Safety Plan (PTCSP), a host railroad must submit, and obtain FRA's approval of, an RFA to its PTC system or PTCSP under 49 CFR 236.1021.

Under 49 CFR 236.1021(e), FRA's regulations provide that FRA will publish a notice in the **Federal Register** and invite public comment in accordance with 49 CFR part 211, if an RFA includes a request for approval of a material modification or discontinuance of a signal and train control system. Accordingly, this notice informs the public that, on December 21, 2022, MBTA submitted an RFA to its ACSES II system, which seeks FRA's approval to temporarily discontinue its PTC system to install Construction Zone (CZ) Transponders on MBTA's Middleboro Main Line segment between May and June 2023. That RFA is available in Docket No. FRA–2010–0030.

Interested parties are invited to comment on MBTA's RFA to its PTC system by submitting written comments or data. During FRA's review of this railroad's RFA, FRA will consider any comments or data submitted within the timeline specified in this notice and to the extent practicable, without delaying implementation of valuable or necessary modifications to a PTC system. *See* 49 CFR 236.1021; *see also* 49 CFR 236.1011(e). Under 49 CFR 236.1021, FRA maintains the authority to approve, approve with conditions, or deny a railroad's RFA to its PTC system at FRA's sole discretion.

Privacy Act Notice

In accordance with 49 CFR 211.3, FRA solicits comments from the public to better inform its decisions. DOT posts these comments, without edit, including any personal information the commenter provides, to *https://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 *https://www.regulations.gov/privacy-notice* for the privacy notice of regulations.gov. To facilitate comment tracking, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. If you wish to provide comments containing proprietary or confidential information,

please contact FRA for alternate submission instructions.

Issued in Washington, DC.

Carolyn R. Hayward-Williams,

Director, Office of Railroad Systems and Technology.

[FR Doc. 2023–07559 Filed 4–10–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2018–0066]

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 March 3, 2023, BNSF Railway (BNSF) 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 227 (Occupational Noise Exposure). The relevant Docket Number is FRA–2018–0066.

Specifically, BNSF requests to extend its relief from § 227.109, *Audiometric testing program,* to allow employees certified under parts 240 (Qualification and Certification of Locomotive Engineers) and 242 (Qualification and Certification of Conductors) to exceed 1,095 days between audiometric tests if they meet the hearing acuity timelines of §§ 240.217, *Time limitations for making determinations,* and 242.201, *Time limitations for certification.* BNSF seeks continued permission for certified employees to have up to 1,460 days between audiometric tests to alleviate possible employee confusion of having multiple hearing test requirements. In support of its petition, BNSF states that the relief will ''reduce the impacts of regulatory overlap'' and that the relief is supported by employees.[1] Additionally, BNSF states that it has successfully completed hearing conservation audits in 2009, 2014, 2020, and 2022, and it will ''continue to offer annual testing and training in the spirit of the regulation's intent to provide long-term surveillance and medical oversight'' for certified employees.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

[1] To support this claim, BNSF cites the comment, dated September 24, 2018, from SMART–TD in the docket at *https://www.regulations.gov/comment/FRA-2018-0066-0004.*

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 June 12, 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. 2023–07575 Filed 4–10–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2022–0108]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Request for Comment; Older Driver Rearview Video Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice and request for comments on a reinstatement of previously approved information collection.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request (ICR) summarized below will be submitted to the Office of Management and Budget (OMB) for review and approval. The ICR describes the nature of the information collection and its expected burden. NHTSA invites public comments about our intention to request approval from the Office of Management and Budget (OMB) for a reinstatement with modification of a previously approved information collection request exploring older drivers' use of rearview video systems (backing cameras). A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published. NHTSA received comments from one organization, which we address below.

DATES: Comments must be submitted on or before May 11, 2023.

ADDRESSES: Written comments and recommendations for the proposed information collection, including suggestions for reducing burden, should be submitted to the Office of Management and Budget at *www.reginfo.gov/public/do/PRAMain.* To find this particular information collection, select ''Currently under Review—Open for Public Comment'' or use the search function.

FOR FURTHER INFORMATION CONTACT: For additional information or access to background documents, contact Kathy Sifrit, Ph.D., Office of Behavioral Safety Research (NPD–320), (202) 366–9982, National Highway Traffic Safety Administration, W46–472, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501 *et seq.*), a Federal agency must receive approval from the Office of Management and Budget (OMB) before it collects certain information from the public and a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. In compliance with these requirements, this notice announces that the following information collection request will be submitted OMB.

Title: Older Driver Rearview Video Systems.

OMB Control Number: 2127–0731.

Form Number: Forms 1398 and 1399.

Type of Request: Reinstatement with modification of a previously approved information collection (OMB Control No. 2127–0731).

Type of Review Requested: Regular.

Length of Approval Requested: Three years (except for certain research projects).

Summary of the Collection of Information: The National Highway Traffic Safety Administration of the U.S. Department of Transportation is seeking approval to reinstate an information collection to recruit 120 older licensed drivers, 60 between ages 60 and 69 and 60 age 70 and older, for a one-time voluntary research study to assess whether training on the use of Rear Video Systems (RVS) improves the ability of older drivers to back safely. NHTSA expects 180 volunteers will complete screening over the telephone or in-person to determine their eligibility for the study. Recruiting participants for the reinstated collection has an estimated burden of 15 hours (five minutes per respondent). NHTSA expects that among the 180 who are screened, 120 will be eligible and willing to participate in the study. These 120 participants will complete informed consent forms (15 minutes per participant or 30 burden hours), participate in either RVS training or an equal-time placebo group (30 minutes per participant or 60 burden hours), and complete a series of backing tasks on a closed test-track (60 minutes per participant or 120 burden hours). The overall expected burden for screening (15 hours) and the experiment (210 hours) is 225 hours.

NHTSA previously obtained clearance from OMB to conduct the information collections for this one-time study. However, NHTSA was unable to complete the study as a result of the public health emergency in 2020 and 2021. The requested reinstatement is 125 fewer burden hours than the previous information collection request because the reinstatement is for 120 rather than 200 participants. The reinstatement requests fewer burden hours because NHTSA previously completed the first part of this collection by observing older drivers while backing for the development of training. NHTSA is now requesting a reinstatement to allow it to complete the second part, assessing the effects of the training. NHTSA will use the information to produce a technical report containing summary statistics and tables. No identifying information or individual responses will be reported. The technical report will be made available to a variety of audiences interested in improving highway safety through the agency website and the National Transportation Library. This project involves approval by an institutional review board, which the contractor will obtain before contacting potential participants. This collection will inform the development of behavioral safety countermeasures to improve older driver safety, particularly older driver training.

Description of the Need for the Information and Proposed Use of the Information: Older adults comprise an increasing proportion of the driving population.[1] The independent mobility that driving confers improves older adults' access to the goods and services they need and enhances their ability to take part in community and family activities that support quality of life. New vehicle technologies, like RVS, may help compensate for some age-related deficits and keep older adults driving safely.

The theory underpinning the assumption that older drivers have an elevated safety risk associated with backing crashes is based upon known age-related deficits. Many older drivers have musculoskeletal difficulties that limit their ability to turn and scan behind the vehicle. For example, Chen et al. (2015) found that older drivers had less neck and trunk rotation and were less successful in detecting targets requiring body rotation in a driving simulator.[2] Aging also diminishes the visual search, visual information processing, and divided attention capabilities needed to be alert to possible conflicts from cross traffic when backing from a driveway or parking space. Deficits in visual scanning among older drivers have been reported in numerous studies. For example, Pollatsek et al. (2012) found that older drivers were less likely to focus their visual attention on areas with potential hazards than younger experienced drivers at intersections in a simulator and on-the-road.[3]

An analysis of NHTSA's Non-Traffic Surveillance from 2012 through 2014 indicated that older drivers were involved in an estimated 19,000 backing crashes a year that resulted in death or injury. This represented 22% of all non-traffic backing crashes. Older drivers represented 17% of all licensed drivers but accounted for 22% of all non-traffic backing crashes during this period, indicating an over-representation in non-traffic backing crashes per licensed driver. Studies have found that the most frequent error among older drivers involved in crashes is failure to yield the right-of-way. For example, Cicchino and McCartt (2015) found that ''the most frequent error made by crash-involved drivers ages 70 and older was inadequate surveillance, which included looking but not seeing and failing to look.''[4] The fact that older drivers are at elevated risk of crashes due to inadequate surveillance compared to younger drivers may explain their over-representation in backing crashes per licensed driver.

RVS is expected to offer more potential benefits to older drivers than younger drivers because older drivers have more room for improvement due to the age-related decline in the ability to rotate one's body. It may also compensate for the fact that older drivers are more likely to have inadequate surveillance or scanning than younger drivers. A recently published article addressed this question. Cichino (2017) found that RVS reduced backing crash involvement among drivers 70 and older by 36% compared to 16% for drivers younger than 70, but the difference was not statistically significant. The study also found that backing sensors reduced backing crash involvement for drivers 70 and older by 38% compared to no effectiveness for drivers younger than 70, which was a statistically significant difference.[5]

60-Day Notice

A Federal Register notice with a 60-day comment period soliciting public comments on the following information collection was published on 01/12/2023 (88 FR 2168–70). One organization, the National Association of Mutual Insurance Companies (NAMIC) submitted comments. NAMIC noted

[1] National Center for Statistics and Analysis. (2022, July). 2020 older population fact sheet. (Traffic Safety Facts. Report No. DOT HS 813 341). National Highway Traffic Safety Administration. Available at *https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812372.*

[2] Chen, K. B., Xu, X., Lin J. H., & Radwin, R. G. (2015). ''Evaluation of older driver head functional range of motion using portable immersive virtual reality.'' *Experimental gerontology, 70,* 150–156. *https://doi.org/10.1016/j.exger.2015.08.010.*

[3] Pollatsek, A., Romoser, M. R., & Fisher, D. L. (2012). ''Identifying and remediating failures of selective attention in older drivers.'' *Current directions in psychological science, 21*(1), 3–7. *https://doi.org/10.1177/0963721411429459.*

[4] Cicchino, J. B. and McCartt, A. T. (2015). ''Critical older driver errors in a sample of serious U.S. crashes.'' *Accident analysis and prevention, 80,* 211–219. *https://doi.org/10.1016/j.aap.2015.04.015.*

[5] Cichino, J. B. (2017). ''Effects of rearview cameras and rear parking sensors on police-reported backing crashes.'' *Traffic injury prevention, 18*(8), 859–865. *https://doi.org/10.1080/15389588.2017.1317758.*

support for the project, specifically that the proposed information collection is necessary for the proper performance of the functions of NHTSA and indicated that there is every reason the believe that the results of the study will have great practical utility. NAMIC went on to recommend that NHTSA ''continue to seek input from the insurance industry,'' as they may be able to provide input on metric, performance indicators, and measures of success. They added that NAMIC would be interested in working with NHTSA on these areas of study and analysis. While NHTSA has not worked with NAMIC on this project, under Part 1 of the project, the contractors conducted a literature review of research in older driver safety that focused on performance in backing maneuvers. That review included research from the Insurance Institute for Highway Safety. This review, combined with analyses of older adults' backing performance collected in Part 1 of the project informed both the training and data collection protocols.

Affected Public: The potential respondent universe is comprised of all residents of the New River Valley and Roanoke Valley regions in Virginia who are age 60 and older. From this universe, the new data collection screening questionnaire will be administered to an estimated 180 potential participants to qualify a total sample of 120 volunteer drivers, 60 between ages 60 and 69 and 60 who are 70 and older.

Estimated Number of Respondents: The study anticipates screening 180 potential participants to obtain 120 older drivers who meet study inclusion criteria. NHTSA expects to collect information either over the telephone or in-person from up to 180 potential participants to determine their eligibility for the study. Based upon previous research experience in the study area, an estimated 120 potential participants (65% of those who respond to screener questions) will be eligible and interested. The 120 participants are expected to consent and complete the study.

Frequency: This study is a one-time information collection, and there will be no recurrence.

Number of Responses: 180.

Estimated Total Annual Burden Hours: 225 hours.

Estimated Total Annual Burden Cost: $6,558.

The contractor will use a screening questionnaire (Form 1398) to identify 120 drivers (60 between ages 60 and 69 and 60 age 70 and older) who are properly qualified and choose to participate in the study. Participants will answer the screening questionnaire items either over the phone or in person to determine if they qualify for the study. Respondents are expected to take an estimated average of 5 minutes to complete the initial screening resulting in 15 burden hours for screening up to 180 potential participants. It is estimated that 65% of those who begin the screening process will be eligible and interested in participating. As such, we anticipate screening up to 180 individuals to recruit an estimated 120 potential participants for the consenting process. The consenting process includes an overview of the study and an explanation of the form (Form 1399). Respondents are expected to take an average of 15 minutes for the consenting process including reviewing and completing the form resulting in 30 burden hours. The 120 participants will complete study activities with an estimated burden of 90 minutes per participant for a total estimated burden of 180 hours.

Table 1 describes the calculation of the estimated burden hours for a total of 225 annual hours. To calculate the opportunity cost to participants in this study, NHTSA used the average (mean) hourly earnings from employers in all industry sectors in the State of Virginia, which the Bureau of Labor Statistics lists at $28.92.[6] NHTSA estimated the opportunity cost for each form (and associated study activities) and arrived at a total opportunity cost of $6,558.

TABLE 1—BURDEN ESTIMATES

	Burden (minutes) per respondent	New respondents	New total burden hours	New total labor costs
Form 1398:				
Telephone Screening	5	180	15	$434
Form 1399				
Informed Consent	15	120	30	$868
Backing Performance Evaluation	60	120	120	$3,470
Training Protocol/Placebo	30	120	60	$1,735
Total Form 1399			210	$6,073
Total estimated burden hours			*225*	*$6,558*

Public Comments Invited: You are asked to comment on any aspects of this information collection, including (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including 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.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; 49 CFR 1.49; and DOT Order 1351.29A.

Issued in Washington, DC.

Nanda Narayanan Srinivasan,

Associate Administrator, Research and Program Development.

[FR Doc. 2023–07521 Filed 4–10–23; 8:45 am]

BILLING CODE 4910–59–P

[6] May 2021. See *https://www.bls.gov/oes/current/oes_va.htm#00-0000.*

DEPARTMENT OF TRANSPORTATION

[Docket No: PHMSA–2022–0060]

Pipeline Safety: Information Collection Activities: Voluntary Adoption of API RP 1173 for Gas Distribution Systems

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the information collection request abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comment. A **Federal Register** notice with a 60-day comment period soliciting comments on the information collections was published on September 6, 2022.

DATES: Interested persons are invited to submit comments on or before May 11, 2023.

ADDRESSES: The public is invited to submit comments regarding these information collection requests, including suggestions for reducing the burden, to Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW, Washington, DC 20503. Comments can also be submitted electronically at *www.reginfo.gov/public/do/PRAMain.*

FOR FURTHER INFORMATION CONTACT: Angela Hill by telephone at 202–680–2034 or by email at *angela.hill@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Title 5, Code of Federal Regulations (CFR) section 1320.8(d), requires the Pipeline and Hazardous Materials Safety Administration (PHMSA) to provide interested members of the public and affected agencies the opportunity to comment on information collection and recordkeeping requests before they are submitted to OMB for approval. In accordance with this regulation, on September 6, 2022, PHMSA published a **Federal Register** notice (87 FR 54590) with a 60-day comment period soliciting comments on its intent to request OMB's approval of a one-time information collection titled: ''Voluntary Adoption of API RP 1173 for Gas Distribution Systems.'' The proposed information collection would provide the data necessary to prepare the report required by section 205 of the Protecting Our Infrastructure of Pipelines and Enhancing Safety (PIPES) Act of 2020 for gas distribution systems.

During the 60-day comment period, PHMSA received comments from the Pipeline Safety Management Systems (PSMS) Industry Team, Atmos Energy Corporation (Atmos Energy), American Gas Association (AGA), Distribution Contractors Association (DCA), Natural Gas SMS Collaborative, NiSource Inc., MDU Utilities Group (MDUG), American Public Gas Association (APGA), Southwest Gas Corporation, and CMS Energy Corporation, a parent holding company of Consumers Energy Company. Commenters were overall supportive of the intent of section 205. Note AGA, DCA and APGA are also members of the PSMS Industry Team. Similarly, the operator companies may be members of one or more of the other entities commenting. In addition to agreeing with comments of the PSMS Industry Team, AGA, DCA and APGA and some operators provided additional comments unique to their respective associations. Where AGA, DCA, APGA, or operator comments were in-line with the PSMS Industry Team, only the PSMS team comment is discussed. If AGA, DCA, APGA, or individual operator companies included unique comments in their separate responses, they are noted accordingly. Overall, PHMSA largely incorporated the PSMS Industry Team's comments. The comments and PHMSA's responses, organized by topic, are summarized and addressed below.

II. Comment Summary

A summary of comments and PHMSA responses are detailed below.

A. Estimated Burden and Cost Related Questions

Comment: The PSMS Industry Team stated that the information collection as written in the 60-day notice was overly complicated, burdensome, and confusing. The PSMS Industry Team stated the burden required to complete the questionnaire as drafted would be extensive, far exceeding the one-hour allocation outlined in the PHMSA 60-day notice. The PSMS Industry Team recommended that PHMSA utilize the existing annual survey already in place and facilitated by the PSMS Industry Team rather than creating new or disparate collection efforts. The PSMS Industry Team did not give specific estimates in the docket comments of burden hours to complete the draft form proposed in the 60-day notice or modified version but specified that its recommendations would meet the intent of section 205 while reducing the burden on industry. PHMSA reached out to the PSMS Industry Team by email for further input on burden estimates. In response, the PSMS Industry Team specified that the PHMSA proposal as written in the 60-day notice could take about 2–4 hours per SMS program element as it would require individual operator employees to coordinate with other departments or groups in the organization to determine work burdens, staff hours worked or monetary costs. Based on their estimate of 2–4 hours per element, the estimated burden for PHMSA's proposed GD–SMS–2022 Form in the 60-day notice would be 26,280–52,560 hours (2–4 hours per element × 10 elements × 1,314 responses). In contrast, the PSMS Industry Team specified that a version that aligns more with their survey and removes the detailed cost and labor hour questions could be more on the order of 3 hours to complete with the rationale that an individual could answer most of the questions without coordination or discussion with other internal work groups on cost or hours by SMS Program Element. Based on this estimate, the PSMS Industry Team's survey would result in an estimated burden of about 3,942 hours (1,314 responses × 3 hours).

For costs, the PSMS Industry Team stated that the proposed GD–SMS–2022 Form in the 60-day notice requests implementation percentages, costs, and manpower hours for each Program Element in RP 1173 instead of assessing steps in the SMS implementation journey as outlined in the Pipeline SMS Maturity Model. The PSMS Industry Team recommended that the questionnaire solicit information on the number of distribution operators who have made leadership commitments, conducted a gap analysis, identified gaps or improvement opportunities, prioritized gap closures, actively participated in external sharing events, developed a management review process and conducted a review, assessed safety culture, and evaluated SMS maturity. The PSMS Industry Team specified that each of these actions are steps in the implementation journey, increasing an operator's SMS maturity from basic RP 1173 conformance to system effectiveness. The PSMS Industry Team's Annual Survey asks operators to detail their level of participation in these discrete steps and has tracked responses since 2017. The PSMS Industry Team stated that PHMSA's draft form in the 60-day notice only sought to quantify the costs or hours to implement these elements, ignoring the more complex questions of implementation progress, effectiveness, and maturity. Further, the PSMS Industry Team stated that PHMSA's

draft form does not recognize that for many operators that have implemented RP 1173, parsing out these implementation costs and effort hours specific to this standard is not realistic. The PSMS Industry Team indicated that as Pipeline SMS implementation is embedded in every aspect of daily operations, attributing specific cost figures to individual program elements is infeasible, impractical, and should be removed.

Atmos Energy stated that Questions 8b and 8c suggest that Pipeline SMS is ''implemented'' at a certain point in time and has a definite, discernible dollar amount that can be quantified and amassed for that implementation. Atmos Energy further stated that even if the data could be accurately captured, it would not provide a meaningful company comparison for PHMSA. Atmos Energy noted that the amount of time and costs that a company has expended and is still expending on instituting and continuing to develop PSMS would be dependent on the results of a gap analysis against the company's existing safety culture, the size and complexity of the organization, and time and pace at which the organization began its Pipeline SMS journey. Atmos Energy also stated that the questions and instructions do not provide guidance as to what factors or components should be included or excluded in these calculations, which would leave that determination up to the individual operator, only further precluding the gathering of usable comparative data. In summary, Atmos Energy stated that tracking and reporting quantifiable implementation efforts and costs do not align with the continuous improvement and ongoing development tenants of Pipeline SMS nor do they accurately reflect a company's safety culture or priorities.

AGA stated that identifying implementation costs and hours specific to each element is not realistic for many large, multi-state operators. Like the PSMS Industry Team's comments, AGA recommended capturing data outlined in the Pipeline SMS Maturity Model. Like Atmos Energy's comment, AGA specified concern regarding whether the information being requested in Questions 8 and 9 could be accurately captured, and whether it would provide a meaningful operator comparison. AGA stated that the proposed form failed to define ''implementation'' and asking operators to disclose when elements were ''fully implemented'' or ''complete'' does not reflect the guiding principles of SMS implementation or continuous improvement.

The Natural Gas SMS Collaborative stated that direct cost figures do not effectively represent the efforts an operator may have put forth in support of safety management implementation and recommended PHMSA consider utilizing measures of maturity to effectively represent the operators' level of commitment and investment in Pipeline SMS.

NiSource commented that an effective management system serves as the foundation of an operating model and NiSource experiences a distribution of costs across operations that may be prioritized based on their SMS Processes and Procedures. NiSource noted that these costs are spread and shared across the organization. NiSource provided some specific recommendations as alternatives if PHMSA chose not to adopt industry comment recommendations through the PSMS Industry Team and the Natural Gas SMS Collaborative, but otherwise supported the comments and alternatives proposed by those entities.

MDUG, which consisted of at least four Operator Identification Numbers (OpIDs) and over 1 million customers served at the time of the 60-day notice comment submittal, stated that it would not be able to accurately assess either the number of staff hours or the implementation costs by element. MDUG proposed removing question 8b (associated with staff hours) in the 60-day version and proposed the following in place of 8c (associated with costs): ''Prior to the decision to implement API RP 1173, did your organization do a cost analysis of the impact of internal or external resources?''

PHMSA Response: PHMSA would like to thank all the entities for taking the time to submit comments. Regarding concerns with burden and cost, PHMSA has largely accepted the alternatives proposed by the commenters. For example, implementing an SMS program based on API RP 1173 requires the operator to maintain procedures for Management of Change (MOC) to be applied to significant technology, equipment, procedural, and organizational changes. Section 204 of the PIPES Act directs PHMSA to update regulations to ensure that gas distribution operators include a detailed MOC process in their procedural manual for operations, maintenance, and emergencies. The regulation update will have to also address emergency response plans and record keeping requirements which are two of elements of API RP 1173. However, after considering the comments, PHMSA agrees that the alternatives proposed that align more closely with the industry's annual survey would still provide the information needed to complete the section 205 Report to Congress.

Regarding the PSMS Industry Team's recommendation that PHMSA utilize the existing annual survey facilitated by the Pipeline SMS team, PHMSA believes that it must proceed with the information collection to better support the preparation of the report required by section 205. However, industry is welcome to provide data from industry developed surveys.

Given that PHMSA has revised the questions to closely align with the PSMS Industry Team recommendations, PHMSA has adjusted the estimated annual burden hours to reflect the input provided by the PSMS Industry Team.

PHMSA appreciates NiSource's and the Natural Gas Collective's suggestions for alternate questions if PHMSA chose not to adopt certain industry recommendations submitted in their comments. Since PHMSA largely incorporated the PSMS Industry Team recommendations, PHMSA did not incorporate the alternatives provided by NiSource. As part of the PSMS Industry Team comments and alternative questions that PHMSA incorporates, there is a question that touches on SMS maturity level. More specifically, question 16 in the 30-day Notice asks, ''Are you maintaining a method to evaluate PSMS maturity?'' In its comments, NiSource raised some interesting nuances that need to be considered for larger and complex operators just as APGA raised some interesting nuances for very small operators described later in this notice. PHMSA believes, by incorporating the alternative questions in the form, the necessary information can be collected from distribution operators of all sizes.

PHMSA accommodated MDUG's suggestion to remove question 8b associated with staff hours by incorporating the PSMS Industry Team's suggested questions. PHMSA also accommodated MDUG's concern with question 8c associated with costs by incorporating the PSMS Industry Team's suggested questions. More specifically, the new question 8 asks ''Have you performed a gap assessment or other comparable exercise to compare your pipeline safety and safety culture efforts to the concepts of safety management systems described in API RP 1173?'' The follow-up question 9 asks about barriers preventing an operator from implementing an SMS program. Among the options for barriers/challenges is financial considerations.

B. Suggestions To Enhance the Quality, Utility, and Clarity of the Collected Information

PHMSA also received comments that made general suggestions to enhance the overall quality and clarity of the collection information. Some aspects are included in the comments above with others described below.

1. Refine Questions To Better Track Progress and Feasibility in Alignment With RP 1173 Principles

Comments: The PSMS Industry Team and other commenters noted confusion with some of the terms used such as question 8 asking about element implementation and question 9 asking in what year the SMS program was fully implemented with elements selected in 8a. Commenters suggested that either PHMSA include the agency's definition of terms ''fully implemented'' and ''initiated'' to support more accurate response or adjust questions in a way to ask operators if they have completed steps along the implementation journey, as reflected in the PSMS team survey, or their perceived maturity towards the PSMS Maturity Model.

PHMSA Response: PHMSA would like to thank the commenters and SMS is a continuous improvement journey. The concept of an element being initiated was to indicate when it started in the Plan-Do-Check-Act (PDCA) cycle for a given operator. Fully implemented was meant to indicate when it at least made it through one PDCA cycle. However, PHMSA agrees fully implemented can still be confusing. PHMSA has modified the form to align with the questions recommended by the PSMS Industry Team.

2. Feasibility of the Form and API RP 1173 for Very Small Operators

Comment: APGA discussed the feasibility of API 1173 and Safety Management Systems in general for very small operators. APGA proposed a very small operator be defined as a pipeline operator that:

(a) Serves less than 20,000 natural gas distribution customers: and

(b) Has total deliveries less than 10 billion cubic feet (BCF) annually.

APGA commented that the principles of API RP 1173 are applicable to pipeline operators of all sizes. However, APGA stated that implementing all the prescriptive requirements and practices, as currently written, is not feasible for very small operators.

For more context, APGA noted the following: A natural gas utility serving around 20,000 services typically employs less than 50 individuals, including employees who offer customer support for billing, office administrators, accountants, human resources managers, supervisors, and field personnel. Ultimately a utility of this size will only have approximately 10 to 15 individuals working on or near the pipelines. There are 970 natural gas operators that operate less than 20,000 services, almost all of which are publicly owned natural gas systems. These natural gas distribution operators are committed to incorporating safety management system principles into their daily operations but believe the requirements and recommendations of API RP 1173 PSMS were not written in a truly scalable way for operators of their size.

APGA further commented that in the Annual Industry PSMS Survey, all pipeline operators are asked what barriers are in place that are preventing their voluntary adoption of API RP 1173. APGA stated that staffing, manpower, resources, and time are the leading reasons provided by those not yet implementing API RP 1173, such as those that would meet the ''very small operator'' designation. APGA commented that some operators also express frustration in understanding the justification for their implementation of API RP 1173. APGA noted that these public gas systems serve relatively few customers and operate minimal pipeline mileage. APGA stated that often their systems are newer, fully constructed of plastic pipe, and have relatively few leaks. APGA further stated that for them, the justification for developing a full PSMS program per API RP 1173 seems both unrealistic and unnecessary to further the safety of their system.

APGA also noted that it has tools to assist small operators in understanding, adopting, and implementing pipeline safety management practices which are explained further in their comments posted in the docket. APGA stated that translating the intent of API RP 1173 in a manner that is relatable and actionable for ''very small operators'' is important for voluntary adoption of safety management systems principles. APGA noted their support of the PSMS Industry Team.

APGA did not comment specifically on changes to the form that can best accommodate very small operators other than agreeing with the PSMS Industry Team comments on realigning the questions in a way that focus first on the principles of SMS in general before jumping into whether operators are aware of and specifically following elements of API RP 1173.

PHMSA Response: PHMSA thanks APGA for the comments and has decided to realign the questions in line with PSMS Industry Team comments. As PHMSA noted in the 60-day notice, while the act mandate pointed specifically to API RP 1173, there are other variations available and implemented, including a customized SMS.

3. Operator Name vs. Operator ID

Comment: Atmos Energy commented that Question 1 directs operators to respond separately for each OpID on record. Atmos Energy stated that large multistate operators would have to file multiple submissions from different operator IDs assigned for distribution and transmission facilities and would further result in repetitive responses for PHMSA to review. Atmos Energy noted that they have eleven OpIDs, which would require the completion of eleven forms, with much of the information across those forms being repetitive. Atmos Energy requested that this question be limited to operator name as opposed to operator identification.

PHMSA Response: PHMSA thanks Atmos Energy for the comment. While PHMSA acknowledges some operators have multiple OpIDs, limiting to just an operator name would cause challenges for data collection and data accuracy. For instance, it may not always be clear that an operator submission covers all OpIDs associated with that operator. Also, if there are any variations across OpIDs in any of the questions, PHMSA is interested in identifying and learning about those differences to inform our report to Congress. For example, number of customers served will likely be different for each OpID. Therefore, PHMSA is still requesting a separate report for each OpID.

4. Feasibility of Implementation

Comment: Atmos Energy commented that question 13 in the 60-day version of the form appeared to ask companies to provide a justification for their decision not to implement PSMS. Question 13 specifically asked ''If you do not plan on implementing an SMS program, what are the primary reasons for not implementing?'' Atmos Energy noted its commitment to the implementation of PSMS, while specifying that they recognize that PSMS, through RP 1173, is intended to serve as guidance for operators and its adoption is voluntary. Atmos Energy also noted if the intent of the question is aimed at determining what components may presently act as potential obstacles to an organization's voluntary adoption of PSMS, Atmos Energy requests that PHMSA clarify that intent in the question.

MDUG proposed removing question 10 completely. Question 10 asked ''If you have not implemented an SMS program, (a) are you currently in the process of implementing one and (b) how much progress have you made with implementing the 10 or more (if applicable) elements of the program?'' with a yes and no answer, a percentage of implementing by element. MDUG suggested adding an additional question after 15: ''If you have used the API maturity scale to assess your SMS program, what is your overall score (on a scale of 1–5)?''

PHMSA Response: The original purpose of the question was to help provide input on the number of companies implementing a pipeline SMS and the feasibility of an operator of a natural gas distribution company to implement a pipeline SMS in line with the PIPES Act 2020 section 205 language. PHMSA modified this question to align with the PSMS Industry Team recommendation. The question now asks ''What barriers are preventing you from implementing an SMS program per API RP 1173 or other SMS? (Select all that apply).'' The question now appears as question 9 in the 30-day notice version.

It should be noted that PHMSA added an NA (not applicable) option to the Industry Team recommended version to indicate if an operator is in the process of implementing SMS as part of the response to the new question 9. The Industry Team's recommended version of question 8 ''Have you performed a gap assessment or other comparable exercise to compare your pipeline safety and safety culture efforts to the concepts of safety management systems described in API RP 1173?'' suggested to skip question 9 if the answer was yes. However, PHMSA believes question 9 would collect data on whether an operator performed an initial gap assessment. PHMSA added some language in the instructions to make the intent clearer.

PHMSA believes it accommodated MDUG's request to remove question 10 by incorporating the PSMS Industry Team's version of the questions. PHMSA did not specifically add MDUG's suggested question on maturity level score but did include a question on whether a submitter is maintaining a method to evaluate PSMS maturity in line with the PSMS Industry Team's version of the questions.

5. Comments Related to Damage Prevention and the Potential of Geographic Information Systems (GIS) Mapping

Comment: The Distribution Contractors Association (DCA) noted that PHMSA solicited comments on ''additional information that would be appropriate to collect to inform the reduction in risk to people, property, and the environment due to excavation damages.'' DCA commented that accurate mapping of underground utility pipelines has become a challenging and difficult task, and rather than restricting a user to limited features on a static map, GIS mapping allows for viewing customizable combinations of data layers in a single dynamic tool. DCA specified that underground facility damage prevention practices are more critical than ever particularly in light of the 2021 Infrastructure Investment and Jobs Act and notes that encouraging the use of readily available GIS mapping technologies is clearly an effective way to ensure for the accurate locating of underground facilities. DCA commented that as a part of PHMSA's information collection effort, gathering as much information as possible regarding the current use of GIS mapping by pipeline operators would be appropriate when considering ways to reduce risks associated with excavation activities.

PHMSA Response: PHMSA would like to thank the DCA for being a member of the PSMS Industry Team and providing comments on the importance of accurate mapping, the use of GIS, and in general following underground facility damage prevention laws and best practices. While PHMSA agrees with DCA's comments and is engaged in initiatives for damage prevention through prevention through organizations such as the Common Ground Alliance. That portion of the 60-day information collection request was partly a carryover of language from other information collection efforts and has been removed from this 30-day notice to avoid confusion. PHMSA still encourages all operators and contractors to follow damage prevention laws and best practices. As it relates to API 1173, PHMSA also commends API for developing contractor guidance as a complement to API RP 1173. For more information, see *https://pipelinesms.org/contractor-guidance/.* If there are any aspects of GIS mapping or contractor engagement in general that could be useful to convey in the process of this information collection, operators are welcome to include those aspects.

III. Summary of Impacted Collections

Section 1320.8(d), title 5, Code of Federal Regulations, requires PHMSA to provide interested members of the public and affected entities an opportunity to comment on information collection and recordkeeping requests. This notice identifies a one-time information collection that PHMSA will submit to OMB for approval.

The following information is provided for this information collection: (1) Title of the information collection; (2) OMB control number; (3) Current expiration date; (4) Type of request; (5) Abstract of the information collection activity; (6) Description of affected public; (7) Estimate of total annual reporting and recordkeeping burden; and (8) Frequency of collection. PHMSA requests comments on the following information:

Title: Voluntary Adoption of API RP 1173 for Gas Distribution Systems.

OMB Control Number: Will request from OMB.

Current Expiration Date: TBD.

Type of Request: Approval of an information collection.

Abstract: This information collection request covers the collection of data from operators of natural gas distribution pipeline systems to ascertain how many gas distribution operators are voluntarily implementing API RP 1173, progress being made for those that have implemented or are implementing a pipeline SMS, and feasibility to implement a pipeline SMS based on size of the operator. PHMSA proposes collecting this information via the proposed GD–SMS–2022 form. PHMSA estimates that it will take each respondent approximately 3 hours to complete the proposed form.

Affected Public: Natural gas distribution pipeline operators.

Annual Burden:

Estimated number of responses: 1,314.

Estimated annual burden hours: 3,942.

Frequency of Collection: Once.

Comments are invited on:

(a) The need for this information collections for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(b) The accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those

who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended, and 49 CFR 1.48.

Issued in Washington, DC, on April 5, 2023, under authority delegated in 49 CFR 1.97.

Alan K. Mayberry,

Associate Administrator for Pipeline Safety.

[FR Doc. 2023–07491 Filed 4–10–23; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Agency Information Collection Activities; Proposed Renewal; Comment Request; Renewal Without Change of the Registration of Money Services Businesses Regulation and FinCEN Form 107

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, FinCEN invites comments on the proposed renewal, without change, to an information collection requirement contained in FinCEN's regulations and FinCEN Form 107—Registration of Money Services Business (RMSB). Under the regulations, money services businesses (MSBs) must register with FinCEN using FinCEN Form 107, renew their registration every two years, and maintain a list of their agents. This request for comments is made pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments are welcome and must be received on or before June 12, 2023.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal E-rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Refer to Docket Number FINCEN–2023–0005 and the Office of Management and Budget (OMB) control number 1506–0013.
- *Mail:* Policy Division, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Refer to Docket Number FINCEN–2023–0005 and OMB control number 1506–0013.

Please submit comments by one method only. Comments will be reviewed consistent with the PRA and applicable OMB regulations and guidance. All comments submitted in response to this notice will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: The FinCEN Resource Center at 1–800–767–2825 or electronically at *frc@fincen.gov.*

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Provisions

The legislative framework generally referred to as the Bank Secrecy Act (BSA) consists of the Currency and Foreign Transactions Reporting Act of 1970, as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Public Law 107–56 (October 26, 2001), and other legislation, including the Anti-Money Laundering Act of 2020 (AML Act).[1] The BSA is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1960, and 31 U.S.C. 5311–5314 and 5316–5336, and notes thereto, with implementing regulations at 31 CFR chapter X.

The BSA authorizes the Secretary of the Treasury (the ''Secretary''), *inter alia,* to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism, and to implement AML programs and compliance procedures.[2] Regulations implementing the BSA appear at 31 CFR chapter X. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.[3]

Under 31 U.S.C. 5330 and its implementing regulation (31 CFR 1022.380), MSBs[4] must file an initial registration form with FinCEN, renew their registration every two years, re-register under certain circumstances, and maintain a list of their agents.

Registration

Each MSB, with a few exceptions, must register with the FinCEN. The information required by 31 U.S.C 5330 and any other information required by FinCEN Form 107 must be reported in the manner and to the extent required by FinCEN Form 107.[5] The registration form for the initial registration period must be filed on or before the end of the 180-day period beginning on the day following the date the business is established.[6] The initial registration period is the two-calendar year period beginning with the calendar year in which the MSB is first required to be registered.[7] MSBs must renew their registrations, with the first renewal due on or before the last day of the initial registration period (December 31st) and subsequent renewals due every two years thereafter.[8] MSBs must re-register with FinCEN not later than 180 days after the following: a change in ownership that requires the MSB to be re-registered under state law, transfer of 10 percent voting or equity interest, or 50 percent increase in agents.[9] MSBs must maintain a copy of any registration form filed under 31 CFR 1022.380 at a location in the United States for a period of five years.[10]

Maintenance of an Agent List

A person that is an MSB solely because that person serves as an agent of another MSB is not required to register.[11] However, MSBs are required to prepare and maintain a list of their agents.[12] The list must be revised each January 1 for the immediately preceding 12-month period.[13] The list is not filed with the registration form but must be maintained at a branch office or location in the United States reported on the registration form.[14] MSBs must make the list of agents available, upon request, to FinCEN, an appropriate law enforcement agency, and the examination function of the Internal Revenue Service, in its capacity as delegee of BSA examination authority.[15]

II. Paperwork Reduction Act (PRA)[16]

Title: Registration of Money Services Businesses (31 CFR 1022.380).

[1] The AML Act was enacted as Division F, sections 6001–6511, of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Public Law 116–283, 134 Stat. 3388 (2021).

[2] Section 358 of the USA PATRIOT Act expanded the purpose of the BSA, by including a reference to reports and records ''that have a high degree of usefulness in intelligence or counterintelligence activities to protect against international terrorism.'' Section 6101 of the AML Act added language further expanding the purpose of the BSA.

[3] Treasury Order 180–01 (Jan. 14, 2020).

[4] *See* 31 CFR 1010.100(ff).

[5] *See* 31 CFR 1022.380(b)(1)(i); Registration of Money Services Business (RMSB) Electronic Filing Instructions. Release Date July 2014—Version 1.0. *https://www.fincen.gov/sites/default/files/shared/FinCENRMSB_ElectronicFilingInstructions.pdf.*

[6] *See* 31 CFR 1022.380(b)(3).

[7] *See* 31 CFR 1022.380(b)(2).

[8] *See* 31 CFR 1022.380(b)(2), (b)(3).

[9] *See* 31 CFR 1022.380(b)(4).

[10] *See* 31 CFR 1010.430(d); 31 CFR 1022.380(b)(1)(iii).

[11] *See* 31 CFR 1022.380(a)(3).

[12] *See* 31 CFR 1022.380(d).

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] Public Law 104–13, 44 U.S.C. 3506(c)(2)(A).

OMB Number: 1506–0013.

Form Number: FinCEN Form 107—RMSB.

Abstract: FinCEN is issuing this notice to renew the OMB control number for the registration of money services business regulations at 31 CFR 1022.380 and FinCEN Form 107—RMSB.

Type of Review: Renewal without change of a currently approved information collection.

Affected Public: Business or other for-profit institutions.

Initial Registration

Frequency: As required.

Estimated Burden per Respondent: FinCEN estimates that the hourly burden of filing and maintaining a copy of the initial RMSB form is 1 hour and 10 minutes. (1 hour to fill out the form and file it, and 10 minutes to save the form electronically and print out a copy to maintain). FinCEN stipulates that the information required to be included on the form is basic information MSBs need to maintain to conduct business. The e-filing system prompts MSBs to save the registration form after submission.

Estimated Number of Respondents: 3,603 MSBs.[17]

Estimated Total Annual Burden Hours: 4,204 hours.[18]

Registration Renewal

Frequency: Every two years.

Estimated Burden per Respondent: FinCEN estimates that the hourly burden of filing and maintaining a copy of the renewal of the RMSB form is 40 minutes (30 minutes to revise the form and file it, and 10 minutes to save the form electronically and print out a copy to maintain). FinCEN stipulates that the information required to be included on the form is basic information MSBs need to maintain to conduct business. In addition, FinCEN's e-filing system allows MSBs to open a previously filed RMSB form and the electronic form is pre-populated with the information from the prior filing. MSBs can amend Part I by selecting item 1b (renewal) and submit the form. MSBs can update any information required on the form prior to submitting the form electronically. The e-filing system prompts MSBs to save the registration form after submission.

Estimated Number of Respondents: 8,429 MSBs.[19]

Estimated Total Annual Burden Hours: 5,619 hours.[20]

Re-Registration

Frequency: As required.

Estimated Burden per Respondent: FinCEN estimates that the hourly burden of filing and maintaining a copy of the re-registration of the RMSB form is 40 minutes (30 minutes to revise the form and file it, and 10 minutes to save the form electronically and print out a copy to maintain). FinCEN stipulates that the information required to be included on the form is basic information MSBs need to maintain to conduct business. In addition, FinCEN's e-filing system allows MSBs to open a previously filed RMSB form and the electronic form is pre-populated with the information from the prior filing. MSBs can amend Part I by selecting item 1d (re-registration) and selecting the appropriate response in item 2. MSBs can amend the applicable information required on the form and submit it electronically. The e-filing system prompts MSBs to save the registration form after submission.

Estimated Number of Respondents: 201 MSBs.[21]

Estimated Total Annual Burden Hours: 134 hours.[22]

Maintenance of Agent List

Frequency: Annually.

Estimated Burden: FinCEN estimates that the hourly burden of drafting an agent list and revising it annually is 30 minutes per MSB. FinCEN stipulates that the information required to be included on an agent list is basic information MSBs need to maintain to conduct business. FinCEN does not require the MSB to maintain the list in any particular format; therefore, the MSB can leverage its business records to create and revise the list.

Estimated Number of Respondents: 26,276.[23]

Estimated Total Annual Burden Hours: 13,138 hours.[24]

Total Annual Burden Hours for this Information Collection: 23,095 hours.[25]

Records required to be retained under the BSA must be retained for five years. Generally, information reported pursuant to the BSA is confidential or otherwise protected from disclosure but may be shared as provided by law with regulatory and law enforcement authorities.

Request for Comments

Specific Request for Comments

- Is there a public source FinCEN can reference to better estimate the number of entities operating as agent-MSBs?

General Request for Comments

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. 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, costs of operation and maintenance, and cost involved in purchasing services.

Himamauli Das,

Acting Director, Financial Crimes Enforcement Network.

[FR Doc. 2023–07540 Filed 4–10–23; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice

[17] FinCEN looked at the number of initial RMSBs filed in each of the calendar years 2018 through 2022. The average number of initial filings for the period of five years is 3,603.

[18] 3,603 MSBs multiplied by 70 minutes and converted to hours is 4,204 hours.

[19] FinCEN looked at the number of RMSB renewals filed in each of the calendar years 2018 through 2022. The average number of renewals for the period of five years is 8,429.

[20] 8,429 MSBs multiplied by 40 minutes and converted to hours equals 5,619 hours.

[21] FinCEN looked at the number of RMSBs re-registered in each of the calendar years 2018 through 2022. The average number of re-registrations for the period of five years is 201.

[22] 201 MSBs multiplied by 40 minutes and converted to hours is 134 hours.

[23] As of March 3, 2023 there were 26,276 MSBs registered with FinCEN.

[24] 26,276 MSBs multiplied by 30 minutes and converted to hours is 13,138 hours.

[25] The grand total annual burden hours for this information collection represents the total annual burden hours to file initial RMSBs, renewals, and re-registrations, and to maintain agent lists (4,204 + 5,619 + 134 + 13,138 = 23,095).

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the name of one person that has been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of this person are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(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 SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Action

On April 5, 2023, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following person are blocked under the relevant sanctions authority listed below.

Individual

1. BODEAU, Gary, 11 Rue Doucet, Delmas 83, Port Au Prince HT6120, Haiti; DOB 18 Nov 1977; POB Port Au Prince, Haiti; nationality Haiti; Gender Male; Passport PP5201306 (Haiti) issued 03 Apr 2019 expires 02 Apr 2029; National ID No. 0038132991 (Haiti) (individual) [GLOMAG].

Designated pursuant to section 1(a)(ii)(B)(1) of Executive Order 13818 of December 20, 2017, ''Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption,'' 82 FR 60839 (Dec. 26, 2017) for being a foreign person who is a current or former government official, or a person acting for or on behalf of such an official, who is responsible for or complicit in, or has directly or indirectly engaged in, corruption, including the misappropriation of state assets, the expropriation of private assets for personal gain, corruption related to government contracts or the extraction of natural resources, or bribery.

Dated: April 5, 2023.

Andrea Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2023–07590 Filed 4–10–23; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The 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 (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of this person are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Action

On March 31, 2023, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following person are blocked under the relevant sanctions authority listed below. Dealings in property subject to U.S. jurisdiction directly or indirectly owned, whether individually or in the aggregate, 50 percent or more by or more by one or more blocked persons are prohibited effective as of the date of that status, which may be earlier than the date of OFAC's determination.

Entity

1. TABACALERA DEL ESTE S.A. (a.k.a. TABESA), Ybyra Pyta s/n Esquina Mandarinas, Villa Conavi II, Hernandarias 7220, Paraguay; Calle Yvyra Pyta y Mandarinas, Barrio Santa Teresa, Ciudad Hernandarias, Alto Parana, Paraguay; Organization Established Date 1994; Organization Type: Wholesale of food, beverages and tobacco; Tax ID No. 80008790–9 (Paraguay) [GLOMAG] (Linked To: CARTES JARA, Horacio Manuel).

Identified as an entity in which HORACIO MANUEL CARTES JARA, a person whose property and interests are blocked pursuant to an Executive Order or regulations administered by OFAC, owns, directly or indirectly, a 50 percent or greater interest as set forth in 31 CFR 583.406.

Dated: March 31, 2023.

Andrea Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2023–07479 Filed 4–10–23; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request Relating to Improving Customer Experience (OMB Circular A–11, Section 280 Implementation)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), 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 information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments relating to, *Improving Customer Experience (OMB Circular A–11, Section 280 Implementation),* proposed by the Agency.

DATES: Written comments should be received on or before June 12, 2023 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov*. Include ''OMB Number 1545–2290'' in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to Martha R. Brinson, at (202)317–5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Martha.R.Brinson@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Improving Customer Experience (OMB Circular A–11, Section 280 (Implementation).

OMB Number: 1545–2290.

Abstract: A modern, streamlined and responsive customer experience means: raising government-wide customer experience to the average of the private sector service industry; developing indicators for high-impact Federal programs to monitor progress towards excellent customer experience and mature digital services; and providing the structure (including increasing transparency) and resources to ensure customer experience is a focal point for agency leadership.

This information collection activity provides a means to garner customer and stakeholder feedback in an efficient, timely manner in accordance with the Administration's commitment to improving customer service delivery as discussed in Section 280 of OMB Circular A–11 at *https://www.whitehouse.gov/wp-content/uploads/2018/06/s280.pdf*.

As discussed in OMB guidance, agencies should identify their highest-impact customer journeys (using customer volume, annual program cost, and/or knowledge of customer priority as weighting factors) and select touchpoints/transactions within those journeys to collect feedback. These results will be used to improve the delivery of Federal services and programs. It will also provide government-wide data on customer experience that can be displayed on *www.performance.gov* to help build transparency and accountability of Federal programs to the customers they serve.

As a general matter, these information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

The Internal Revenue Service will only submit collections if they meet the following criteria.

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered is intended to be used for general service improvement and program management purposes
- Upon agreement between OMB and the agency all or a subset of information may be released as part of A–11, Section 280 requirements only on *performance.gov*. Summaries of customer research and user testing activities may be included in public-facing customer journey maps and summaries.
- Additional release of data must be done coordinated with OMB.

These collections will allow for ongoing, collaborative and actionable communications between the Agency, its customers and stakeholders, and OMB as it monitors agency compliance on Section 280. These responses will inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on services will be unavailable.

Current Actions: IRS is requesting an increase in the bank of burden hours to cover existing and planned surveys.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households; businesses or other for-profit organizations; not-for-profit institutions; State, local or tribal governments.

Estimated Number of Respondents: 1,011,000.

Estimated Time per Respondent: 9 minutes.

Estimated Total Annual Burden Hours: 150,000.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments will be 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 has 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 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: April 6, 2023.

Martha R. Brinson,

Tax Analyst.

[FR Doc. 2023–07580 Filed 4–10–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request Relating to the Investment 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 continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning the investment credit.

DATES: Written comments should be received on or before June 12, 2023 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov*. Include OMB control number 1545–0155 or Investment Credit.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the publication should be directed to Kerry Dennis at (202) 317–5751, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Kerry.L.Dennis@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Investment Credit.

OMB Number: 1545–0155.

Form Number: 3468.

Abstract: Form 3468 is used to compute Taxpayers' credit against their income tax for certain expenses incurred for their trades or businesses. The information collected is used by the IRS to verify that the credit has been correctly computed.

Current Actions: There are no changes to burden.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,109.

Estimated Time per Response: 35 hours, 34 minutes.

Estimated Total Annual Burden Hours: 75,107.

The following paragraph applies to all 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 if 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: April 5, 2023.

Kerry L. Dennis,

Tax Analyst.

[FR Doc. 2023–07504 Filed 4–10–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Community Volunteer Income Tax Assistance (VITA) Matching Grant Program—Availability of Application for Federal Financial Assistance

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This document provides notice of the availability of the application package for the 2024 Community Volunteer Income Tax Assistance (VITA) Matching Grant Program.

DATES: Application instructions are available electronically from the IRS on May 1, 2023, by visiting: *IRS.gov* (key word search—''VITA Grant''). Application packages are available on May 1, 2023, by visiting *Grants.gov* and searching with the Catalog of Federal Domestic Assistance (CFDA) number 21.009. The deadline for applying to the IRS through *Grants.gov* for the Community VITA Matching Grant Program is May 31, 2023. All applications must be submitted through *Grants.gov*.

ADDRESSES: Internal Revenue Service, Grant Program Office, 401 West Peachtree St. NW, Stop 420–D, Atlanta, GA 30308.

FOR FURTHER INFORMATION CONTACT: Sharon Alley, Senior Tax Analyst at (470) 639–2935 or via their email address at *Grant.Program.Office@irs.gov.*

SUPPLEMENTARY INFORMATION: Authority for the Community Volunteer Income Tax Assistance (VITA) Matching Grant Program is contained in the Taxpayer First Act 2019, Public Law 116–25.

Carol Quiller,

Chief, Grant Program Office, IRS, Stakeholder Partnerships, Education & Communication.

[FR Doc. 2023–07505 Filed 4–10–23; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0365]

Agency Information Collection Activity: (Request for Disinterment)

AGENCY: National Cemetery Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the National Cemetery Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by clicking on the following link *www.reginfo.gov/public/do/PRAMain*, select ''Currently under Review—Open for Public Comments,'' then search the list for the information collection by Title or ''OMB Control No. 2900–0365.''

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. 2900–0365'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 38 U.S.C. 107, 501, 512, 2306, 2402, 2403, 2404, 2407, 2408, 2411, 7105.

Title: Request for Disinterment, VA Form 40–4970.

OMB Control Number: 2900–0365.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants complete VA Form 40–4970 to request removal of remains from a national cemetery for interment at another location. Interments made in national cemeteries are permanent and final. All immediate family members of the decedent, including the person who initiated the interment, (whether or not he/she is a member of the immediate family) must provide a written consent before disinterment is granted. VA will accept an order from a court of local jurisdiction in lieu of VA Form 40–4970.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 88 FR 7775, February 6, 2023.

Affected Public: Individuals or households.

Estimated Annual Burden: 255 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: Annual.

Estimated Number of Respondents: 1,531.

By direction of the Secretary:

Dorothy Glasgow,

VA PRA Clearance Officer, (Alt) Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2023–07534 Filed 4–10–23; 8:45 am]

BILLING CODE 8320–01–P

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Part II

Department of Energy

10 CFR Part 430

Energy Conservation Program: Energy Conservation Standards for Air Cleaners; Final Rule

DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2021–BT–STD–0035]

RIN 1904–AF46

Energy Conservation Program: Energy Conservation Standards for Air Cleaners; Final Rule

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

ACTION: Direct final rule.

SUMMARY: The Energy Policy and Conservation Act, as amended (''EPCA''), authorizes the Secretary of Energy to classify additional types of consumer products as covered products upon determining that: classifying the product as a covered product is necessary for the purposes of EPCA; and the average annual per-household energy use by products of such type is likely to exceed 100 kilowatt-hours per year (''kWh/yr''). In a final determination published on July 15, 2022, DOE determined that classifying air cleaners as a covered product is necessary or appropriate to carry out the purposes of EPCA, and that the average U.S. household energy use for air cleaners is likely to exceed 100 kWh/yr. In this direct final rule, DOE is establishing energy conservation standards for air cleaners. DOE has determined that energy conservation standards for these products will result in significant conservation of energy, and are technologically feasible and economically justified.

DATES: The effective date of this rule is August 9, 2023, unless adverse comment is received by July 31, 2023. If adverse comments are received that DOE determines may provide a reasonable basis for withdrawal of the direct final rule, a timely withdrawal of this rule will be published in the **Federal Register**. If no such adverse comments are received, compliance with the standards established for air cleaners in this direct final rule is required on and after December 31, 2023.

ADDRESSES: The docket for this rulemaking, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The docket web page can be found at *www.regulations.gov/docket/EERE-2021-BT-STD-0035.* The docket web page contains instructions on how to access all documents, including public comments, in the docket.

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

FOR FURTHER INFORMATION CONTACT: Mr. Troy Watson, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC, 20585–0121. Telephone: (240) 449–9387. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Ms. Amelia Whiting, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC, 20585–0121. Telephone: (202) 586–2588. Email: *Amelia.Whiting@hq.doe.gov.*

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I. Synopsis of the Direct Final Rule

On July 15, 2022, DOE published a final determination (''July 2022 Final Determination'') in which it determined that air cleaners qualify as a ''covered product'' under the Energy Policy and Conservation Act, as amended (''EPCA'').[1] 87 FR 42297. DOE determined in the July 2022 Final Determination that coverage of air cleaners is necessary or appropriate to carry out the purposes of EPCA, and that the average U.S. household energy use for air cleaners is likely to exceed 100 kWh/yr. *Id.* Currently, no energy conservation standards are prescribed by DOE for air cleaners.

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 significant conservation of energy. (42 U.S.C. 6295(o)(3)(B))

As previously mentioned, and under the authority provided by 42 U.S.C. 6295(p)(4), DOE is issuing this direct final rule establishing energy conservation standards for air cleaners. These standard levels were submitted jointly to DOE on August 23, 2022, by groups representing manufacturers, energy and environmental advocates, and consumer groups, hereinafter referred to as ''the Joint Stakeholders.''[2] This collective set of comments, titled ''Joint Statement of Joint Stakeholder Proposal On Recommended Energy Conservation Standards And Test Procedure For Consumer Room Air Cleaners'' (the ''Joint Proposal''),[3] recommends specific energy conservation standards for air cleaners that, in the commenters' view, would satisfy the EPCA requirements in 42 U.S.C. 6295(o). See sections II.B.3 and II.B.2 of this document for a detailed discussion of the Joint Proposal and history of the current rulemaking, respectively.

After carefully considering the Joint Proposal, DOE determined that the recommendations contained therein are compliant with 42 U.S.C. 6295(o), as required by 42 U.S.C. 6295(p)(4)(A)(i) for the issuance of a direct final rule. As required by 42 U.S.C. 6295(p)(4)(A)(i), DOE is simultaneously publishing, elsewhere in this issue of the **Federal Register**, a notice of proposed rulemaking (''NOPR'') proposing that the identical standard levels contained in this direct final rule be adopted. Consistent with the statute, DOE is providing a 110-day public comment period on the direct final rule. (42 U.S.C. 6295(p)(4)(B)) If DOE determines that any comments received provide a reasonable basis for withdrawal of the direct final rule under 42 U.S.C. 6295(o), DOE will continue the rulemaking under the NOPR. (42 U.S.C. 6295(p)(4)(C)) See section II.A of this document for more details on DOE's statutory authority.

This direct final rule documents DOE's analyses to objectively and independently evaluate the energy savings potential, technological feasibility, and economic justification of the standard levels recommended in the Joint Proposal, as per the requirements of 42 U.S.C. 6295(o).

Ultimately, DOE found that the standard levels recommended in the Joint Proposal would result in significant energy savings and are technologically feasible and economically justified. Table I.1 documents the standards for air cleaners. The standards correspond to the recommended trial standard level (''TSL'') 3 (as described in section V.A of this document) and are expressed as an integrated energy factor (''IEF'') in terms of $PM_{2.5}$[4] clean air delivery rate per watt (''$PM_{2.5}$ CADR/W''), based on the product's $PM_{2.5}$ CADR. The standards are the same as those recommended by the Joint Stakeholders, which consist of two-tiered (Tier 1 and Tier 2) standard levels. These standards apply to all products listed in Table I.1 and manufactured in, or imported into, the United States starting on December 31, 2023, for Tier 1 standards and on December 31, 2025, for Tier 2 standards.

[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] The Joint Stakeholders include the Association of Home Appliance Manufacturers (''AHAM''), Appliance Standards Awareness Project (''ASAP''), American Council for an Energy-Efficient Economy (''ACEEE''), Consumer Federation of America (''CFA''), Natural Resources Defense Council (''NRDC''), the New York State Energy Research and Development Authority (''NYSERDA''), and the Pacific Gas and Electric Company (''PG&E''). AHAM is representing the companies who manufacture consumer room air cleaners and are members of the Portable Appliance Division (DOE has included names of all manufacturers listed in the footnote on page 1 of the Joint Proposal and the signatories listed on pages 13–14): 3M Co.; Access Business Group, LLC; ACCO Brands Corporation; Air King, Air King Ventilation Products; Airgle Corporation; Alticor, Inc.; Beijing Smartmi Electronic Technology Co., Ltd.; BISSELL Inc.; Blueair Inc.; BSH Home Appliances Corporation; De'Longhi America, Inc.; Dyson Limited; Essick Air Products; Fellowes Inc.; Field Controls; Foxconn Technology Group; GE Appliances, a Haier company; Gree Electric Appliances Inc.; Groupe SEB; Guardian Technologies, LLC; Haier Smart Home Co., Ltd.; Helen of Troy-Health & Home; iRobot; Lasko Products, Inc.; Molekule Inc.; Newell Brands Inc.; Oransi LLC; Phillips Domestic Appliances NA Corporation; SharkNinja Operating, LLC; Sharp Electronics Corporation; Sharp Electronics of Canada Ltd.; Sunbeam Products, Inc.; Trovac Industries Ltd; Vornado Air LLC; Whirlpool Corporation; Winix Inc.; and Zojirushi America Corporation.

[3] DOE Docket No. EERE–2021–BT–STD–0035–0016.

[4] Section 2.8 of the industry standard AHAM AC–7–2022 defines $PM_{2.5}$ as particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by a reference method based on 40 CFR part 50, appendix I, and designated in accordance with 40 CFR part 53 or by an equivalent method designated in accordance with 40 CFR part 53.

TABLE I.1—ENERGY CONSERVATION STANDARDS FOR AIR CLEANERS

[Compliance starting December 31, 2023]

Product class	IEF ($PM_{2.5}$ CADR/W) [5]	
	Tier 1 December 31, 2023	Tier 2 December 31, 2025
PC1: 10 ≤ $PM_{2.5}$ CADR < 100	1.7	1.9
PC2: 100 ≤ $PM_{2.5}$ CADR < 150	1.9	2.4
PC3: $PM_{2.5}$ CADR ≥ 150	2.0	2.9

A. Benefits and Costs to Consumers

Table I.2 summarizes DOE's evaluation of the economic impacts of the adopted standards on consumers of air cleaners, as measured by the average life-cycle cost (''LCC'') savings and the simple payback period (''PBP'').[6] The average LCC savings are positive for all product classes, and the PBP is less than the average lifetime of air cleaners, which is estimated to be 9.0 years (see section IV.F of this document).

TABLE I.2—IMPACTS OF ADOPTED ENERGY CONSERVATION STANDARDS ON CONSUMERS OF AIR CLEANERS

Air cleaners class	Tier	Average LCC savings (2021$)	Simple payback period (years)
Product Class 1: 10–100 $PM_{2.5}$ CADR	Tier 1	$18	0.9
	Tier 2	12	1.4
Product Class 2: 100–150 $PM_{2.5}$ CADR	Tier 1	38	0.4
	Tier 2	50	0.5
Product Class 3: 150+ $PM_{2.5}$ CADR	Tier 1	105	0.1
	Tier 2	94	0.1

DOE's analysis of the impacts of the adopted standards on consumers is described in section IV.F of this document.

B. Impact on Manufacturers

The industry net present value (''INPV'') is the sum of the discounted cash flows to the industry from the base year through the end of the analysis period (2023–2057). Using a real discount rate of 6.6 percent, DOE estimates that the INPV for manufacturers of air cleaners in the case without new standards is $1,565.9 million in 2021$. Under the adopted standards, DOE estimates the change in INPV to range from −4.3 percent to −2.6 percent, which is approximately −$66.7 million to −$40.7 million. In order to bring products into compliance with standards, it is estimated that industry will incur total conversion costs of $57.3 million.

DOE's analysis of the impacts of the adopted standards on manufacturers is described in sections IV.J and V.B.2 of this document.

C. National Benefits and Costs [7]

DOE's analyses indicate that the adopted energy conservation standards for air cleaners would save a significant amount of energy. Relative to the case without standards, the lifetime energy savings for air cleaners purchased in the analysis period that begins in the anticipated year of compliance with the standards (2024–2057), amount to 1.80 quadrillion British thermal units (''Btu''), or quads.[8] This represents a cumulative savings of 27 percent relative to the energy use of these products in the case without standards (referred to as the ''no-new-standards case'').

The cumulative net present value (''NPV'') of total consumer benefits of the standards for air cleaners ranges from $5.8 billion (at a 7-percent discount rate) to $13.7 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 air cleaners purchased in 2024–2057.

In addition, the adopted standards for air cleaners are projected to yield significant environmental benefits. DOE estimates that the standards will result in cumulative emission reductions (over the same period as for energy savings) of 57.7 million metric tons (''Mt'') [9] of carbon dioxide (''CO_2''), 24.2 thousand tons of sulfur dioxide (''SO_2''), 91.2 thousand tons of nitrogen oxides (''NO_X''), 411.4 thousand tons of methane (''CH_4''), 0.6 thousand tons of nitrous oxide (''N_2O''), and 0.2 tons of mercury (''Hg'').[10] The estimated cumulative reduction in CO_2 emissions through 2030 amounts to 2.5 million Mt, which is equivalent to the emissions

[5] These values from the Joint Proposal are rounded according to the sampling plan in 10 CFR 429.68. The rounding has no functional impact on the standards as compared to the levels in the Joint Proposal.

[6] 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 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).

[7] All monetary values in this document are expressed in 2021 dollars. and, where appropriate, are discounted to 2022 unless explicitly stated otherwise.

[8] 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.1 of this document.

[9] A metric ton is equivalent to 1.1 short tons. Results for emissions other than CO_2 are presented in short tons.

[10] 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 affect air pollutant emissions.

resulting from the annual electricity use of almost 500 thousand homes.

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'').[11] DOE used interim SC–GHG values developed by an Interagency Working Group on the Social Cost of Greenhouse Gases (''IWG'').[12] 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 $2.8 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 sets of SC–GHG estimates.

DOE estimated the monetary health benefits of SO_2 and NO_X emissions reductions, using benefit per ton estimates from the scientific literature, as discussed in section IV.L of this document. DOE estimated the present value of the health benefits would be $1.8 billion using a 7-percent discount rate, and $4.7 billion using a 3-percent discount rate.[13] 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.3 summarizes the economic benefits and costs expected to result from the new standards for air cleaners. 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.3—SUMMARY OF ECONOMIC BENEFITS AND COSTS OF ADOPTED ENERGY CONSERVATION STANDARDS FOR AIR CLEANERS

	Billion ($2021)
3% discount rate	
Consumer Operating Cost Savings	14.1
Climate Benefits *	2.8
Health Benefits **	4.7
Total Benefits †	21.6
Consumer Incremental Product Costs	0.5
Net Benefits	21.1
7% discount rate	
Consumer Operating Cost Savings	6.0
Climate Benefits * (3% discount rate)	2.8
Health Benefits **	1.8
Total Benefits †	10.6
Consumer Incremental Product Costs	0.2
Net Benefits	10.3

Note: This table presents the costs and benefits associated with product name shipped in 2024–2057. These results include benefits to consumers which accrue after 2057 from the products shipped in 2024–2057.

* 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 DOE does not have a single central SC–GHG point estimate. To monetize the benefits of reducing greenhouse gas emissions this analysis uses the interim 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 Interagency Working Group on the Social Cost of Greenhouse Gases (IWG).

** 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 3-percent discount rate, but DOE does not have a single central SC–GHG point estimate. DOE emphasizes the importance and value of considering the benefits calculated using all four sets of SC–GHG estimates.

[11] To monetize the benefits of reducing greenhouse gas emissions this analysis uses the interim 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 Interagency Working Group on the Social Cost of Greenhouse Gases (IWG).

[12] *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.*

[13] 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 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.[14]

The national operating cost 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 air cleaners shipped in 2024–2057. The benefits associated with reduced emissions achieved as a result of the adopted standards are also calculated based on the lifetime of air cleaners shipped in 2024–2057. DOE notes that DOE used its typical analytical time horizon of 30-years and then added 4 additional years to reflect the early compliance dates that are part of the standard level being adopted in this final rule. Total benefits for both the 3-percent and 7-percent cases are presented using the average GHG social costs with 3-percent discount rate. Estimates of SC–GHG values are presented for all four discount rates in section V.C.2 of this document.

Table I.4 presents the total estimated monetized benefits and costs associated with the 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 adopted in this rule is $19.8 million per year in increased equipment costs, while the estimated annual benefits are $499 million in reduced equipment operating costs, $136 million in climate benefits, and $149 million in health benefits. In this case, the net benefit would amount to $764 million per year.

Using a 3-percent discount rate for all benefits and costs, the estimated cost of the standards is $23.4 million per year in increased equipment costs, while the estimated annual benefits are $690 million in reduced operating costs, $136 million in climate benefits, and $228 million in health benefits. In this case, the net benefit would amount to $1,030 million per year.

TABLE I.4—ANNUALIZED BENEFITS AND COSTS OF ADOPTED STANDARDS FOR AIR CLEANERS

	Million (2021$/year)		
	Primary estimate	Low-net-benefits estimate	High-net-benefits estimate
3% discount rate			
Consumer Operating Cost Savings	689.7	623.7	773.4
Climate Benefits *	135.6	124.2	149.9
Health Benefits **	228.4	210.1	251.0
Total Benefits †	1,053.6	958.1	1,174.2
Consumer Incremental Product Costs ‡	23.4	22.8	24.7
Net Benefits	1,030.2	935.3	1,149.5
7% discount rate			
Consumer Operating Cost Savings	498.8	459.8	546.9
Climate Benefits * (3% discount rate)	135.6	124.2	149.9
Health Benefits **	149.3	139.7	160.9
Total Benefits †	783.7	723.7	857.7
Consumer Incremental Product Costs ‡	19.8	19.3	20.7
Net Benefits	763.9	704.4	837.0

Note: This table presents the costs and benefits associated with air cleaners shipped in 2024–2057. These results include benefits to consumers which accrue after 2057 from the products shipped in 2024–2057. 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.F.1 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 sets of SC–GHG estimates. To monetize the benefits of reducing greenhouse gas emissions this analysis uses the interim 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 Interagency Working Group on the Social Cost of Greenhouse Gases (IWG).

** 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 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.

‡ Costs include incremental equipment costs as well as filter costs.

[14] To convert the time-series of costs and benefits into annualized values, DOE calculated a present value in 2021, 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.,* 2020 or 2030), and then discounted the present value from each year to 2021. 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.

DOE's analysis of the national impacts of the adopted standards is described in sections IV.H, IV.K, and IV.L of this document.

D. Conclusion

DOE has determined that the Joint Proposal containing recommendations with respect to energy conservation standards for air cleaners was submitted jointly by interested persons that are fairly representative of relevant points of view, in accordance with 42 U.S.C. 6295(p)(4)(A). After considering the analysis and weighing the benefits and burdens, DOE has determined that the recommended standards are in accordance with 42 U.S.C. 6295(o), which contains the criteria for prescribing new or amended standards. Specifically, the Secretary has determined that the adoption of the recommended standards would result in the significant conservation of energy and is technologically feasible and economically justified. In determining whether the recommended standards are economically justified, the Secretary has determined that the benefits of the recommended standards exceed the burdens. Namely, the Secretary has concluded that the recommended standards, when considering the benefits of energy savings, positive NPV of consumer benefits, emission reductions, the estimated monetary value of the emissions reductions, and positive average LCC savings, would yield benefits outweighing the negative impacts on some consumers and on manufacturers, including the conversion costs that could result in a reduction in INPV for manufacturers.

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 standards for air cleaners is $19.8 million per year in increased product costs, while the estimated annual benefits are $499 million in reduced product operating costs, $136 million in climate benefits, and $149 million in health benefits. The net benefit amounts to $764 million 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.[15] For example, some covered products and equipment have most of their energy consumption occur during periods of peak energy demand. The impacts of these products on the energy infrastructure can be more pronounced than products with relatively constant demand. Accordingly, DOE evaluates the significance of energy savings on a case-by-case basis.

As previously mentioned, the standards are projected to result in estimated national energy savings of 1.80 quads FFC, the equivalent of the primary annual energy use of 19 million homes. The NPV of consumer benefit for these projected energy savings is $5.8 billion using a discount rate of 7 percent, and $13.7 billion using a discount rate of 3 percent. The cumulative emissions reductions associated with these energy savings are 57.7 Mt of CO_2, 24.2 thousand tons of SO_2, 91.2 thousand tons of NO_X, 0.2 tons of Hg, 411.4 thousand tons of CH_4, 0.6 thousand tons of N_2O. The estimated monetary value of the climate benefit from reduced GHG emissions (associated with the average SC–GHG at a 3-percent discount rate) is $2.8 billion. The estimated monetary value of the health benefits from reduced SO_2 and NO_X emissions is $1.8 billion using a 7 percent discount rate and $4.7 billion using a 3 percent discount rate. As such, DOE has determined the energy savings from the standard levels adopted in this direct final rule are ''significant'' within the meaning of 42 U.S.C. 6295(o)(3)(B). A more detailed discussion of the basis for these conclusions is contained in the remainder of this document and the accompanying technical support document (''TSD'').

Under the authority provided by 42 U.S.C. 6295(p)(4), DOE is issuing this direct final rule establishing the energy conservation standards for air cleaners. Consistent with this authority, DOE is also publishing elsewhere in this issue of the **Federal Register** a notice of proposed rulemaking proposing standards that are identical to those contained in this direct final rule. *See* 42 U.S.C. 6295(p)(4)(A)(i).

II. Introduction

The following section briefly discusses the statutory authority underlying this direct final rule, as well as some of the relevant historical background related to the establishment of standards for air cleaners.

A. Authority

EPCA grants DOE authority to prescribe an energy conservation standard for any type (or class) of covered products of a type specified in 42 U.S.C. 6292(a)(20) if the requirements of 42 U.S.C. 6295(o) and 42 U.S.C. 6295(p) are met and the Secretary determines that—

(A) the average per household energy use within the United States by products of such type (or class) exceeded 150 kWh (or its Btu equivalent) for any 12-month period ending before such determination;

(B) the aggregate household energy use within the United States by products of such type (or class) exceeded 4,200,000,000 kWh (or its Btu equivalent) for any such 12-month period;

(C) substantial improvement in the energy efficiency of products of such type (or class) is technologically feasible; and

(D) the application of a labeling rule under 42 U.S.C. 6294 to such type (or class) is not likely to be sufficient to induce manufacturers to produce, and consumers and other persons to purchase, covered products of such type (or class) which achieve the maximum energy efficiency which is technologically feasible and economically justified. (42 U.S.C. 6295(*l*)(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 the 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 in limited instances 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

[15] 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).

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 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 air cleaners appear at title 10 of the Code of Federal Regulations (''CFR'') part 430, subpart B, appendix FF (''appendix FF'').

DOE must follow specific statutory criteria for prescribing new or amended standards for covered products, including air cleaners. 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 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 air cleaners, 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, as codified, 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, as codified, 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 products 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 such a 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))

Additionally, 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 air cleaners address standby mode and off mode energy use, through the IEF metric. As IEF includes annual energy consumption in standby mode and off mode as part of the annual energy consumption metric and DOE is adopting standards for air cleaners based on IEF the standards in this direct final rule account for standby mode and off mode energy use of an air cleaner.

Finally, EISA 2007 amended EPCA, in relevant part, to grant DOE authority to issue a final rule (hereinafter referred to as a ''direct final rule'') establishing an energy conservation standard on receipt of a statement submitted jointly by interested persons that are fairly representative of relevant points of view (including representatives of manufacturers of covered products, States, and efficiency advocates), as determined by the Secretary, that contains recommendations with respect to an energy or water conservation standard that are in accordance with the requirements in 42 U.S.C. 6295(o). (42 U.S.C. 6295(p)(4))

A NOPR that proposes an identical energy efficiency standard must be published simultaneously with the direct final rule, and DOE must provide a public comment period of at least 110 days on the proposal. (42 U.S.C. 6295(p)(4)(A)–(B)) Based on the comments received during this period, the direct final rule will either become effective, or DOE will withdraw it not later than 120 days after its issuance if (1) one or more adverse comments is received, and (2) DOE determines that those comments, when viewed in light of the rulemaking record related to the direct final rule, may provide a reasonable basis for withdrawal of the direct final rule under 42 U.S.C. 6295(o). (42 U.S.C. 6295(p)(4)(C)) Receipt of an alternative joint recommendation may also trigger a DOE withdrawal of the direct final rule in the same manner. *Id.* After withdrawing a direct final rule, DOE must proceed with the notice of proposed rulemaking published simultaneously with the direct final rule and publish in the **Federal Register** the reasons why the direct final rule was withdrawn. *Id.*

DOE has previously explained its interpretation of its direct final rule

authority. In a final rule amending the Department's ''Procedures, Interpretations and Policies for Consideration of New or Revised Energy Conservation Standards for Consumer Products'' at 10 CFR part 430, subpart C, appendix A, DOE explained that, because the direct final rule authority does not refer to any of the other requirements in EPCA, DOE interprets that provision as not subject to any of those other requirements. 86 FR 70892, 70912 (Dec. 13, 2021). Rather, DOE's authority under 42 U.S.C. 6295(p)(4) is constrained only by the requirements of 42 U.S.C. 6295(o). DOE's overarching statutory mandate in issuing energy conservation standards is to choose a standard that results in the maximum improvement in energy efficiency that is technologically feasible and economically justified—a requirement found in 42 U.S.C. 6295(o). *Id.*

B. Background

1. Current Standards

Air cleaners are not currently subject to federal energy conservation standards. However, some states have adopted standards. Specifically, the District of Columbia adopted standards in 2020, Maryland adopted standards in 2022, and Nevada and New Jersey adopted standards in 2021, as shown in Table II.1. The District of Columbia and New Jersey State standards went into effect in 2022, while the Nevada State standard is expected to go into effect in 2023 and the Maryland State standard is expected to go into effect in 2024.

TABLE II.1—AIR CLEANER STANDARDS ADOPTED BY THE DISTRICT OF COLUMBIA AND THE STATES OF MARYLAND, NEVADA, AND NEW JERSEY

Smoke CADR bins	Minimum smoke CADR/W
30 ≤ $PM_{2.5}$ CADR < 100	1.7
100 ≤ $PM_{2.5}$ CADR < 150	1.9
$PM_{2.5}$ CADR ≥ 150	2.0

Note: These standards are based on smoke clean air delivery rate (''CADR'') divided by the active mode power consumption in watts (''W''), which is different from the IEF metric specified in appendix FF.

Washington State adopted the standards shown in Table II.2 in 2022 with an effective date in 2024.

TABLE II.2—AIR CLEANER STANDARDS ADOPTED BY WASHINGTON STATE

Smoke CADR Bins	Minimum smoke CADR/W
30 ≤ $PM_{2.5}$ CADR < 100	1.9
100 ≤ $PM_{2.5}$ CADR < 150	2.4
$PM_{2.5}$ CADR ≥ 150	2.9

Note: These standards are based on smoke CADR divided by the active mode power consumption in W, which is different from the IEF metric specified in appendix FF.

2. History of Standards Rulemaking for Air Cleaners

DOE has not previously conducted an energy conservation standards rulemaking for air cleaners. On January 25, 2022, DOE published a request for information (''January 2022 RFI''), seeking comments on potential test procedure and energy conservation standards for air cleaners. 87 FR 3702. In the January 2022 RFI, DOE requested information to aid in the development of the technical and economic analyses to support energy conservation standards for air cleaners, should they be warranted. 87 FR 3702, 3705.

DOE determined in the July 2022 Final Determination that coverage of air cleaners is necessary or appropriate to carry out the purposes of EPCA; the average U.S. household energy use for air cleaners is likely to exceed 100 kWh/yr; and thus, air cleaners qualify as a ''covered product'' under EPCA. 87 FR 42297.

On March 6, 2023, DOE published a final rule (''March 2023 TP Final Rule'') establishing a new test procedure (TP) at appendix FF for air cleaners that references the industry standard, Association of Home Appliance Manufacturers (''AHAM'') AC–7–2022, ''Energy Test Method for Consumer Room Air Cleaners'' and includes methods to (1) measure the performance of the covered product and (2) use the measured results to calculate an IEF to represent the energy efficiency of air cleaners. 88 FR 14014.

DOE received comments in response to the January 2022 RFI from the interested parties listed in Table II.4.

TABLE II.4—LIST OF COMMENTERS WITH WRITTEN SUBMISSIONS IN RESPONSE TO THE JANUARY 2022 RFI

Commenter(s)	Abbreviation	Docket No.	Commenter type
ACEEE, ASAP, AHAM, CFA, and NRDC	Joint Commenters	8	Efficiency Organizations and Trade Association.
Blueair IAQ	Blueair	10	Manufacturer.
Electrolux Home Products Inc. North America	Electrolux	6	Manufacturer.
Daikin U.S. Corporation	Daikin	12	Manufacturer.
Lennox International Inc	Lennox	7	Manufacturer.
Madison Indoor Air Quality	MIAQ	5	Manufacturer.
Molekule	Molekule	11	Manufacturer.
Northwest Energy Efficiency Alliance	NEEA	13	Efficiency Organization.
Pacific Gas and Electric Company, San Diego Gas and Electric, and Southern California Edison; collectively, the California Investor-Owned Utilities.	CA IOUs	9	Utilities.
Synexis LLC	Synexis	14	Manufacturer.
Trane Technologies	Trane	3	Manufacturer.
Air-Conditioning, Heating, & Refrigeration Institute	AHRI	15	Trade Association.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[16] In response to the January 2022 RFI, DOE received certain

[16] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to determine coverage for air cleaners. (Docket No. EERE–2021–BT–DET–0022, which is maintained at *www.regulations.gov*). The references are arranged as follows: (commenter name, comment docket ID number, page of that document). When referring to comments received on another docket, the docket number is included prior to the commenter's name.

comments pertaining to the scope of coverage and definition for air cleaners, which DOE addressed and discussed in the July 2022 Final Determination. Additionally, DOE addressed comments pertaining to the test procedure in a NOPR published on October 18, 2022 as part of the test procedure rulemaking establishing appendix FF. 87 FR 63324. All remaining comments provided by stakeholders in response to the January 2022 RFI are addressed in this direct final rule.

3. Joint Proposal Submitted by the Joint Stakeholders

This section summarizes the recommendations included in the Joint Proposal submitted by the Joint Stakeholders. The Joint Proposal submitted by the Joint Stakeholders urged DOE to publish final rules adopting the consumer room air cleaner test procedure and standards and compliance dates contained in the Joint Proposal, as soon as possible, but not later than December 31, 2022. (Joint Stakeholders, No. 16 at p. 1) The Joint Proposal also recommended that DOE adopt AHAM AC–7–2022 as the DOE test procedure. (*Id.* at p. 6) In regards to energy conservation standards, the Joint Proposal specified two-tiered Tier 1 and Tier 2 standard levels, as shown in Table II.5, for conventional room air cleaners with proposed compliance dates of December 31, 2023, and December 31, 2025, respectively. (*Id.* at p. 9)

TABLE II.5—TIER 1 AND TIER 2 STANDARDS PROPOSED BY THE JOINT STAKEHOLDERS IN THE JOINT PROPOSAL

Product description	IEF ($PM_{2.5}$ CADR/W) Tier 1 *	IEF ($PM_{2.5}$ CADR/W) Tier 2 **
$10 \leq PM_{2.5}$ CADR < 100	1.69	1.89
$100 \leq PM_{2.5}$ CADR < 150	1.90	2.39
$PM_{2.5}$ CADR ≥ 150	2.01	2.91

* Tier 1 standards would have an effective date of December 31, 2023.
** Tier 2 standards would have an effective date of December 31, 2025.

The Tier 1 standards are equivalent to the state standards established by the States of Maryland, Nevada, and New Jersey, and the District of Columbia. (*Id.* at p. 9) Tier 2 standards are equivalent to the voluntary standards specified in the U.S. Environmental Protection Agency's (''EPA's'') ENERGY STAR Version 2.0 Room Air Cleaners Specification, Rev. May 2022, (''ENERGY STAR V. 2.0'') and those adopted by the State of Washington. (*Id.*) While the standards established by the States and those specified in ENERGY STAR V. 2.0 are based on smoke CADR and include only active mode energy consumption in the calculation of the CADR/W metric, the Joint Stakeholders presented data to show that there is a strong relationship between the $PM_{2.5}$ CADR calculation and the measured smoke and dust CADR values. (*Id.* at p. 6) Additionally, DOE compared the IEF metric, calculated using $PM_{2.5}$ CADR and annual energy consumption in active mode and standby mode (''AEC''), to the smoke CADR/W metric, calculated using smoke CADR and active mode power consumption, using the ENERGY STAR database,[17] and found a strong relationship between IEF and the CADR/W metric specified in ENERGY STAR V. 2.0 and the State standards. The Joint Stakeholders stated that the Tier 1 and Tier 2 standards are estimated to save 1.9 quads of FFC energy nationally over 30 years of sales. (*Id.* at p. 9)

After carefully considering the consensus recommendations for establishing energy conservation standards for air cleaners submitted by the Joint Stakeholders, DOE has determined that these recommendations are in accordance with the statutory requirements of 42 U.S.C. 6295(p)(4) for the issuance of a direct final rule.

More specifically, these recommendations comprise a statement submitted by interested persons who are fairly representative of relevant points of view on this matter. In appendix A to subpart C of 10 CFR part 430 (''appendix A''), DOE explained that to be ''fairly representative of relevant points of view,'' the group submitting a joint statement must, where appropriate, include larger concerns and small business in the regulated industry/manufacturer community, energy advocates, energy utilities, consumers, and States. However, it will be necessary to evaluate the meaning of ''fairly representative'' on a case-by-case basis, subject to the circumstances of a particular rulemaking, to determine whether fewer or additional parties must be part of a joint statement in order to be ''fairly representative of relevant points of view.'' Section 10 of appendix A. In reaching this determination, DOE took into consideration the fact that the Joint Stakeholders consist of representatives of manufacturers of the covered product at issue, a state corporation, and efficiency advocates—all of which are groups specifically identified by Congress as relevant parties to any consensus recommendation. (42 U.S.C. 6295(p)(4)(A)) As delineated above, the Joint Proposal was signed and submitted by a broad cross-section of interests, including the trade association representing small and large manufacturers who produce the subject products, consumer groups, climate and health advocates, and energy-efficiency advocacy organizations, each of which signed the Joint Proposal on behalf of their respective manufacturers and efficiency advocacy organizations, which includes consumer groups, utilities, and a state corporation. Moreover, DOE does not read the statute as requiring a statement submitted by all interested parties before the Department may proceed with issuance of a direct final rule, nor does appendix A require the statement be submitted by all interested parties listed in the appendix. By explicit language of the statute, the Secretary has the discretion to determine when a joint recommendation for an energy or water conservation standard has met the requirement for representativeness (*i.e.,* ''as determined by the Secretary''). *Id.*

DOE also evaluated whether the recommendation satisfies 42 U.S.C. 6295(o), as applicable. In making this determination, DOE conducted an analysis to evaluate whether the potential energy conservation standards under consideration achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified and result in significant energy conservation. The evaluation is the

[17] Available at: *https://data.energystar.gov/Active-Specifications/ENERGY-STAR-Certified-Room-Air-Cleaners/jmck-i55n/data.* Last accessed: December 2022.

same comprehensive approach that DOE typically conducts whenever it considers potential energy conservation standards for a given type of product or equipment.

Upon review, the Secretary determined that the Joint Proposal comports with the standard-setting criteria set forth under 42 U.S.C. 6295(p)(4)(A). Accordingly, the consensus-recommended efficiency levels were included as the ''recommended TSL'' for air cleaners (see section V.A of this document for description of all of the considered TSLs). The details regarding how the consensus-recommended TSLs comply with the standard-setting criteria are discussed and demonstrated in the relevant sections throughout this document.

In sum, as the relevant criteria under 42 U.S.C. 6295(p)(4) have been satisfied, the Secretary has determined that it is appropriate to adopt the consensus-recommended new energy conservation standards for air cleaners through this direct final rule. Also, in accordance with the provisions described in section II.A of this document, DOE is simultaneously publishing, elsewhere in this issue of the **Federal Register**, a NOPR proposing that the identical standard levels contained in this direct final rule be adopted.

III. General Discussion

DOE developed this direct final rule after considering oral and written comments, data, and information that DOE received in response to the January 2022 RFI from interested parties that represent a variety of interests. The following discussion addresses issues raised by these commenters.

A. General Comments

While DOE received comments in response to the January 2022 RFI pertaining to the specific subtopics in section IV of this document, DOE also received several general comments in response to the January 2022 RFI from interested parties regarding the rulemaking timing and process. These comments are summarized and addressed in the following paragraphs.

The Joint Commenters stated support for DOE's proposal to include consumer room air cleaners as a covered product and indicated they were working to negotiate possible Federal energy conservation standards for consumer room air cleaners, along with an applicable test procedure for DOE's consideration. (Joint Commenters, No. 8 at p.1) The CA IOUs also stated that they were engaged with stakeholders on test procedures, metrics, and efficiency standards for air cleaners. (CA IOUs, No. 9 at pp. 1–2)

Trane commented that a new energy conservation standard for consumer air cleaners is necessary because consumers need guidance at a time of unprecedented energy bills and the opportunity to avoid unnecessary energy consumption. (Trane, No. 3 at p. 2) Blueair also commented that it supported energy conservation standards for air cleaners, citing its own HEPASilent™ technology as proof that reduced energy consumption and maximum clean air delivery were compatible. Blueair also stated that it has demonstrated that it is technologically possible to design and manufacture air cleaners with reduced energy usage without loss of air cleaning performance. (Blueair, No. 10 at p. 4) Synexis commented that energy conservation standards for consumer air cleaners were economically justified, technologically feasible, and would lead to energy savings. Synexis commented that implementing uniform Federal test methods and standards would likely reduce costs by standardizing the evaluation processes and would provide common criteria so consumers can make informed decisions. (Synexis, No. 14 at pp. 6–7)

NEEA stated its support for DOE's effort to adopt test procedures and standards for air cleaners and shared sales data from 2015–2019 compiled from retail store sales in the U.S. Northwest. (NEEA, No. 13 at pp. 1–2) NEEA commented that the compiled data reflected the dramatic increases in sales and usage of air cleaners caused by the pandemic and wildfires, making a compelling case for DOE regulation. (NEEA, No. 13 at p. 2) The CA IOUs also stated that the growth of air cleaner usage has been accelerated because of the pandemic and California wildfires, necessitating EPCA energy conservation standards. (CA IOUs, No. 9 at p. 2)

DOE recognizes the comments supporting DOE regulation of air cleaners, and as discussed elsewhere in this document, DOE has determined that energy conservation standards for air cleaners are economically justified, technologically feasible, and would result in the significant conservation of energy.

Daikin commented that DOE's effort to initiate the test procedure and energy conservation standards rulemakings for consumer air cleaners was premature without first finalizing the coverage determination, segmenting the market based on types of air cleaners, and identifying the categories that would provide the most energy savings. (Daikin, No. 12 at p. 1) Daikin commented that since this is a new product rulemaking, DOE must first finalize its coverage determination and then a test procedure before establishing an energy conservation standard. Daikin further commented that DOE should provide sufficient time to comply with the test procedures before determining minimum efficiency standards. Daikin additionally stated that there may be laboratory test chamber shortages after a DOE test procedure is established. (Daikin, No. 12 at p. 3)

DOE appreciates Daikin's concern over the timing and order of rulemaking publications. DOE notes that the January 2022 RFI sought to solicit general feedback on air cleaner test procedures and standards only under the condition that air cleaners are determined to be a covered product. DOE further notes that the July 2022 Final Determination was published prior to DOE proposing a test procedure and establishing an energy conservation standard. The timeline of this rulemaking is accelerated compared to DOE's typical timeline in order to follow as closely as possible the schedule outlined in the Joint Proposal.

MIAQ also commented that it was disappointed by the shortening of the 75-day comment period to 30 days for the January 2022 RFI and the combination of the test procedure and standards rulemakings into a single RFI. MIAQ commented that this impacted its ability to investigate test laboratory capacity or capabilities. (MIAQ, No. 5 at p. 2)

DOE notes that while it initially established a 30-day comment period to allow DOE to review comments received in response to the January 2022 RFI before finalizing its coverage determination, it reopened the comment period to provide a 45-day extension. 87 FR 11326.

Lennox commented that DOE must maintain consumer utility of air cleaners when promulgating new standards and must ensure that any new standards are economically justified. (Lennox, No. 7 at p. 3)

DOE agrees with Lennox and, as discussed elsewhere in this document, DOE screened out technology options from consideration that would not maintain consumer utility. DOE is also establishing standards that are economically justified and did not select more stringent standards that would have negative economic impacts on consumers.

The Joint Stakeholders commented that the Joint Proposal comports with the standards-setting criteria in EPCA and that the Joint Proposal was designed to achieve the maximum improvement in energy efficiency that is

technologically feasible and economically justified as required by 42 U.S.C. 6295(o). The Joint Stakeholders additionally stated that the standards proposed in the Joint Proposal would decrease maximum energy use of a covered product in both Tier 1 and Tier 2, and thus comply with EPCA's prohibition against standards that increase maximum allowable energy use of a covered product. 42 U.S.C. 6295(o)(1). (Joint Stakeholders, No. 16 at pp. 11)

DOE agrees that the Joint Proposal provides standards criteria that are technologically feasible and economically justified, as discussed throughout this document. DOE believes the standards criteria set by the Joint Proposal will provide an improvement in energy efficiency and decrease maximum energy use of covered products.

B. Scope of Coverage

DOE has defined an ''air cleaner'' as a product for improving indoor air quality, other than a central air conditioner, room air conditioner, portable air conditioner, dehumidifier, or furnace, that is an electrically-powered, self-contained, mechanically encased assembly that contains means to remove, destroy, or deactivate particulates, volatile organic compound (VOC), and/or microorganisms from the air. 10 CFR 430.2. It excludes products that operate solely by means of ultraviolet light without a fan for air circulation. *Id.*

In response to the January 2022 RFI, the Joint Commenters commented that minimum energy conservation standards should apply to conventional room air cleaners with a measured $PM_{2.5}$ CADR of 10 or greater in order to capture tabletop/desk portable room air cleaners. (Joint Commenters, No. 8 at p. 4)

In the March 2023 TP Final Rule, DOE established the scope of the air cleaners test procedure at appendix FF to ''conventional room air cleaners,'' which are a subset of products that meet the definition of ''air cleaner'' as defined in 10 CFR 430.2. 88 FR 14014, 14044. DOE established a definition for a conventional room air cleaner as a consumer room air cleaner that (1) is a portable or wall mounted (fixed) unit, excluding ceiling mounted unit, that plugs in to an electrical outlet; (2) operates with a fan for air circulation; and (3) contains means to remove, destroy, and/or deactivate particulates. The term ''portable'' is defined in section 2.1.3.1 of AHAM AC–7–2022 and ''fixed'' is defined in section 2.1.3.2 of AHAM AC–7–2022. 88 FR 14014, 14044. The scope of appendix FF is limited to conventional room air cleaners with smoke CADR and dust CADR greater than or equal to 10 cubic feet per minute (''cfm'') and less than or equal to 600 cfm.

This direct final rule covers those consumer products that meet the definition of conventional room air cleaners with smoke CADR and dust CADR greater than or equal to 10 cfm and less than or equal to 600 cfm as defined in section 1 of appendix FF. As discussed in section III.C of this document, $PM_{2.5}$ CADR is calculated as the geometric average of smoke CADR and dust CADR, which is very similar in value to both the smoke CADR and dust CADR. Therefore, the scope of products covered in this direct final rule is consumer products that meet the definition of conventional room air cleaners with $PM_{2.5}$ CADR greater than or equal to 10 cfm and less than or equal to 600 cfm.

See section IV.A.1 of this document for discussion of the product classes analyzed in this direct final rule.

C. 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 does not currently prescribe energy conservation standards for air cleaners.

As stated, in the March 2023 TP Final Rule, DOE established a new test procedure for air cleaners at appendix FF. 88 FR 14014. Specifically, appendix FF establishes an IEF metric, expressed in terms of $PM_{2.5}$ CADR/W, which measures the reduction rate of $PM_{2.5}$ particulates in a given room volume per unit power. The numerator of the IEF metric is $PM_{2.5}$ CADR, which is the geometric average of smoke CADR and dust CADR, where each of these CADR metrics refers to the reduction rate of smoke and dust particles, respectively, in a given room volume with the air cleaner operating. The denominator of the IEF metric is the annual energy consumption in active mode and standby mode (AEC) divided by the annual operating hours in active mode.[18]

Additionally, DOE discussed in the March 2023 TP Final Rule that for compliance with the standards in Tier 1 of the Joint Proposal, the Joint Stakeholders recommended that DOE permit section 6.2 of AHAM AC–1–2020 [19] for dust CADR to be applied as an alternative for calculating $PM_{2.5}$ CADR. The Joint Stakeholders stated that the dust CADR, determined according to section 6.2 of AHAM AC–1–2020, is nearly identical to the subset dust CADR used to calculate $PM_{2.5}$ CADR. The Joint Stakeholders further stated that given many products have already been tested per AHAM AC–1–2020, allowing this alternative would ensure that manufacturers are not required to retest using AHAM AC–7–2022 to demonstrate compliance with a new standard on a short timeline. (Joint Stakeholders, No. 16 a p. 6); 88 FR 14014, 14030.

According to section 5.1.1 of appendix FF, $PM_{2.5}$ CADR is obtained by combining the CADR of smoke (which includes particle sizes ranging from 0.1 to 0.5 micrometers (''μm'')) with the CADR of dust (which includes particle sizes ranging from 0.5 to 2.5 μm) and performing a geometric average calculation as follows:

$$PM_{2.5}CADR = \sqrt{Smoke\ CADR\ (0.1 - 0.5\ \mu m) \times Dust\ CADR\ (0.5 - 2.5\ \mu m)}$$

The tests to determine smoke CADR and dust CADR are specified in sections 5 and 6 of AHAM AC–1–2020. The allowable particle size for smoke particles is 0.1 to 1 μm for the smoke CADR test in AHAM AC–1–2020 and the allowable particle size for dust particles is 0.5 to 3 μm for the dust CADR test in AHAM AC–1–2020. However, the calculation of $PM_{2.5}$ CADR in section 5.1.1 of appendix FF specifies a narrower range of allowable particle sizes for the smoke CADR and dust CADR than the smoke CADR and dust

[18] For more details on the AEC and IEF metrics, refer to section III.H of the March 2023 TP Final Rule. 88 FR 14014.

[19] American National Standards Institute (''ANSI'')/AHAM standard, ANSI/AHAM AC–1–2020 (''AHAM AC–1–2020''), ''Method for Measuring Performance of Portable Household Electric Room Air Cleaners''.

CADR tests in sections 5 and 6, respectively, of AHAM AC–1–2020.

While the allowable smoke and dust particle size for the smoke CADR and dust CADR tests in sections 5 and 6 of AHAM AC–1–2020 is larger (*i.e.,* 0.1 to 1 μm for smoke particles and 0.5 to 3 μm for dust particles) than the allowable smoke and dust particle size for the calculation of $PM_{2.5}$ CADR in section 5.1.1 of appendix FF (*i.e.,* 0.1 to 0.5 μm for smoke particles and 0.5 to 2.5 μm for dust particles), the subset smoke CADR and dust CADR used to calculate $PM_{2.5}$ are nearly identical to the smoke CADR and dust CADR calculated according to sections 5 and 6 of AHAM AC–1–2020, as shown in the figures included in the Joint Proposal.[20] Accordingly, in the March 2023 TP Final Rule, DOE specified in section 5.1.2 of appendix FF that $PM_{2.5}$ CADR may alternatively be calculated using the full range of particles used to calculate smoke CADR and dust CADR according to sections 5 and 6 of AHAM AC–1–2020, respectively. 88 FR 14014. DOE additionally stated that it may revisit allowing the use of both approaches to calculate $PM_{2.5}$ CADR in a future standards rulemaking. *Id.*

In this direct final rule, DOE continues to allow the full range of particles used to calculate smoke CADR and dust CADR according to sections 5 and 6 of AHAM AC–1–2020, respectively, may be used to determine compliance only with the Tier 1 standards specified in this document. Compliance with Tier 2 standards must be determined using the smoke and dust particle size specified in the calculation of $PM_{2.5}$ CADR in section 5.1.1 of appendix FF. This aligns with the test parameters of the Joint Proposal and allows manufacturers more time to adjust to the tighter particle size requirements specified in AHAM AC–7–2022. Accordingly, DOE is amending section 5.1.2 of appendix FF to specify that the alternate calculation for $PM_{2.5}$ CADR may be used for determining compliance only with Tier 1 standards specified at 10 CFR 430.32(ee).

D. 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 rulemaking. 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 (''appendix A'').

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. Section 7(b)(2)–(5) of appendix A. Section IV.B of this document discusses the results of the screening analysis for air cleaners, 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 direct final rule TSD.

2. Maximum Technologically Feasible Levels

When DOE prescribes new or amended standards 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 air cleaners, 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 rulemaking are described in section IV.C of this document and in chapter 5 of the direct final rule TSD.

E. Energy Savings

1. Determination of Savings

For each TSL, DOE projected energy savings from application of the TSL to air cleaners purchased in the 30-year period that begins in the year of compliance with the standards (2024–2057 for the recommended TSL, and 2028–2057 for the other TSLs).[21] The savings are measured over the entire lifetime of air cleaners purchased in the 30-year analysis 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 energy conservation standards.

DOE used its national impact analysis (''NIA'') spreadsheet models to estimate national energy savings (''NES'') from potential standards for air cleaners. 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 national energy savings in terms of primary energy savings, which is the savings in the energy that is used to generate and transmit the site electricity. For natural gas, the primary energy savings are considered to be equal to the site energy savings. 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.[22] 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.[23] For example, some

[20] *See* Joint Stakeholders, No. 16 at p. 6.

[21] For the standards recommended in the Joint Proposal, DOE considered an analysis period beginning in the year of compliance with the Tier 1 standards (2024) and ending in the same year as the 30-year analysis periods considered for the other analyzed TSLs (2057) to align the end dates of the analysis periods. DOE also presents a sensitivity analysis that considers impacts for products shipped in a 9-year period.

[22] 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).

[23] Procedures, Interpretations, and Policies for Consideration in New or Revised Energy Conservation Standards and Test Procedures for

Continued

covered products and equipment have most of their energy consumption occur during periods of peak energy demand. The impacts of these products on the energy infrastructure can be more pronounced than products with relatively constant demand. 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.

As stated, the standard levels adopted in this direct final rule are projected to result in national energy savings of 1.80 quads of FFC energy savings, the equivalent of the annual electricity use of 19 million homes. DOE has determined the energy savings from the standard levels adopted in this direct final rule are ''significant'' within the meaning of 42 U.S.C. 6295(o)(3)(B).

F. 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 potential new standards on manufacturers, DOE conducts a manufacturer impact analysis (''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 cost (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 will purchase the covered products in the first year of compliance with new or amended standards. 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 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 IV.H 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 adopted 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 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 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 direct final rule to the Attorney General with a request that the Department of Justice (''DOJ'') provide its determination on this issue. DOE will consider DOJ's comments on the rule in determining whether to proceed with the direct final rule. DOE will also publish and respond to the DOJ's comments in the **Federal Register** in a separate notice.

f. Need for National Energy Conservation

DOE also considers the need for national energy and water conservation in determining whether a new or

Consumer Products and Commercial/Industrial Equipment, 86 FR 70892, 70901 (Dec. 13, 2021).

amended standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)(VI)) The energy savings from the adopted 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 effects associated with the more efficient use of energy are important to take into account when considering the need for national energy conservation. The adopted standards are likely to result in environmental benefits in the form of reduced emissions of air pollutants and 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 effect potential new or amended 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 of this document.

IV. Methodology and Discussion of Related Comments

This section addresses the analyses DOE has performed for this rulemaking with regard to air cleaners. Separate subsections address each component of DOE's analyses.

DOE used several analytical tools to estimate the impact of the standards considered 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 NIA uses a second spreadsheet set that provides shipments projections and calculates NES and NPV 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 rulemaking: *www.regulations.gov/docket/EERE-2021-BT-STD-0035/document.* Additionally, DOE used output from the latest version of the Energy Information Administration's (''EIA's'') *Annual Energy Outlook* (''*AEO*'') for the emissions and utility impact analyses.

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 rulemaking 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 air cleaners. The key findings of DOE's market assessment are summarized in the following sections. See chapter 3 of the direct final rule TSD for further discussion of the market and technology assessment.

1. Product Classes

When evaluating and establishing energy conservation standards, DOE may establish separate standards for a group of covered products (*i.e.,* establish a separate product class) if DOE determines that separate standards are justified based on the type of energy used, or if DOE determines that a product's capacity or other performance-related feature justifies a different standard. (42 U.S.C. 6295(q)) 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. (*Id.*)

DOE currently does not specify any energy conservation standards or associated product classes for air cleaners. In the January 2022 RFI, DOE noted that it may use CADR as a measurement of capacity to establish product classes. 87 FR 3702, 3711. DOE requested comment on whether capacity or any other performance-related features, such as air cleaning technology (*i.e.,* whether the product destroys or deactivates contaminants from the air or removes them), would justify establishing different product classes. *Id.*

NEEA commented that, based on a review of NEEA Retail Products Platform (''RPP'') sales data for air cleaners and sales from the ENERGY STAR Retail Products Platform (''ESRPP'') data, product class distinctions based on CADR and smoke CADR/W would be appropriate. (NEEA, No. 13 at p. 3)

Trane commented that different classes of air cleaners could be useful to consumers, who have varying performance goals. (Trane, No. 3 at p. 3)

Synexis stated that the definition of a standard should be applicable to all devices operating in the air cleaning technology space as sub-classes would likely confuse the issue and be difficult to apply equally across all technologies. (Synexis, No. 14 at p. 7)

DOE agrees with NEEA and Trane's comments and, for reasons discussed later in this section, is establishing three separate air cleaner product classes based on CADR as a measurement of capacity. DOE's testing and teardown

analysis showed that air cleaning technology, particularly UV and ion generation, did not significantly impact the measured energy use or efficiency of air cleaners. Accordingly, DOE is not establishing additional product class distinction based on air cleaning technology.

Regarding Synexis' comment, DOE notes that energy conservation standards are applicable to all conventional room air cleaners, as defined in the March 2023 TP Final Rule, but that the applicable standard level varies based on the product class. The standards are technology-neutral, and apply to all configurations of conventional room air cleaners with a $PM_{2.5}$ CADR rating within the specified ranges for the three product classes.

The Joint Stakeholders proposed product classes as shown in Table IV.1 and noted that it was proposing separate product classes because it is more difficult for smaller air cleaners to reach higher levels of efficiency because smaller products require smaller components such as fan blades. The Joint Stakeholders stated that as the blade design is made more efficient despite its smaller diameter, the optimization point is tight to achieve adequate air movement while not increasing noise levels beyond a tolerable level. They further stated that this makes achieving higher levels of efficiency a more difficult design challenge while retaining the utility of the smaller size. (Joint Stakeholders, No. 16 at pp. 9–10)

The Joint Stakeholders also stated that were smaller products required to meet the same efficiency levels as larger and higher CADR/W models, a greater change in efficiency of the motor would be necessary, which could require more expensive motor technology that could lead to standards that are not economically justified. The Joint Stakeholders stated that the recommended product classes will help ensure that a broad range of capacity changes remain available for consumers. (Joint Stakeholders, No. 16 at p. 10)

TABLE IV.1—JOINT STAKEHOLDER RECOMMENDED AIR CLEANER PRODUCT CLASSES

Product class	$PM_{2.5}$ CADR bins
PC1	$10 \leq PM_{2.5}$ CADR < 100.
PC2	$100 \leq PM_{2.5}$ CADR < 150.
PC3	$PM_{2.5}$ CADR ≥ 150.

DOE notes that the product classes are defined based on $PM_{2.5}$ CADR, rather than smoke CADR as recommended by NEEA and as specified in the ENERGY STAR V. 2.0 Specification. In the March 2023 TP Final Rule, DOE established the IEF metric based on $PM_{2.5}$ CADR, which is based on the geometric average of the measured smoke CADR and dust CADR values, consistent with the Joint Stakeholder recommendation.

As discussed in the following paragraphs, based on investigatory testing, product teardowns, and a review of the ENERGY STAR V. 2.0 specification, DOE agrees with the Joint Stakeholders that reaching higher efficiencies is more difficult for smaller capacity products due to size and component constraints. Therefore, consistent with the Joint Proposal, DOE is establishing three product classes for air cleaners as shown in Table IV.1.

DOE determined the three product classes specified in Table IV.1 to be appropriate based on an analysis of ENERGY STAR-qualified products. As seen in Figure IV–1, the ENERGY STAR database shows that air cleaner models at lower CADR values generally have lower efficiencies compared to models at higher CADR. DOE expects that this is likely due to the smaller motor and/or filter required for the lower-CADR units, which are typically intended to be used in rooms with smaller areas (*e.g.,* units in Product Class 1 would be recommended for a maximum room size of 155 square feet). To achieve a certain level of cleaning performance, a smaller unit would need to include more filtration by volume in a more limited chassis space (*i.e.,* the air cleaner cabinet). This would increase the pressure drop across the filter, which would require more blower power to maintain the same air delivery performance. These factors impact the overall efficiency of the unit. At higher CADR values (*i.e.,* air cleaners designed for larger rooms), the cabinet volume is much larger, which allows the incorporation of a much larger filter (*i.e.,* the filtration can be spread across a larger filter area), thereby reducing the pressure drop across the filter and necessary blower power, and therefore improving efficiency.

Establishing separate product classes for units that are intended to be used in both smaller and larger rooms is necessary to maintain consumer utility. For example, Product Class 1 units have a small cabinet volume (<0.6 cubic feet (''ft^3'')), are designed for use in a single small room, such as a bathroom or bedroom (<155 sq. ft), and are easily portable, which can allow product configurations such as tabletop or wall plug-ins. Units with larger capacities and corresponding larger cabinet volumes provide different utility to consumers. Product Class 2 includes medium cabinet-sized units (0.6–1.2 ft^3), which are designed for a larger room (155–235 sq. ft) such as a kitchen or living space. The size and weight of these units generally allow single-person portability without necessitating the use of wheels. Finally, Product Class 3 units have a large cabinet (>1.2 ft^3), are typically less portable than lower-capacity units, in some cases being equipped with wheels to facilitate moving, and are designed to be used for an extended duration in a large room (>235 sq. ft) such as a classroom, office, or large living area. Establishing these product classes is necessary because the three ranges of capacity each provide distinct consumer utility in terms of the application based on room size and portability of the unit and are associated with inherently different efficiency due to the different filter size and configurations that can be accommodated. Further, these product class distinctions will help ensure that higher-capacity units installed in smaller-sized rooms, which achieve higher efficiencies at the same active mode power consumption than smaller-capacity units and which warrant more stringent energy conservation standards, do not lead to unnecessarily high AEC.

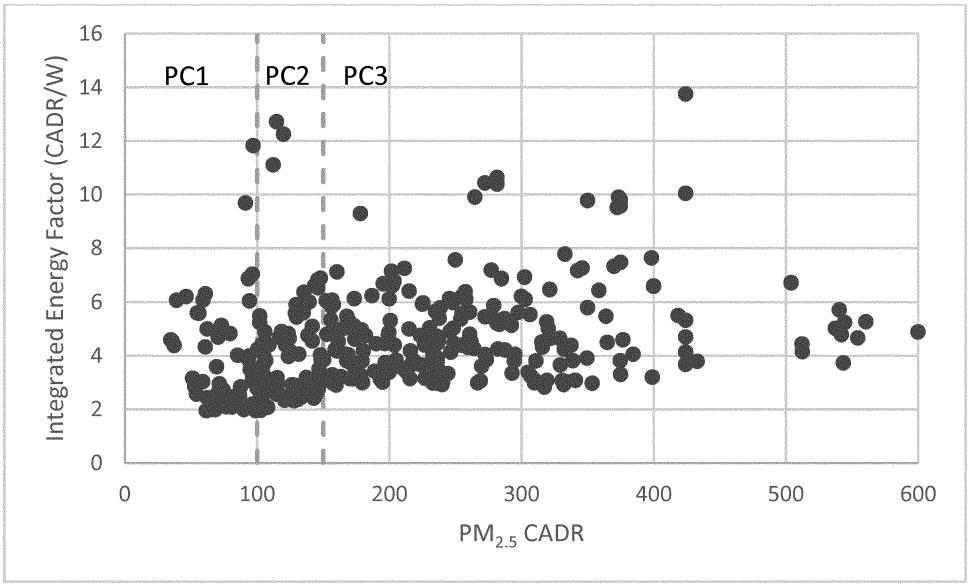

Figure IV-1 ENERGY STAR Qualified Air Cleaners as of December 2022

Finally, DOE is establishing Product Class 1 with a $PM_{2.5}$ CADR lower limit of 10 cfm as opposed to 30 cfm, as specified in the ENERGY STAR V. 2.0 specification, so that tabletop and desktop portable room air cleaners as well as plug-in air cleaners, which is a growing segment of the market, will be required to demonstrate compliance with the adopted standards. DOE notes that the $PM_{2.5}$ CADR lower limit of 10 cfm for Product Class 1 is also recommended by the Joint Stakeholders in the Joint Proposal.

2. Technology Options

In analyzing the feasibility of new energy conservation standards, DOE uses information about technology options and prototype designs to identify technologies that manufacturers could use to meet and/or exceed a given energy conservation standard level. In the January 2022 RFI, DOE requested information on technologies that are used to improve the energy efficiency of air cleaners. Specifically, DOE sought information on the range of efficiencies or performance characteristics that are available for each technology option. 87 FR 3702, 3711. For each technology option suggested by stakeholders, DOE also sought information regarding its market adoption, costs, and any concerns with incorporating the technology into products (*e.g.,* impacts on consumer utility, potential safety concerns, manufacturing or production challenges, *etc.*). 87 FR 3702, 3711–3712.

MIAQ and AHRI commented that they could not provide concrete information on the availability or lack thereof of technologies for improving energy efficiency of air cleaners for non-portable products until DOE altered the scope and definitions to exclude products inappropriate for regulation. MIAQ and AHRI noted that ducted products, with fans primarily used for ventilating, cooling, and heating, employ different technologies than portable products, with distinctly different energy use patterns. (MIAQ, No. 5 at p. 8; AHRI, No. 15 at p. 9)

As discussed in section III.B of this document, the scope of this standards rulemaking includes conventional room air cleaners with $PM_{2.5}$ CADR between 10 and 600 cfm (inclusive). Products not meeting the definition of conventional room air cleaners, such as ceiling-mounted and whole-home units are not included in the scope of this rulemaking. Accordingly, DOE has analyzed technology options only for conventional room air cleaners that are in the scope of this standards rulemaking.

Trane commented that portable HEPA and other high filter efficiency filter-based units should be prioritized highest in a new standard because of their use in classrooms. (Trane, No. 3 at p. 2)

DOE is aware of the prevalence of HEPA filters in air cleaners, and DOE's teardown sample largely comprised conventional room air cleaners that utilize a HEPA filter or other high efficiency filters. The teardown analysis confirmed that, by effectively removing $PM_{2.5}$ particulates, such high efficiency filters are a technology option for improving air cleaner efficiency as measured according to the DOE test procedure at appendix FF.

Synexis commented that safety standards should be considered for air cleaners that generate hazardous by-products, such as ozone, which can be harmful to humans at levels above established thresholds. (Synexis, No. 14 at p. 7) Trane also commented that since certain air cleaning devices, like electronic/reactive air cleaners, may produce by-products such as ozone, organic acids, and ultrafine particles, this fact complicates attempts at standards or creates a need for additional standards. (Trane No. 3 at p. 2) DOE is aware that technology options that generate ozone or other harmful by-products can have adverse impacts on health or safety and, as discussed in section IV.B of this document, DOE has screened-out such technology options accordingly.

In the market analysis and technology assessment, DOE identified 19 technology options for air cleaners, as shown in Table IV.2. These technology options have been determined to improve the efficiency of air cleaners, as measured by the DOE test procedure. In general, the technology options with the most significant impact on efficiency represent improvements to the filter and motor. The motor and filter relationship is crucial to improving efficiency, as optimization of the airflow across the filter is the largest factor contributing to an air cleaner's active mode power consumption.

TABLE IV.2—AIR CLEANER TECHNOLOGY OPTIONS

1. High efficiency particulate air (''HEPA'')-type filter (99 percent of 0.2μm particles).
2. True HEPA filter (99.97 percent of 0.3μm particles).
3. Activated carbon filter.
4. High density polyethylene (''HDPE'') pre-filter.
5. Photoelectrochemical oxidation (''PECO'') filter.
6. Photocatalytic oxidation (''PCO'') filter.
7. Electrostatic/Polarizing media.
8. Filter shape.
9. Improved Motor Technologies.
10. Low standby-power electronic controls.
11. Direct double-ended blower assembly.
12. Ionization brush.
13. Ionization plates.
14. Air quality sensor.
15. Ozone generators.
16. Thermodynamic sterilization system (''TSS'').
17. Bioreactor.

After identifying all potential technology options for improving the efficiency of air cleaners, DOE performed a screening analysis (see section IV.B of this document) to determine which technologies merited further consideration in the engineering analysis.

B. Screening Analysis

DOE uses the following five screening criteria to determine which technology options are suitable for further consideration in an energy conservation standards rulemaking:

(1) *Technological feasibility.* Technologies that are not incorporated in commercial products or in commercially viable, existing prototypes will not be considered further.

(2) *Practicability to manufacture, install, and service.* If it is determined that mass production of a technology in commercial products and reliable installation and servicing of the technology 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.* If a technology is determined to have a significant adverse impact on the utility of the product to subgroups of consumers, or 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) *Safety of technologies.* 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 technology has proprietary protection and represents a unique pathway to achieving a given efficiency level, it will not be considered further, due to the potential for monopolistic concerns. Sections 6(b)(3) and 7(b) of appendix A.

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.

In the January 2022 RFI, DOE requested feedback on whether any air cleaner technology options would be screened out based on the five screening criteria described in this section. DOE also requested information on the technologies that would be screened out and the screening criteria that would be applicable to each screened out technology option. 87 FR 3702, 3712.

The subsequent paragraphs 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.

Molekule commented that its PECO technology includes energy requirements different from traditional air cleaners and requested an exemption from Federal energy efficiency standards since its air cleaners have been cleared by the U.S. Food and Drug Administration (''FDA'') as Class II medical devices, which allows medical professionals to use these devices in medical settings to purify the air for viruses and bacteria. (Molekule, No. 11 at pp. 1–2) Molekule commented that while the removal and destruction of airborne microbes is a key benefit in medical settings, it is not measured by CADR tests for particulate matter. Molekule further stated that any modifications to meet DOE energy efficiency standards would be burdensome, requiring the company to re-apply for FDA clearance. (Molekule, No. 11 at p. 3). While FDA classification is not one of the five screening criteria that DOE applies, DOE notes that it has screened out PECO technology because it is a proprietary technology. DOE additionally notes that many air cleaners are capable of removing or destroying contaminants other than particulate matter (*i.e.,* air cleaners that can remove, destroy, or deactivate smoke, dust, or pollen may also remove, destroy or deactivate microorganisms and/or gaseous pollutants) and that such air cleaners would be in the scope of this rulemaking and subject to applicable standards as long as the unit ''contains means to remove, destroy, and/or deactivate particulates,'' as included in the definition of a conventional room air cleaner.

Synexis commented that DOE should eliminate this criterion [24] because it is in direct and fundamental conflict with intellectual property rights. Synexis stated that if the United States government grants monopolistic rights to certain technology options through the patent process, then DOE should not eliminate those same technology options. (Synexis, No. 14 at p. 7) DOE clarifies that the intent of the unique-pathway proprietary technologies screening criterion is to screen out proprietary technologies as a design pathway for achieving higher efficiencies for the purposes of DOE's analysis only. That is, if the only way to reach a given efficiency would be to utilize a proprietary technology, DOE would not include it in its analysis because manufacturers that do not have access to the proprietary technology would not be able to meet the efficiency level under consideration. This would not preclude manufacturers from utilizing such technologies in their products. The intent of DOE's analysis is to identify a pathway to achieve higher efficiencies that would generally be available to all manufacturers, but DOE recognizes that manufacturers may have more than one pathway to achieve higher efficiencies, including using proprietary technologies.

1. Screened-Out Technologies

Photoelectrochemical Oxidation

PECO is a type of photoreactor-based air purification, similar to PCO technology (described in the next section) with some important variations. PECO processes pollutants in a photoreactor that utilizes photons to initiate a reaction that oxidizes and destroys organic pollutants in the air. The reaction converts pollutants into non-toxic substances. Specifically, PECO works by shining UV–A light on the catalytic surface of the PECO filter. Once the catalyst is activated by the UV–A light, it forms hydroxyl radicals that combine and react with airborne

[24] DOE understands Synexis to be referring to the unique-pathway proprietary technology screening criterion.

microbiological contaminants, which destroys them.

Since PECO technology is proprietary, DOE has screened out this technology option as a unique pathway proprietary technology.

Photocatalytic Oxidation (PCO)

The PCO process is similar to PECO in that it utilizes UV radiation combined with a catalyst to break down pollutants. The major difference between PCO and PECO is the filter material, UV light, and subsequent byproducts. While the PECO filter is a proprietary technology, PCO uses a catalyst such as titanium dioxide. Additionally, PECO does not emit any harmful byproducts such as ozone and formaldehyde as compared to the catalysts on PCO filters. Finally, the PECO system utilizes a UV–A light, instead of a UV–C light found in PCO systems.

When the titanium dioxide used with PCO is activated by UV–C radiation, it forms oxidizing hydroxyl radicals which react with pollutants. When a pollutant comes into contact with UV-activated titanium dioxide, the reaction destroys the pollutant and releases non-toxic compounds, such as carbon dioxide and water, as byproducts, as well as certain harmful byproducts such as ozone and formaldehyde.

DOE is screening out the PCO technology option due to health and safety concerns stemming from the byproducts generated by the reaction of the PCO filter. Formaldehyde is a known human carcinogen that can cause irritation of the skin, eyes, nose, and throat. High levels of exposure may cause some types of cancers, according to EPA.[25] For ozone, DOE describes these concerns in more detail in the following section.

Ozone Generation

Ozone is a strong oxidizer and cleaning agent. Ozone generators work by creating an electrical discharge to split oxygen molecules in ambient air into single oxygen atoms, which then bind with existing oxygen molecules in the air to form ozone. Ozone is highly unstable and reactive, so after it is produced by the generator, it is released in the air and is claimed to chemically react with air pollutants such as chemicals, mold, viruses, bacteria, and odors.

DOE has identified concerns with air cleaners that rely on ozone generation in terms of both efficacy and safety. The same chemical properties that allow ozone to be highly reactive with organic material in the air mean that ozone can impact organic material inside the respiratory system. EPA investigated the use of ozone generation for air cleaning and in a 1996 publication,[26] determined that relatively low amounts of ozone can pose harmful health effects such as decrease in lung function, aggravation of asthma, throat irritation and coughing, chest pain and shortness of breath, inflammation of lung tissue and high susceptibility to respiratory infection. EPA further researched the effectiveness of ozone at removing indoor air contaminants and found that there is evidence to suggest that at concentrations that do not exceed public health standards, ozone is not effective at removing many odor-causing chemicals, viruses, bacteria, mold, or other biological pollutants. Additionally, ozone does not impact particulate matter such as dust or pollen.

Due to these health and safety concerns associated with ozone and lack of efficacy towards particulate removal, DOE has screened out this technology option.

Thermodynamic Sterilization System (TSS)

DOE has identified air cleaners on the market that use TSS in a ceramic core to destroy microorganisms and particle pollutants. These air cleaners do not rely on filter media to trap or remove particles, but rather utilize air convection to force air through the devices' internal ceramic core which heats up to about 200 degrees Celsius (''°C'') (392 degrees Fahrenheit (''°F'')) and incinerates pollutants. Manufacturers of these air cleaners claim that TSS can kill mold, bacteria, germs, and viruses and destroy pollutants such as dust, pollen, pet dander, hair, and other airborne particulates. After the air is heated and cleaned, it is immediately cooled using heat transfer plates and released back out of the device.

TSS is a proprietary technology implemented by a single company. Therefore, DOE has screened out this technology option as a unique pathway proprietary technology.

Bioreactor

DOE has identified two air cleaner models on the market that utilize a bioreactor system to produce clean air. The air cleaners that use this technology option rely on convection and fans to draw large particulate matter of over 0.5 microns such as dust and dander into the bioreactor chamber. Smaller ultra-fine air pollutants and VOCs are drawn into the chamber of the air purifier by a process of molecular attraction through an electrostatic grounded air zone.

Once the various types of air contaminants are drawn into the bioreactor, an activated solution of water, oxygen, enzymes, and the trapped contaminants lead to an accelerated process of natural oxidation that digests the air contaminants and breaks them down into water, carbon dioxide, and base elements. This results in cleaner air that is released from the air purifier.

Given the scarcity of models on the market with this technology, DOE has screened out this technology option as it is not proven to be practicable to manufacture, install, and service this technology on a scale necessary to serve the relevant market at the time of the compliance date of new standards.

2. Remaining Technologies

Through a review of each technology, DOE tentatively concludes that all of the other identified technologies listed in section IV.A.2 met all five screening criteria to be examined further as design options in DOE's direct final rule analysis. In summary, DOE did not screen out the following technology options:

1. HEPA-type filter (99 percent of 0.2μm particles)
2. True HEPA filter (99.97 percent of 0.3μm particles)
3. Activated carbon filter
4. HDPE pre-filter
5. Electrostatic/Polarizing media
6. Filter shape
7. Improved Motor Technologies
8. Low standby-power electronic controls
9. Direct double ended blower assembly
10. Ionization brush
11. Ionization plates
12. Air quality sensor

DOE 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). For additional details, see chapter 4 of the direct final rule TSD.

[25] *www.epa.gov/sites/default/files/2016-09/documents/formaldehyde.pdf.*

[26] *www.epa.gov/indoor-air-quality-iaq/ozone-generators-are-sold-air-cleaners.*

C. Engineering Analysis

The purpose of the engineering analysis is to establish the relationship between the efficiency and cost of air cleaners. 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 air cleaners, 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).

Chapter 5 of the direct final rule TSD provides additional details regarding the engineering analysis.

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 interpolate to define ''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).

In this rulemaking, DOE primarily used the efficiency-level approach. This approach involved reviewing the ENERGY STAR V. 2.0 database to identify the market distribution of existing products. DOE also used the design-option approach, testing and physically disassembling commercially available products to fill gaps where data was not available from the efficiency-level approach (*e.g.,* to identify efficiency levels below the ENERGY STAR level). From this information, DOE estimated the manufacturer production costs (''MPCs'') for a range of products available at that time on the market. DOE then analyzed the steps manufacturers took to improve product efficiencies. In its analysis, DOE determined that manufacturers would likely rely on certain design options to reach higher efficiencies. From this information, DOE estimated the incremental cost and efficiency impacts of incorporating specific design options at each efficiency level. This section provides more detail on the development of efficiency levels for the air cleaner engineering analysis.

In response to the January 2022 RFI, Molekule commented that air cleaners that utilize combined technologies such as a fan and UV that are intended to capture and destroy a wide range of potentially harmful pollutants should be subject to adjusted requirements. Molekule additionally commented that devices that feature technologies with capabilities outside of AHAM AC–1 and its scope of smoke, dust, and pollen test should receive an additional 15-percent energy allowance. (Molekule, No. 11 at pp. 2, 5) Molekule commented that air cleaners that are designed to work against contaminants such as microbes and organic chemicals may require technology stacks and energy usage beyond what is needed for mechanical filtration. Molekule further stated that evaluating such air cleaners solely on particle removal efficiency without considering these other pollutant classes is an inappropriate measure of an air cleaner's energy efficiency relative to its potential benefits. Molekule commented that many proposed and existing standards for microbes and chemicals, including proposed AHAM AC–4 and AHAM AC–5 tests and NRCC_54013 [27] protocol, will only gauge the initial reduction of pollutants, while an important benefit of its devices is the destruction of pollutants. (Molekule, No. 11 at p. 4) DOE notes that the air cleaners test procedure at appendix FF requires that all features pertaining to air cleaning (*e.g.,* UV, ion generator, *etc.*) must be activated and set to their highest setting during testing, while features unrelated to air cleaning are disabled. That is, the air cleaners test procedure already accounts for these technologies and to the extent it is necessary, DOE's analysis accounts for the additional energy consumed by such technologies. Regarding comments related to the AHAM AC–4 and AHAM AC–5 industry test standards, DOE is not introducing a test procedure for microbes and chemicals at this time and is not establishing an additional energy allowance for products that target these pollutants.

Molekule also commented that air cleaners that utilize automatic or standby functionality should receive a credit and that DOE should delay the implementation of energy conservation standards for such air cleaners until the appropriate standards or credit has been determined. (Molekule, No. 11 at p. 2) Molekule stated that energy efficiency requirements should account for the typical operation of the air cleaner rather than only the maximum performance mode, particularly for air cleaners that employ air quality sensors. Molekule stated that the continuous use case is to operate in ''Auto'' mode or at a level lower than the maximum running speed and that its internal data indicates that the use of Auto Mode, coupled with other common user behavior of selecting speeds lower than the maximum speed, results in more than 50-percent energy savings as compared to the energy use if the device was operated continuously at maximum speed. (Molekule, No. 11 at p. 5) DOE notes that the current test procedure at appendix FF requires all air cleaners to be tested in the maximum performance mode, not in automatic mode. Accordingly, a credit or separate standards are not necessary for such units at this time. DOE is aware that an AHAM task force is currently engaged in discussions to develop an industry test method to test air cleaners in automatic mode, and DOE is participating in these meetings. However, DOE's test procedure specifies testing only in maximum performance mode (consistent with the existing industry standard) and accordingly, DOE is not providing a credit for units with automatic mode.

a. Baseline Efficiency Levels

For each product class, DOE generally selects a baseline model as a reference

[27] National Research Council Canada (''NRCC'')-54013, ''Method for Testing Portable Air Cleaners,'' April 2011. Available online at: *https://nrc-publications.canada.ca/eng/view/ft/?id=cc1570e0-53cc-476d-b2ee-3e252d8bd739.*

point for each class, and measures changes resulting from potential energy conservation standards against the baseline. The baseline model in each product class represents the characteristics of a product 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. In the January 2022 RFI, DOE requested feedback on appropriate baseline efficiency levels for DOE to apply, and the product classes to which these baseline efficiency levels would be applicable, in evaluating whether to establish energy conservation standards for air cleaners. 87 FR 3702, 3712.

NEEA commented that using the ENERGY STAR V. 2.0 levels as the baseline efficiency level would be appropriate because of the high percentage of sales of ENERGY STAR units, comprising 87 percent of the 2015 room air cleaner sales. (NEEA, No. 13 at p. 4)

Based on publicly available data from ENERGY STAR and AHAM, DOE estimated that 60 percent of air cleaners on the market do not meet the ENERGY STAR V. 2.0 levels. Based on the large number of products available on the market that do not meet the ENERGY STAR V. 2.0 specification, DOE is establishing the baseline efficiency levels below the ENERGY STAR V. 2.0 levels.

As a first step to determine baseline and incremental efficiency levels, DOE selected units for testing and teardowns using the AHAM Verifide [28] and ENERGY STAR databases and identified the CADR values at which most models were clustered. The ENERGY STAR database includes smoke CADR, dust CADR, and pollen CADR values in addition to providing power consumption data, but the AHAM Verifide database includes only smoke CADR, dust CADR, and pollen CADR values. Using these databases, DOE selected a representative sample of products for testing and teardowns. From its test sample, DOE identified a representative nominal $PM_{2.5}$ CADR value for each product class based on the most commonly occurring $PM_{2.5}$ CADR value for each product class in its test sample, which are 50 CADR/W, 125 CADR/W, and 200 CADR/W for Product Class 1, Product Class 2, and Product Class 3, respectively.

For each product class, DOE then selected the baseline efficiency level based on a commercially available unit below the levels established by certain States and the ENERGY STAR V. 2.0 level. Given there is no database that contains energy use data for air cleaners other than the ENERGY STAR database, which provides a list of products that meet or exceed ENERGY STAR V. 2.0 levels, DOE identified the baseline efficiency levels by testing a representative sample of commercially available units that were not included in the ENERGY STAR database. Through this approach, DOE was able to identify the baseline efficiency level using the IEF of the least efficient unit tested in each product class for Product Classes 1 and 3. For Product Class 2, DOE did not identify any unit in its test sample with an IEF below the State or ENERGY STAR levels from its limited test sample. Accordingly, DOE used the baseline unit from Product Class 1, scaled to the representative $PM_{2.5}$ CADR for Product Class 2, to determine a representative baseline unit for Product Class 2. Table IV.3 summarizes the baseline efficiency levels defined for each product class:

TABLE IV.3—BASELINE EFFICIENCY LEVELS

Product class	$PM_{2.5}$ CADR bins	Minimum IEF
PC1	10 ≤ CADR < 100	1.53
PC2	100 ≤ CADR < 150	1.53
PC3	CADR ≥ 150	1.2

b. Higher Efficiency Levels

In the January 2022 RFI, DOE requested feedback on design options that manufacturers would use to increase energy efficiency in air cleaners above the baseline, including information on the order in which manufacturers would incorporate the different technologies to incrementally improve efficiency of products. DOE also requested feedback on whether the increased energy efficiency would lead to other design changes that would not occur otherwise. DOE further requested information regarding any potential impact of design options on a manufacturer's ability to incorporate additional functions or attributes in response to consumer demand and on whether certain design options may not be applicable to (or incompatible with) certain types of air cleaners. 87 FR 3702, 3713.

NEEA commented that it analyzed the ENERGY STAR database and identified the max-tech units shown in Table IV.4 for each product class:

TABLE IV.4—MAX-TECH UNITS IDENTIFIED BY NEEA

Product class	$PM_{2.5}$ CADR (cfm)	IEF * ($PM_{2.5}$ CADR/W)	AEC (kWh/year)
PC1: 10 ≤ $PM_{2.5}$ CADR < 100	91.2	9.9	55.0
PC2: 100 ≤ $PM_{2.5}$ CADR < 150	120.0	12.5	57.2
PC3: $PM_{2.5}$ CADR ≥ 150	424.3	14.0	180.2

* Note that NEEA provided each unit's CADR/W in terms of smoke CADR. DOE calculated the $PM_{2.5}$ CADR values using the information available from the ENERGY STAR database.

[28] Available at: *https://ahamverifide.org/directory-of-air-cleaners/*. Last accessed: January 2022.

(NEEA, No. 13 at p. 5)

As part of DOE's analysis, the maximum available efficiency level is the highest efficiency unit currently available on the market. DOE also defines a ''max-tech'' efficiency level to represent the maximum possible efficiency for a given product. Table IV.5 shows the units that DOE determined to be the maximum available and max-tech units for each product class. These units are the highest efficiency units currently available on the market that provide complete consumer utility. DOE is not aware of any additional technologies that could be implemented to the identified units, and therefore has determined that the units represent the max-tech efficiency level in each product class. The following paragraphs in this section explain DOE's selection of max-tech units as well as its reasons for deviating from the units suggested by NEEA.

TABLE IV.5—MAX-TECH UNITS ANALYZED BY DOE

Product class	Representative $PM_{2.5}$ CADR (cfm)	IEF ($PM_{2.5}$ CADR/W)	AEC (kWh/yr)
PC1: $10 \leq PM_{2.5}$ CADR < 100	50	5.4	54.1
PC2: $100 \leq PM_{2.5}$ CADR < 150	125	12.8	57.3
PC3: $PM_{2.5}$ CADR ≥ 150	200	7.4	157.6

DOE recognizes that the air cleaners included in NEEA's comment may be the highest efficiency units available on the market for each product class; however, as noted previously, DOE strived to select units at the representative $PM_{2.5}$ CADR value for each product class, and especially at the max-tech. For Product Class 1 and Product Class 3, the models suggested by NEEA have roughly twice the capacity, expressed in terms of $PM_{2.5}$ CADR, as the representative capacities selected by DOE—91.2 cfm compared to DOE's representative $PM_{2.5}$ CADR value of 50 cfm for Product Class 1 and 424.3 cfm compared to DOE's representative $PM_{2.5}$ CADR value of 200 cfm for Product Class 3. For Product Class 2, the $PM_{2.5}$ CADR of the model suggested by NEEA falls within the range of CADR values that DOE considered for its analysis and DOE's max-tech unit for Product Class 2 is fairly similar to the unit suggested by NEEA.

In addition to selecting units within a representative $PM_{2.5}$ CADR range for each product class, to determine its max-tech units DOE also selected units that utilized a true HEPA filter, which is a filter that is rated to remove at least 99.97 percent of particles that have a size of 0.3 μm. DOE selected this criterion because, according to EPA, the diameter specification of 0.3 μm corresponds to the most penetrating particle size; that is, particles of 0.3 μm are the most difficult size particles to capture and particles either larger or smaller than 0.3 μm are generally captured more easily.[29] Therefore, DOE selected its max-tech unit to include a true HEPA filter to ensure that there would not be any loss in product utility at the selected max-tech efficiency level. The Product Class 1 and Product Class 3 units suggested by NEEA do not include a true HEPA filter and instead utilize ionic plates or a filter that is rated to capture 98 percent of 5 μm particles, neither of which meet the rating requirement of a HEPA filter for capturing at least 99.97 percent of particles that have a size of 0.3 μm, which DOE determined is required to maintain full consumer functionality. DOE notes that the pressure drop across a HEPA filter would be greater due to the design of such a filter, which would require a more powerful motor to move the same quantity of air across the filter as compared to a less effective filter.

While the max-tech units selected by DOE for Product Class 2 and Product Class 3 are the most-efficient units at the representative $PM_{2.5}$ CADR value, for Product Class 1, DOE observed another unit that had a higher IEF compared to its selected unit. However, DOE ultimately selected the unit shown in Table IV.5 because the other unit did not include a true HEPA filter; instead, it included a filter that is rated to remove only up to 97 percent of particles that have a size of 0.3 μm, which DOE determined did not maintain full consumer functionality.

To establish other incremental higher efficiency levels between the baseline and max-tech, DOE reviewed data in the ENERGY STAR database to evaluate the range of efficiencies for air cleaners currently available on the market. For all three product classes, DOE considered Efficiency Level 1 (''EL 1'') to correspond to the level established by certain States. EL 1 also corresponds to the Tier 1 level provided in the Joint Proposal. DOE selected EL 2 for all product classes to correspond to the ENERGY STAR V. 2.0 level, which is also the Tier 2 level provided in the Joint Proposal. Finally, DOE identified EL 3 as a ''gap-fill'' level between EL 2 and max-tech (*i.e.,* EL 4) based on number of available models grouped (or ''clustered'') between EL 2 and max-tech for each product class. Table IV.6 through Table IV.8 summarize the efficiency levels analyzed for each product class.

TABLE IV.6—EFFICIENCY LEVELS FOR PRODUCT CLASS 1

EL	Efficiency level description	IEF ($PM_{2.5}$ CADR/W)
Baseline	Minimum available from tested units	1.5
1	State Standard Levels; Joint Proposal Tier 1	1.7
2	ENERGY STAR V. 2.0; Joint Proposal Tier 2	1.9
3	Gap-fill	3.4
4	Maximum available	5.4

[29] *www.epa.gov/indoor-air-quality-iaq/what-hepa-filter.*

TABLE IV.7—EFFICIENCY LEVELS FOR PRODUCT CLASS 2

EL	Efficiency level description	IEF ($PM_{2.5}$ CADR/W)
Baseline	Minimum available from tested units	1.5
1	State Standard Levels; Joint Proposal Tier 1	1.9
2	ENERGY STAR V. 2.0; Joint Proposal Tier 2	2.4
3	Gap-fill	5.4
4	Maximum available	12.8

TABLE IV.8—EFFICIENCY LEVELS FOR PRODUCT CLASS 3

EL	Efficiency level description	IEF ($PM_{2.5}$ CADR/W)
Baseline	Minimum available from tested units	1.2
1	State Standard Levels; Joint Proposal Tier 1	2.0
2	ENERGY STAR V. 2.0; Joint Proposal Tier 2	2.9
3	Gap-fill	6.6
4	Maximum available	7.4

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 air cleaners 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 primarily using the physical teardown approach. For each product class, DOE tore down a representative sample of models spanning the entire range of efficiency levels, as well as multiple manufacturers within each product class. DOE aggregated the results so that the cost-efficiency relationship developed for each product class reflects DOE's assessment of a market-representative ''path'' to achieve each higher efficiency level. The resulting bill of materials from each teardown provides the basis for the MPC estimates. In addition to determining MPCs for each efficiency level, DOE disaggregated the overall MPCs to find the filter costs, which are used later in the LCC and PBP analyses.

The detailed description of DOE's determination of costs for baseline and higher efficiency levels is provided in chapter 5 of the direct final rule TSD.

In the January 2022 RFI, DOE sought input on the increase in MPC associated with incorporating each particular design option. DOE also requested information on the investments necessary to incorporate specific design options, including, but not limited to, costs related to new or modified tooling (if any), materials, engineering and development efforts to implement each design option, and manufacturing/production impacts. 87 FR 3702, 3713.

NEEA commented that it had analyzed the incremental cost of air cleaners and found the incremental cost was $6.00 for large-capacity room air cleaners and about $26 for smaller-capacity units. (NEEA, No. 13 at p. 5)

As discussed in the following sections, DOE's teardown results also showed that incremental MPC between baseline and max-tech units for Product Class 3 was much smaller compared to the incremental MPC between baseline and max-tech units for Product Classes 1 and 2. DOE estimated the incremental MPC between max-tech and baseline for Product Classes 1 and 2 to be approximately $12, as compared to $26 as stated by NEEA. This is likely due to the difference in how NEEA and DOE conducted their analyses—DOE's analysis is based on MPC, which accounts for the costs associated only with efficiency-related components, while it is DOE's understanding that NEEA's analysis is based on retail prices, which could include costs attributed to non-efficiency-related features.

3. Cost-Efficiency Results

The results of the engineering analysis are reported as incremental MPCs associated with each efficiency level and product class. At each efficiency level, DOE tore down a representative unit and excluded the non-efficiency related components from the MPC calculation. Due to slight variations in the $PM_{2.5}$ CADR of each unit, DOE applied a normalization to the MPCs using a single representative $PM_{2.5}$ CADR for each product class. See chapter 5 of the direct final rule TSD for complete cost-efficiency results.

a. Product Class 1

Table IV.9 summarizes the MPCs at each efficiency level for Product Class 1.

TABLE IV.9—MANUFACTURER PRODUCTION COSTS FOR PRODUCT CLASS 1

[2022$]

EL	IEF ($PM_{2.5}$ CADR/W)	MPC	Incremental MPC
Baseline	1.5	$31.24	.....
1	1.7	32.25	$1.01
2	1.9	33.39	2.15
3	3.4	39.27	8.03
4	5.4	44.06	12.82

The baseline unit in Product Class 1 is typically smaller than the baseline units in the other two product classes and is equipped with a shaded pole motor (''SPM'') and rectangular HEPA filter. At EL 1, efficiency improvements are achievable by optimizing the motor-filter relationship, typically by reducing the restriction of airflow (and therefore, the pressure drop across the filter) by increasing the surface area of the filter, reducing filter thickness, and/or increasing air inlet/outlet size. Optimizing the air flow across the filter enables reducing the size and power draw of the motor for an EL 1 unit. Other than alterations to the cabinet size to accommodate the filter design, these changes do not significantly increase the MPC at EL 1.

At EL 2, typically the SPM is upgraded to a permanent split capacitor (''PSC'') motor, which improves overall efficiency while increasing MPC slightly.

EL 3 and EL 4 units are typically designed to house a cylindrical filter, and the cabinets of these units are also typically cylindrical in shape. A cylindrical filter design further reduces the restriction in air flow across the filter without compromising on performance because a cylindrical shape allows for a much larger surface area for the same volume of filter material. The larger surface area reduces the resistance across the filter material, which reduces the pressure drop and improves efficiency overall. EL 3 and EL 4 units also utilize a variable-speed brushless direct-current (''BLDC'') motor, which is much more efficient than an SPM or PSC motor. EL 4 units additionally improve energy efficiency by further optimizing the motor-filter relationship. The incremental costs associated with EL 3 and EL 4 are typically much higher due to the significant motor upgrade and cylindrical filter and case design.

b. Product Class 2

When selecting representative units for Product Class 2, DOE was unable to identify commercially available units for the baseline and EL 1 due to lack of published data for units with efficiencies below the ENERGY STAR V.2.0 level; the units that DOE selected for its test sample based on product features did not have measured efficiencies at EL 1 or lower. Therefore, DOE extrapolated costs from baseline and EL 1 units in Product Class 1 with similar measured IEFs as the Product Class 2 baseline and EL 1 efficiency levels. Table IV.10 summarizes the MPCs at each efficiency level for Product Class 2.

TABLE IV.10—MANUFACTURER PRODUCTION COSTS FOR PRODUCT CLASS 2

[2022$]

EL	IEF ($PM_{2.5}$ CADR/W)	MPC	Incremental MPC
Baseline	1.5	$42.97	.....
1	1.9	44.26	$1.29
2	2.4	45.62	2.65
3	5.4	50.45	7.48
4	12.8	55.55	12.58

DOE estimated that the typical baseline unit for Product Class 2 is similar to the baseline unit from Product Class 1, although it has a larger cabinet, rectangular filter, and SPM motor in order to achieve a higher $PM_{2.5}$ CADR value. At EL 1, DOE estimated that the air cleaner would require a motor upgrade to a PSC motor to be able to provide the increasing power required to maintain the desired IEF for an EL 1 unit at a representative $PM_{2.5}$ CADR value of 125. At EL 2, DOE observed a direct, double-ended PSC motor with a blower on each end, compared to a single-ended blower assembly in the lower-efficiency units.

Similar to Product Class 1, the EL 3 and EL 4 units utilize a cylindrical filter and cabinet to improve filter surface area and airflow as well as a BLDC motor to improve efficiency. At EL 4, the max-tech unit uses lower-standby power components along with optimizations to the motor-filter relationship that allowed for the use of a smaller motor due to a lower pressure drop across the filter.

c. Product Class 3

For Product Class 3, DOE was unable to identify and teardown an EL 1 unit, again due to a lack of published power consumption data for commercially available units below ENERGY STAR V.2.0. Therefore, DOE estimated the EL 1 MPC for Product Class 3 by developing a best-fit curve from the IEF and MPCs of the other efficiency levels for Product Class 3 and using this best-fit curve to estimate the MPC for EL 1. Table IV.11 summarizes the MPCs at each efficiency level for the 150+ $PM_{2.5}$ CADR product class.

TABLE IV.11—MANUFACTURER PRODUCTION COSTS FOR PRODUCT CLASS 3

[2022$]

EL	IEF ($PM_{2.5}$ CADR/W)	MPC	Incremental MPC
Baseline	1.2	$70.50	.....
1	2.0	71.66	$1.17
2	2.9	72.50	2.00
3	6.6	74.33	3.84
4	7.4	74.61	4.11

DOE estimated that the typical baseline unit for Product Class 3 is equipped with an electronic interface, a PSC motor, and a rectangular HEPA filter. For an EL 1 unit, DOE estimated that a PSC motor is still used, but the motor-filter relationship is optimized along with lower-standby power components to increase unit efficiency. The representative EL 2 unit also uses a PSC motor; however, the unit has a filter with a larger surface area and a larger case with larger air inlets/outlets to improve airflow compared to the baseline and EL 1 units. The EL 3 and EL 4 units utilize a cylindrical HEPA filter and BLDC motor to improve airflow through the filter while reducing power consumption. However, the EL 3 and EL 4 units are typically smaller in cabinet size compared to lower-efficiency units within Product Class 3. Therefore, the incremental MPCs at EL 3 and EL 4 is smaller compared to the incremental MPCs at EL 3 and EL 4 for the other two product classes.

In addition to determining the MPCs for each representative unit at each efficiency level, DOE also disaggregated the overall MPC at each efficiency level to determine filter costs, which are used to determine the maintenance and repair costs for the LCC and PBP. These costs are shown in Table IV.12.

TABLE IV.12—FILTER COSTS (2022$) DISAGGREGATED FROM OVERALL MPCS FOR EACH REPRESENTATIVE UNIT

Efficiency level	Product class 1	Product class 2	Product class 3
Baseline	$2.62	$5.83	$9.06
EL 1	1.92	5.00	8.68
EL 2	1.79	4.16	8.29
EL 3	6.71	10.25	12.10
EL 4	7.05	7.78	12.69

DOE observed that the filter MPC typically decreased going from baseline to EL 2 and then increased for EL 3 and EL 4. This is because the baseline unit typically has a larger rectangular filter compared to EL 1 and EL 2 filters, leading to higher filter costs for the baseline unit. EL 3 and EL 4 units have cylindrical filters with plastic casing, compared to the paper/cardboard casing seen at baseline through EL 2, both of which lead to much higher filter costs at these levels.

To account for manufacturers' non-production costs and profit margin, DOE applies a multiplier (the manufacturer markup) to the MPC. The resulting manufacturer selling price (''MSP'') is the price at which the manufacturer distributes a unit into commerce.

The detailed description of DOE's determination of costs for baseline and higher efficiency levels is provided in chapter 5 of the direct final rule TSD. The detailed description of DOE's determination of the industry average manufacturer markup is provided in chapter 12 of the direct final rule TSD

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 air cleaners, DOE relied on the TechSci Research report,[30] and manufacturer inputs from the manufacturer interviews to develop the distribution channels and the corresponding market share. DOE developed baseline and incremental markups for each link in the distribution chains (after the product leaves the manufacturer). 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 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.[31]

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,[32] and the 2017 Annual Wholesale Trade Survey for both ''Machinery, equipment, and supplies merchant wholesalers'' and ''Household appliances and electrical and electronic goods merchant wholesalers'' business types to develop the markups for distributors.[33]

To differentiate the retailer markups in the online and offline retail channels,

[30] TechSci Research. 2022. United States air purifier market, forecast and opportunity. June 2022. *www.techsciresearch.com/report/us-air-purifier-market/3711.html.*

[31] 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.

[32] U.S. Census Bureau, Annual Retail Trade Survey, 2017. *www.census.gov/programs-surveys/arts.html.*

[33] U.S. Census Bureau, Annual Wholesale Trade Survey, 2017. *www.census.gov/programs-surveys/awts.html.*

DOE compared the retail prices of top-selling models provided in the TechSci Research report from major home improvement centers (offline retail sales) and e-commerce websites (online retail sales) and estimated that the online retail prices are on average 1.1% lower than the offline retail prices. Hence, DOE applied the price ratio to the retailer markups estimated from the 2017 Annual Retail Trade Survey to derive separate markups for the offline retail channel.

Chapter 6 of the direct final rule TSD provides details on DOE's development of markups for air cleaners.

E. Energy Use Analysis

The purpose of the energy use analysis is to determine the annual energy consumption of air cleaners at different efficiencies in representative U.S. single-family homes, multi-family residences, mobile homes, and commercial buildings, and to assess the energy savings potential of increased air cleaner efficiency. The energy use analysis estimates the range of energy use of air cleaners 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.

DOE determined the annual energy consumption of air cleaners by multiplying the per operating mode annual operating hours by the power of standby and active modes. DOE used the Energy Information Administration's (''EIA'') Residential Energy Consumption Survey (''*RECS*'') 2020 [34] data and EIA's Commercial Building Energy Consumption Survey (''*CBECS*'') 2018 [35] data to represent residential and commercial consumer samples. In the absence of air cleaner ownership and usage information in both datasets, for the residential sector, DOE included all household samples, but adjusted the residential sample weights based on the geographic distribution of air cleaner stocks reported by TechSci Research, and the number of air cleaners per sample based on household size. For the commercial sector, DOE excluded the vacant and non-used buildings from the *CBECS 2018* samples and adjusted the remaining building sample weights based on the building occupancy, the square footage of the climate-controlled space, and the stock distribution by building principal activity reported by TechSci Research.

Daikin requested that DOE disclose its methodology and results of the Annual Energy Use assessment. Daikin recognizes that the actual hours of operation will obviously have a significant impact on the annual energy consumption of a product. (Daikin, No. 12 at p. 6) NEEA stated it typically estimates average operation to be 8 hours per day based on seasonal operation or part-day operation, but noted that the Northwest Regional Technical Forum estimates 16 hours per day. (NEEA, No. 11 at p. 5)

The DOE test procedure produces standardized results that can be used to assess or compare the performance of products operating under specified laboratory conditions. The test procedure assumes air cleaners are used 16 hours of the day on active mode (maximum power) and 8 hours on standby mode which aligns with the ENERGY STAR description.[36] 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.

To estimate the actual annual air cleaner energy consumption in the residential sector, DOE relied on the *RECS 2020* consumer sample, in conjunction with the county-based 2020 air quality data published by the EPA,[37] and a market research report conducted by Evergreen Economics [38] submitted by stakeholders to determine the annual operating hours. DOE estimated that the air cleaners operated on average 10.6 hours per day, and 248 days per year in the residential sector.

To determine the commercial sector air cleaner annual energy consumption, DOE used the *CBECS 2018* building sample regarding the reported building principal activities, building schedule and occupancy information. DOE estimated an average of 4,198 annual operating hours, which is equivalent to 12.9 operating hours per day and 325 operating days per year.

Chapter 7 of the direct final rule TSD provides details on DOE's energy use analysis for air cleaners.

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 air cleaners. 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 air cleaners 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 U.S. households and commercial buildings. As stated previously, DOE developed household samples from the *RECS 2020* and commercial building samples from the *CBECS 2018*. For each sample household, DOE determined the energy consumption for the air cleaners and the appropriate energy price. By developing a representative sample of households

[34] U.S. Department of Energy—Energy Information Administration. Residential Energy Consumption Survey. 2020. *www.eia.gov/consumption/residential/data/2020/.*

[35] U.S. Department of Energy—Energy Information Administration. Commercial Buildings Energy Consumption Survey. 2018. *www.eia.gov/consumption/commercial/data/2018/.*

[36] ENERGY STAR Certified Room Air Cleaners Database. Description of ''Annual Energy Use (kWh/yr)'' ''This is the estimated annual energy use of the room air cleaner under typical conditions, including the energy used in active modes and partial on modes . . . The active mode [. . .] is on average 16 hours active and 8 hours inactive per day. Actual energy consumption will vary depending on various factors such as the amount of usage in active model and the settings chosen.'' *data.energystar.gov/Active-Specifications/ENERGY-STAR-Certified-Room-Air-Cleaners/jmck-i55n/data.*

[37] U.S. Environmental Protection Agency. Air Quality System. Air Quality Index per County. 2020. *www.epa.gov/air-trends/air-quality-cities-and-counties.*

[38] Evergreen Economics. Air Purifier Study Results. February 8, 2021. The document can be found in docket, *www.regulations.gov/comment/EERE-2021-BT-STD-0035-0009.*

and commercial buildings, the analysis captured the variability in energy consumption and energy prices associated with the use of air cleaners.

Inputs to the calculation of total installed cost include the cost of the product—which includes MPCs, manufacturer markups, retailer markups, and sales taxes—and filter 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 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 air cleaner user samples. For this rulemaking, the Monte Carlo approach is implemented in MS Excel together with the Crystal Ball™ add-on.[39] The model calculated the LCC for products at each efficiency level for 10,000 housing units and commercial building units 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 for consumers of air cleaners as if each were to purchase a new product in the first year of required compliance with new or amended standards. New standards apply to air cleaners manufactured five years after the date on which any new standard is published. (42 U.S.C. 6295(*l*)(2)) However, on August 23, 2022, DOE received a Joint Proposal from the Joint Stakeholders regarding energy conservation standards for air cleaners recommending a two-tier approach. Therefore, DOE used 2024 and 2026 as the first years of compliance in one of the scenarios analyzed based on the Joint Proposal's two-tier standard recommendation, and used 2028 as the first year of compliance with any new standards for air cleaners for the other scenarios analyzed based on the statutory requirement.

Table IV.13 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 direct final rule TSD and its appendices.

TABLE IV.13—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. Used historical data to derive a price scaling index to project product costs.
Installation Cost	No change with efficiency level.
Annual Energy Use	The total annual energy use by operating mode multiplied by the hours per year. Variability: Based on the *RECS 2020* and *CBECS 2018*.
Energy Prices	Electricity: Based on Edison Electric Institute data for 2021. Variability: Regional energy prices determined for 50 states and Washington DC.
Energy Price Trends	Based on *AEO2022* price projections.
Repair and Maintenance Costs	Considered filter change cost only. Filter change frequency assumed to be associated with usage. On average 1.7 filters used per year for residential sector and 2 filters used per year for commercial sector.
Product Lifetime	Average: 9.0 years.
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	2024/2026 for tiered trial standard level (TSL) and 2028 for the other TSLs.

* Not used for PBP calculation. References for the data sources mentioned in this table are provided in the sections following the table or in chapter 8 of the direct final rule TSD.

1. 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 ''experience'' curves. An 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. To derive the learning rate parameter for air cleaners, DOE obtained historical Producer Price Index (''PPI'') data for air cleaners from the Bureau of Labor Statistics (''BLS''). A PPI for ''small electric household appliances'' was available for the time period between 1982 and 2015.[40] However, the small electric household appliances PPI was discontinued beyond 2015 due to insufficient sample size. To extend the price index beyond 2015, DOE assumed that the more aggregated product series, small electrical appliances price index, is representative of the trend of small electric household appliances. Inflation-adjusted price indices were calculated by dividing the PPI series by the gross

[39] Crystal Ball™ is commercially-available software tool to facilitate the creation of these types of models by generating probability distributions and summarizing results within Excel, available at *www.oracle.com/technetwork/middleware/crystalball/overview/index.html* (last accessed July 6, 2018).

[40] U.S. Bureau of Labor Statistics, PPI Industry Data, Small electric household appliance manufacturers, Product series ID: PCU33521033521014. Data series available at: *www.bls.gov/ppi/*.

domestic product index from Bureau of Economic Analysis for the same years. Using data from 1982–2021, the estimated learning rate (defined as the fractional reduction in price expected from each doubling of cumulative production) is 6 percent. DOE assumed that the air cleaner manufacturers do not typically manufacture the air filters themselves; thus, DOE applied the price learning to the non-filter portion of the cost only.

2. Installation Cost

Installation costs include labor, overhead, and any miscellaneous materials and parts needed to install the product. DOE found no data showing that installation costs would be impacted with increased efficiency levels.

3. Annual Energy Consumption

For each sampled household and commercial building, DOE determined the energy consumption for air cleaners at different efficiency levels using the approach described previously in section IV.E of this document.

4. 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 kWh 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).[41] For the commercial sector, DOE calculated electricity prices using the methodology described in Coughlin and Beraki (2019).[42]

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 *AEO2022,* which has an end year of 2050.[43] For the years after 2050, DOE held constant the 2050 electricity prices.

See chapter 8 of the direct final rule TSD for details.

5. 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. Typically, small incremental increases in product efficiency entail no, or only minor, changes in repair and maintenance costs compared to baseline efficiency products.

In this direct final rule analysis, DOE included no changes in maintenance or repair costs for air cleaners that exceed the baseline efficiency other than the filter change costs. As described in section IV.C of this document, differences in filter size, shape, and material lead to variations in filter costs at each efficiency level within each product class. DOE determined that replacement filters have the same distribution channels and markups as the air cleaner units. No price learning was considered and applied to the filter change costs. Based on the information received from the manufacturer interviews, for commercial buildings, DOE estimated a flat filter change frequency of twice per year. For the residential sector, DOE associated the filter change frequency with the air cleaner usage. DOE correlated higher filter change frequency with higher operating hours with the highest frequency of once every six months and the lowest frequency of once per year. This filter change rate aligns with the range suggested by manufacturer interviews. DOE also takes into account that a small percentage of consumers may never change the air cleaner filters.

6. Product Lifetime

For air cleaners, DOE developed a distribution of lifetimes from which specific values are assigned to the appliances in the samples. DOE ensured that the average lifetime estimate of 9 years aligned with those lifetime estimates suggested by ENERGY STAR,[44] and by CA IOUs (who cited EPA and various State Technical Reference Manuals). (CA IOUs, No. 9 at p. 2) NEEA also cited an estimated lifetime of 9 years. (NEEA, No. 11 at p. 5)

7. Discount Rates

In the calculation of LCC, DOE applies discount rates appropriate to households and commercial buildings to estimate the present value of future operating cost savings. DOE estimated a distribution of discount rates for air cleaners based on the opportunity cost of consumer funds.

DOE applies weighted average discount rates calculated from consumer debt and asset data, rather than marginal or implicit discount rates.[45] The LCC analysis estimates net present value 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, 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 triennial Survey of Consumer

[41] Coughlin, K. and B. Beraki. 2018. Residential Electricity Prices: A Review of Data Sources and Estimation Methods. Lawrence Berkeley National Lab. Berkeley, CA. Report No. LBNL–2001169. *https://ees.lbl.gov/publications/residential-electricity-prices-review.*

[42] Coughlin, K. and B. Beraki. 2019. Non-residential Electricity Prices: A Review of Data Sources and Estimation Methods. Lawrence Berkeley National Lab. Berkeley, CA. Report No. LBNL–2001203. *https://ees.lbl.gov/publications/non-residential-electricity-prices.*

[43] U.S. Department of Energy—Energy Information Administration. *Annual Energy Outlook 2022 with Projections to 2050.* Washington, DC. Available at *www.eia.gov/forecasts/aeo/* (last accessed December 9, 2022).

[44] Room Air Cleaners Final Version 2.0 Program Requirements—Data and Analysis Package. October 2019. *www.energystar.gov/products/spec/room_air_cleaners_version_2_0_pd.*

[45] 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.

Finances[46] (''SCF'') starting in 1995 and ending in 2019. 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 standards would take effect. DOE assigned each sample household a specific discount rate drawn from one of the distributions. The average rate across all types of household debt and equity and income groups, weighted by the shares of each type, is 4.3 percent.

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 of the direct final rule TSD for further details on the development of consumer discount rates.

8. 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 energy efficiency distribution of air cleaners for 2028 (as well as 2024 and 2026), DOE combined market share information submitted by manufacturers[47] and model efficiency distribution from the ENERGY STAR database, and assumed no annual efficiency improvement for the no-new-standards case. The estimated market shares for the no-new-standards case for air cleaners are shown in Table IV.14. See chapter 8 of the direct final rule TSD for further information on the derivation of the efficiency distributions.

TABLE IV.14—NO-NEW-STANDARDS CASE EFFICIENCY DISTRIBUTION FOR AIR CLEANERS IN 2028 (AND IN 2024 AND 2026)

PC	PC1: 10–100 $PM_{2.5}$ CADR		PC2: 100–150 $PM_{2.5}$ CADR		PC3: 150+ $PM_{2.5}$ CADR	
Market Share	26%		24%		50%	
EL	Efficiency ($PM_{2.5}$ CADR/W)	Market share (%)	Efficiency ($PM_{2.5}$ CADR/W)	Market share (%)	Efficiency ($PM_{2.5}$ CADR/W)	Market share (%)
Baseline	1.53	28.0	1.53	24.4	1.20	22.2
1	1.69	42.1	1.90	36.6	2.01	33.3
2	1.89	19.1	2.39	28.1	2.91	37.7
3	3.37	7.5	5.44	10.5	6.55	3.1
4	5.40	3.3	12.75	0.4	7.41	3.8

The LCC Monte Carlo simulations draw from the efficiency distributions and randomly assign an efficiency to the air cleaner purchased by each sample household and commercial building in the no-new-standards case. The resulting percent shares within the sample match the market shares in the efficiency distributions.

9. Payback Period Analysis

The payback period is the amount of time (expressed in years) it takes the consumer to recover the additional installed cost of more-efficient products, compared to baseline products, through energy cost savings. 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. DOE refers to this as a ''simple PBP'' because it does not consider changes over time in operating cost savings. The PBP calculation uses the same inputs as the LCC analysis when deriving first-year operating costs.

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 efficiency level, 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 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.[48] 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 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.

While demand for the replacement of existing products is dependent only on past shipments and estimated product lifetimes, new demand must be independently projected into the future. DOE projected new demand by estimating new demand in 2020, and applying an annual growth rate. In order to estimate new demand in 2020, DOE took estimates of past shipments (2007–2020) from a EuroMonitor product sales

[46] U.S. Board of Governors of the Federal Reserve System. Survey of Consumer Finances. 1995, 1998, 2001, 2004, 2007, 2010, 2013, 2016, and 2019. *www.federalreserve.gov/econresdata/scf/scfindex.htm.*

[47] *https://www.regulations.gov/comment/EERE-2021-BT-STD-0035-0018.*

[48] 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.

report[49] and estimated lifetimes to calculate an amount of retiring units in 2020. Overall new demand in 2020 was computed as the difference between the EuroMonitor estimate of all units shipped that year, and the estimated retirement demand. Separately, DOE estimated an average annual shipments growth rate of 4.87 percent from the 2021–2028 shipments projection provided by EuroMonitor which is a more conservative estimate compared to the 7 percent annual shipments growth rate estimated by the TechSci Research report.[50] New demand was projected using this annual growth rate. In all shipments projection years, based on the TechSci Research data, DOE assumed that 40 percent of shipments were directed to the commercial sector, and 60 percent were directed to the residential sector. For both sectors and based on manufacturers data, DOE also estimated that 26 percent of shipments were comprised of 10–99 CADR units, 24 percent were comprised of 100–149 CADR units, and the remaining 50 percent were ≥150 CADR units.

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.[51] (''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 air cleaners sold through 2057.

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.15 summarizes the inputs and methods DOE used for the NIA analysis for the direct final rule. Discussion of these inputs and methods follows Table IV.15. See chapter 10 of the direct final rule TSD for further details.

TABLE IV.15—SUMMARY OF INPUTS AND METHODS FOR THE NATIONAL IMPACT ANALYSIS

Inputs	Method
Shipments	Annual shipments from shipments model.
Compliance Date of Standard	2024/2026 (Tiered TSL), 2028 (other TSLs).
Efficiency Trends	No-new-standards case: fixed efficiency distribution provided by manufacturers with no annual improvements.
	Standard cases: No-new-standards case market share below the standard level is rolled up to the minimum qualifying level.
Annual Energy Consumption per Unit	Annual weighted-average values are a function of energy use at each TSL.
Total Installed Cost per Unit	Annual weighted-average values are a function of cost at each TSL.
	Incorporates projection of future product prices based on historical data.
Annual Energy Cost per Unit	Annual weighted-average values as a function of the annual energy consumption per unit and energy prices.
Repair and Maintenance Cost per Unit	Annual values estimated in the LCC analysis do not change across the analysis period except for the first year.
Energy Price Trends	*AEO2022* projections (to 2050) and constant values thereafter.
Energy Site-to-Primary and FFC Conversion.	A time-series conversion factor based on *AEO2022.*
Discount Rate	Three and seven percent.
Present Year	2022.

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.8 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 a new standard. In the no-new-standards case, DOE determined that the present efficiency distribution would remain fixed over time due to the lack of evidence of efficiency improvement in the no-new-standards case. The approach is further described in chapter 10 of the direct final rule TSD.

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 (2024 and 2026 for TSL3 and 2028 for the other TSLs). 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

[49] Euromonitor International. 2021. Air treatment products in the U.S. December. *www.euromonitor.com/air-treatment-products-in-the-us/report.*

[50] TechSci Research. 2022. United States air purifier market, forecast and opportunity. June 2022. *www.techsciresearch.com/report/us-air-purifier-market/3711.html.*

[51] The NIA accounts for impacts in the 50 states and U.S. territories.

the new standard level, and the market share of products above the standard would remain unchanged.

2. National Energy Savings

The national energy savings analysis involves a comparison of national energy consumption of the considered products between each 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 *AEO2022.* Cumulative energy savings are the sum of the NES for each year over the timeframe of the analysis.

Use of higher-efficiency products is sometimes associated with a direct rebound effect, which refers to an increase in utilization of the product due to the increase in efficiency and reduction in operating cost. However, DOE did not find any data on a rebound effect specific to air cleaners, and so applied no rebound for air cleaners.

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 [52] that EIA uses to prepare its *Annual Energy Outlook.* 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 direct final rule 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.1 of this document, DOE developed air cleaners price trends based on an experience curve that depends on cumulative product shipments. DOE applied the same trends to the non-filter part of the projected prices for each product class at each considered efficiency level. By 2057, which is the end date of the projection period, the average air cleaner price is projected to drop 17 percent relative to 2021. DOE's projection of product prices is described in chapter 8 of the direct final rule 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 air cleaners. In addition to the default price trend, DOE considered two product price sensitivity cases: (1) a high price decline case based on the small electric household appliance PPI from 2014 to 2021, and (2) a low price decline case based on the small electric household appliance PPI from 2009 to 2014. The derivation of these price trends and the results of these sensitivity cases are described in appendix 10C of the direct final rule TSD.

The operating cost savings consist of repair and maintenance costs savings, and energy cost savings. The repair and maintenance cost savings are estimated based on the filter change frequency and costs in the LCC analysis, which are held constant during the lifetime of the air cleaner in the NIA except for the first year.[53] Energy cost savings 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 energy price changes in the Reference case from *AEO2022,* which has an end year of 2050. To estimate price trends after 2050, the 2050 value was used for all years. As part of the NIA, DOE also analyzed scenarios that used inputs from variants of the *AEO2022* 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 direct final rule TSD.

In calculating the NPV, DOE multiplies the net savings in future years by a discount factor to determine their present value. For this direct final rule, 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.[54] 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

[52] For more information on NEMS, refer to *The National Energy Modeling System: An Overview 2018,* DOE/EIA–0581(2019), April 2019. Available at *www.eia.gov/outlooks/aeo/nems/overview/pdf/0581(2018).pdf* (last accessed December 5, 2022).

[53] A new air cleaner unit usually comes with a new filter, which is why the first year of operation has a lower repair and maintenance cost compared to the other years during the lifetime of a unit.

[54] United States Office of Management and Budget. *Circular A–4: Regulatory Analysis.* September 17, 2003. Section E. Available at *obamawhitehouse.archives.gov/omb/circulars_a004_a-4/* (last accessed December 9, 2022).

impacts and PBP for those particular consumers from alternative standard levels. For this direct final rule, DOE analyzed the impacts of the considered standard levels on three subgroups: (1) low-income households, (2) senior-only households and (3) small businesses. There may be other subgroups affected by standards for air cleaners, *e.g.,* those with occupants who have chronic respiratory health conditions. However, DOE does not have information indicating that these consumers may be disproportionately affected by new air cleaner standards and DOE did not analyze these consumers as a separate consumer subgroup. The analysis used subsets of the *RECS 2020* and *CBECS 2018* samples composed of households and commercial buildings that meet the criteria for the considered subgroups. DOE used the LCC and PBP spreadsheet model to estimate the impacts of the considered efficiency levels on these subgroups. Chapter 11 in the direct final rule TSD describes the consumer subgroup analysis.

J. Manufacturer Impact Analysis

1. Overview

DOE performed an MIA to estimate the financial impacts of new energy conservation standards on manufacturers of air cleaners and to estimate the potential impacts of such standards on 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 new 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 standards cases. To capture the uncertainty relating to manufacturer pricing strategies following standards, the GRIM estimates a range of possible impacts under different manufacturer markup 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 direct final rule TSD.

DOE conducted the MIA for this rulemaking in three phases. In Phase 1 of the MIA, DOE prepared a profile of the air cleaners manufacturing industry based on the market and technology assessment, preliminary manufacturer interviews, and publicly-available information. This included a top-down analysis of air cleaner 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 air cleaners manufacturing industry, including results of the engineering analysis, the U.S. Census Bureau's ''Economic Census,'' [55] and reports from Dunn & Bradstreet.[56]

In Phase 2 of the MIA, DOE prepared a framework industry cash-flow analysis to quantify the potential impacts of 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 air cleaners 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 subgroup impacts.

In Phase 3 of the MIA, DOE typically conducts structured, detailed interviews with representative manufacturers. During these interviews, DOE typically discusses engineering, manufacturing, procurement, and financial topics to validate assumptions used in the GRIM and to identify key issues or concerns. For this air cleaners rulemaking, DOE conducted preliminary interviews that focused on key issues, product classes, and the engineering analysis. As part of Phase 3, DOE also evaluated subgroups of manufacturers that may be disproportionately impacted by 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 one subgroup for a separate impact analysis: small business manufacturers. The small business subgroup is discussed in section VI.B, ''Review under the Regulatory Flexibility Act'' and in chapter 12 of the direct final rule TSD.

2. Government Regulatory Impact Model and Key Inputs

DOE uses the GRIM to quantify the changes in cash flow due to new standards that result in a higher or lower industry value. The GRIM uses a standard, annual discounted cash-flow analysis that incorporates manufacturer costs, 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 energy conservation standard. The GRIM spreadsheet uses the inputs to arrive at a series of annual cash flows, beginning in 2023 (the base

[55] The U.S. Census Bureau. Quarterly Survey of Plant Capacity Utilization. Available at *www.census.gov/programs-surveys/qpc/data/tables.html.*

[56] The Dun & Bradstreet Hoovers login is available at *app.dnbhoovers.com.*

year of the analysis) and continuing to 2057. DOE calculated INPVs by summing the stream of annual discounted cash flows during this period. For manufacturers of air cleaners, DOE used a real discount rate of 6.6 percent. Given the lack of publicly-listed original equipment manufacturers (OEMs) of air cleaners, DOE relied on industry parameters from the portable air conditioners final rule published in January 2020. 85 FR 1378 (Jan. 9, 2020). In reviewing other appliance standards rulemakings where DOE had sufficient data to estimate product-specific manufacturer markups and other financial parameters, DOE found portable air conditioners to be the most recent rulemaking covering a product similar to air cleaners in terms of product and market attributes.

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 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 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 direct final rule TSD.

a. Manufacturer Production Costs

Manufacturing more efficient products is typically more expensive than manufacturing baseline products due to the use of more complex components, which are typically more costly than baseline components. The changes in the manufacturer production costs (''MPCs'') of covered products can affect the revenues, gross margins, and cash flow of the industry.

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 interpolate to define ''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).

In this rulemaking, DOE applied a hybrid approach of efficiency-level and design-option approaches described above. This approach involved reviewing publicly available efficiency data and physically disassembling commercially available products. From this information, DOE estimated the MPCs for a range of products available at that time on the market. DOE then analyzed the steps manufacturers took to improve product efficiencies. In its analysis, DOE determined that manufacturers would likely rely on certain design options to reach higher efficiencies. From this information, DOE estimated the cost and efficiency impacts of incorporating specific design options at each efficiency level. For a complete description of the MPCs, see chapter 5 of the direct final rule TSD.

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 base year) to 2057 (the end year of the analysis period). See chapter 9 of the direct final rule TSD for additional details.

c. Product and Capital Conversion Costs

Energy conservation standards could cause manufacturers to incur conversion costs to bring their production facilities and product 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) capital conversion costs; and (2) product conversion costs. 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 are investments in research, development, testing, marketing, and other non-capitalized costs necessary to make product designs comply with energy conservation standards.

To evaluate the level of product conversion costs industry would likely incur to comply with n energy conservation standard, DOE evaluated the testing costs for manufacturers to certify models to DOE and the investments necessary to update product designed to comply with standards. DOE relied on testing costs from the March 2023 TP Final Rule, which estimated $6,000 for 3rd party lab testing of a basic model. To estimate investment levels, DOE relied on financial parameters to estimate annual spending on R&D; complexity of design options; and percentage of industry shipments that would require redesign. Product conversion costs by efficiency level are presented in Table IV.16 through Table IV.18. To evaluate the level of capital conversion costs for the industry, DOE relied on its product teardowns and analysis of the equipment and tooling required to produce conventional air cleaners. The conversion cost estimates are driven by the number of injection mold dies that would require replacement as a result of standards. Capital conversion costs by efficiency level are presented in Table IV.16 through Table IV.18.

TABLE IV.16—CONVERSION COST ($M) FOR PC1 (10 > $PM_{2.5}$ CADR <100)

Efficiency level	Product conversion cost	Capital conversion cost
1	$3.6	$6.1
2	9.0	8.4
3	19.0	14.2
4	20.6	15.1

TABLE IV.17—CONVERSION COST ($M) FOR PC2 (100 > $PM_{2.5}$ CADR <150)

Efficiency level	Product conversion cost	Capital conversion cost
1	$3.1	$5.6
2	7.8	7.6
3	26.7	13.9
4	29.8	15.0

TABLE IV.18—CONVERSION COST ($M) FOR PC3 ($PM_{2.5}$ CADR ≥150)

Efficiency level	Product conversion cost	Capital conversion cost
1	$6.9	$5.5
2	17.2	7.3
3	48.5	14.3
4	50.1	14.7

In general, DOE assumes all conversion-related investments occur between the year of publication of the direct final rule and the year by which manufacturers must comply with the new standard. For additional information on the estimated capital and product conversion costs, see chapter 12 of the direct final rule 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 a 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'' 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 31 percent for all air cleaners.[57] This scenario represents a high bound of industry profitability under an energy conservation standard.

Under 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 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. Discussion of MIA Comments

In response to the request for comment published in January 2022, Molekule stated manufacturers may incur costs if energy efficiency redesign results in a repeat verification and testing for the Federal Drug Administration (FDA)-cleared device requirements. Additionally, manufacturers may need to re-submit new Premarket Notifications 510(k) to the FDA. (Molekule, No. 11, pp. 3–4)

DOE evaluated the FDA requirements and does not anticipate air cleaner standards affecting submissions of Premarket Notifications 510(k) because any design options that (1) significantly affect the safety or effectiveness of the device or (2) change or modify the intended use of the device would be screened out in the screening analysis. Thus, DOE's analysis does not include costs for Premarket Notifications 510(k) verification.

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 in 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 emission 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 direct final rule TSD. The analysis presented in this document 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 EPA.[58]

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 direct final rule TSD.

The emissions intensity factors are expressed in terms of physical units per megawatt-hours (''MWh'') or million British thermal units (''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.

[57] The gross margin percentage of 31 percent is based on manufacturer markup of 1.45.

[58] Available at *www.epa.gov/sites/production/files/2021-04/documents/emission-factors_apr2021.pdf* (last accessed July 12, 2021).

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.[59]

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.[60] *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).[61] 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 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 used to permit offsetting increases in SO_2 emissions by another regulated EGU. Therefore, energy conservation standards that decrease electricity generation will 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, NO_X 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 NO_X 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 direct final 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 direct final rule.

To monetize the benefits of reducing greenhouse gas emissions this analysis uses the interim 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 Interagency Working Group on the Social Cost of Greenhouse Gases (IWG).

DOE requests comment on how to address the climate benefits and other non-monetized effects of this direct final rule.

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

[59] 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 December 5, 2022).

[60] 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), and EPA issued the CSAPR Update for the 2008 ozone NAAQS. 81 FR 74504 (Oct. 26, 2016).

[61] In Sept. 2019, the DC Court of Appeals remanded the 2016 CSAPR Update to EPA. In April 2021, EPA finalized the 2021 CSAPR Update which resolved the interstate transport obligations of 21 states for the 2008 ozone NAAQS. 86 FR 23054 (April 30, 2021); *see also,* 86 FR 29948 (June 4, 2021) (correction to preamble). The 2021 CSAPR Update became effective on June 29, 2021. The release of AEO 2022 in February 2021 predated the 2021 CSAPR Update.

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 direct final rule in the absence of the social cost of greenhouse gases. That is, the social costs of greenhouse gases, whether measured using the February 2021 interim estimates presented by the Interagency Working Group on the Social Cost of Greenhouse Gases or by another means, did not affect the rule ultimately published by DOE.

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 CH4 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.*[62] 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).[63] 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'' (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 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

[62] Marten, A. L., E. A. Kopits, C. W. Griffiths, S. C. Newbold, and A. Wolverton. Incremental CH4 and N2O mitigation benefits consistent with the US Government's SC–CO2 estimates. *Climate Policy.* 2015. 15(2): pp. 272–298.

[63] 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.

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 direct final 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,[64] and recommended that 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% and 7% 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% discount rate is not appropriate to apply to value the social cost of greenhouse gases in the analysis presented 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 the previous 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 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 were 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

[64] 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. 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.*

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.[65] 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 integrated assessment models, 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 direct final rule likely underestimate the damages from GHG emissions. DOE concurs with this assessment.

DOE's derivations of the SC–CO_2, SC–N_2O, and SC–CH_4 values used for this DFR 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 direct final rule were based on the values in the IWG's February 2021 TSD. Table IV.19 shows the updated sets of SC–CO_2 estimates from the IWG's TSD in 5-year increments from 2020 to 2050. The full set of annual values that DOE used is presented in Appendix 14–A of the direct final rule TSD. For purposes of capturing the uncertainties involved in regulatory impact analysis, DOE has determined it is appropriate to include all four sets of SC–CO_2 values, as recommended by the IWG.[66]

TABLE IV.19—ANNUAL SC–CO_2 VALUES FROM 2021 INTERAGENCY UPDATE, 2020–2050

[2021$ Per metric ton CO_2]

Year	Discount rate and statistic			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
2025	18	59	86	176
2030	20	64	93	194
2035	23	70	100	214
2040	26	76	107	234
2045	30	82	114	253
2050	33	88	121	271

For 2051 to 2070, DOE used SC–CO_2 estimates published by EPA, adjusted to 2021$.[67] These estimates are based on methods, assumptions, and parameters identical to the 2020–2050 estimates published by the IWG.

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 direct final rule were based on the values developed for the February 2021 TSD.[68] Table IV.20 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 direct final rule 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

[65] 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: *www.whitehouse.gov/briefing-room/blog/2021/02/26/a-return-to-science-evidence-based-estimates-of-the-benefits-of-reducing-climate-pollution/.*

[66] 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.

[67] See EPA, *Revised 2023 and Later Model Year Light-Duty Vehicle GHG Emissions Standards: Regulatory Impact Analysis,* Washington, DC, December 2021. Available at *www.epa.gov/system/files/documents/2021-12/420r21028.pdf* (last accessed January 13, 2022).

[68] 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. *www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf?source=email.*

recommended by the IWG. DOE derived values after 2050 using the approach described above for the SC–CO_2.

TABLE IV.20—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	1,500	2,000	3,900	5,800	18,000	27,000	48,000
2025	800	1,700	2,200	4,500	6,800	21,000	30,000	54,000
2030	940	2,000	2,500	5,200	7,800	23,000	33,000	60,000
2035	1,100	2,200	2,800	6,000	9,000	25,000	36,000	67,000
2040	1,300	2,500	3,100	6,700	10,000	28,000	39,000	74,000
2045	1,500	2,800	3,500	7,500	12,000	30,000	42,000	81,000
2050	1,700	3,100	3,800	8,200	13,000	33,000	45,000	88,000

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 this direct final rule, 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 Program.[69] 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 and 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 range; for years beyond 2040 the values are held constant. DOE derived values specific to the sector for air cleaners using a method described in appendix 14B of the direct final rule 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 direct final rule 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 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.[70] 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

[69] 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.*

[70] As defined in the U.S. Census Bureau's 2016 *Annual Survey of Manufactures,* production workers include ''Workers (up through the line-supervisor level) engaged in fabricating, processing, assembling, inspecting, receiving, packing, warehousing, shipping (but not delivering), maintenance, repair, janitorial, guard services, product development, auxiliary production for plant's own use (*e.g.,* power plant), record keeping, and other closely associated services (including truck drivers delivering ready-mixed concrete)'' Non-production workers are defined as ''Supervision above line-supervisor level, sales (including a driver salesperson), sales delivery (truck drivers and helpers), advertising, credit, collection, installation, and servicing of own products, clerical and routine office functions, executive, purchasing, finance, legal, personnel (including cafeteria, *etc.*), professional and technical.''

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 direct final rule 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 over-estimate actual job impacts over the long run for this rule. Therefore, DOE used ImSET only to generate results for near-term timeframes, where these uncertainties are reduced. For more details on the employment impact analysis, see chapter 16 of the direct final rule 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 air cleaners. It addresses the TSLs examined by DOE, the projected impacts of each of these levels if adopted as energy conservation standards for air cleaners, and the standards levels that DOE is adopting in this direct final rule. Additional details regarding DOE's analyses are contained in the direct final rule TSD supporting this document.

A. Trial Standard Levels

In general, DOE typically evaluates potential 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 air cleaner 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 direct final rule, DOE analyzed the benefits and burdens of five TSLs for air cleaners. DOE developed TSLs that combine efficiency levels for each analyzed product class. DOE presents the results for the TSLs in this document, while the results for all efficiency levels that DOE analyzed are in the direct final rule TSD.

Table V.1 presents the TSLs and the corresponding efficiency levels that DOE has identified for potential energy conservation standards for air cleaners. TSL 5 represents the maximum technologically feasible (''max-tech'') energy efficiency for all product classes and corresponds to EL 4 for all product classes. TSL 4 represents an intermediate efficiency level and corresponds to EL 3 for all product classes. TSL 3 corresponds to the two-tier approach from the Joint Proposal which comprises efficiency level EL 1 [73] for Tier 1 standards (going to effect in 2024) and the current ENERGY STAR V.2.0 efficiency level (EL 2) for Tier 2 standards (going to effect in 2026) for all the product classes. TSL 2 comprises the current ENERGY STAR V.2.0 efficiency level (EL 2) for all product classes. TSL 1 represents EL 1 for all product classes. For all TSLs other than TSL 3, the compliance year is considered to be 2028.

TABLE V.1—TRIAL STANDARD LEVELS FOR AIR CLEANERS

TSL	Compliance year	PC1: 10–100 $PM_{2.5}$ CADR		PC2: 100–150 $PM_{2.5}$ CADR		PC2: 100–150 $PM_{2.5}$ CADR	
		Efficiency level	Efficiency ($PM_{2.5}$ CADR/W)	Efficiency level	Efficiency ($PM_{2.5}$ CADR/W)	Efficiency level	Efficiency ($PM_{2.5}$ CADR/W)
1	2028	1	1.7	1	1.9	1	2.0
2	2028	2	1.9	2	2.4	2	2.9
3	2024 (Tier 1)	1	1.7	1	1.9	1	2.0
	2026 (Tier 2)	2	1.9	2	2.4	2	2.9
4	2028	3	3.4	3	5.4	3	6.6
5	2028	4	5.4	4	12.8	4	7.4

B. Economic Justification and Energy Savings

1. Economic Impacts on Individual Consumers

DOE analyzed the economic impacts on air cleaner consumers by looking at the effects that potential 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

[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 1, 2021).

[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's Guide.* 2015. Pacific Northwest National Laboratory: Richland, WA. PNNL–24563.

[73] EL 1 also corresponds to individual standards established by certain states and the District of Columbia.

operating costs decrease.[74] Inputs used for calculating the LCC and PBP include total installed costs (*i.e.,* product price plus installation costs), and operating costs (*i.e.,* annual energy use, energy prices, energy price trends, repair costs, and maintenance costs). The LCC calculation also uses product lifetime and a discount rate. Chapter 8 of the direct final rule TSD provides detailed information on the LCC and PBP analyses.

Table V.2 through Table V.7 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, the impacts are measured relative to the efficiency distribution in the no-new-standards case in the compliance year (see section IV.F.8 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.2—AVERAGE LCC AND PBP RESULTS FOR PRODUCT CLASS 1: 10–100 $PM_{2.5}$ CADR

TSL *	Efficiency level	Average costs (2021$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Baseline	$64	$13	$117	$181		9.0
1	1	65	11	98	163	0.9	9.0
2	2	67	10	91	158	1.4	9.0
3 **	1	65	11	98	163	0.9	9.0
	2	67	10	91	158	1.4	9.0
4	3	78	15	178	255	NA	9.0
5	4	86	14	176	262	NA	9.0

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.
* All TSLs except TSL 3 have a compliance year of 2028.
** For TSL 3, the first results row has a 2024 compliance year. The second results row has a 2026 compliance year.

TABLE V.3—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR PRODUCT CLASS 1: 10–100 $PM_{2.5}$ CADR

TSL **	Efficiency level	Life-cycle cost savings	
		Average LCC savings * (2021$)	Percent of consumers that experience net cost (%)
1	1	$18	0
2	2	12	6
3 ***	1	18	0
	2	12	6
4	3	(87)	88
5	4	(87)	94

* The savings represent the average LCC for affected consumers.
** All TSLs except TSL 3 have a compliance year of 2028.
*** For TSL 3, the first results row has a 2024 compliance year. The second results row has a 2026 compliance year.

TABLE V.4—AVERAGE LCC AND PBP RESULTS FOR PRODUCT CLASS 2: 100–150 $PM_{2.5}$ CADR

TSL *	Efficiency level	Average costs (2021$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Baseline	$88	$31	$273	$361		9.0
1	1	90	26	232	322	0.4	9.0
2	2	92	22	195	287	0.5	9.0
3 **	1	90	26	232	322	0.4	9.0
	2	92	22	195	287	0.5	9.0
4	3	101	24	280	381	NA	9.0
5	4	109	17	207	317	1.6	9.0

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.
* All TSLs except TSL 3 have a compliance year of 2028.

[74] For air cleaners, operating costs may increase at certain efficiency levels as filter costs increase due to recurring costs for filter replacements.

** For TSL 3, the first results row has a 2024 compliance year. The second results row has a 2026 compliance year.

TABLE V.5—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR PRODUCT CLASS 2: 10–100 $PM_{2.5}$ CADR

TSL **	Efficiency level	Life-cycle cost savings	
		Average LCC savings * (2021$)	Percent of consumers that experience net cost (%)
1	1	$38	0
2	2	50	0
3 ***	1	38	0
	2	50	0
4	3	(60)	75
5	4	11	54

* The savings represent the average LCC for affected consumers.
** All TSLs except TSL 3 have a compliance year of 2028.
*** For TSL 3, the first results row has a 2024 compliance year. The second results row has a 2026 compliance year.

TABLE V.6—AVERAGE LCC AND PBP RESULTS FOR PRODUCT CLASS 3: 150+ $PM_{2.5}$ CADR

TSL *	Efficiency level	Average costs (2021$)				Simple payback (years)	Average lifetime (years)
		Installed cost	First year's operating cost	Lifetime operating cost	LCC		
	Baseline	$144	$57	$485	$629		9.0
1	1	146	41	377	523	0.1	9.0
2	2	147	34	323	470	0.1	9.0
3 **	1	146	41	377	523	0.1	9.0
	2	147	34	323	470	0.1	9.0
4	3	151	31	347	497	0.3	9.0
5	4	151	31	354	505	0.3	9.0

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.
* All TSLs except TSL 3 have a compliance year of 2028.
** For TSL 3, the first results row has a 2024 compliance year. The second results row has a 2026 compliance year.

TABLE V.7—AVERAGE LCC SAVINGS RELATIVE TO THE NO-NEW-STANDARDS CASE FOR PRODUCT CLASS 3: 10–100 $PM_{2.5}$ CADR

TSL **	Efficiency level	Life-cycle cost savings	
		Average LCC savings * (2021$)	Percent of consumers that experience net cost (%)
1	1	$105	0
2	2	94	0
3 ***	1	105	0
	2	94	0
4	3	29	50
5	4	20	56

* The savings represent the average LCC for affected consumers.
** All TSLs except TSL 3 have a compliance year of 2028.
*** For TSL 3, the first results row has a 2024 compliance year. The second results row has a 2026 compliance year.

b. Consumer Subgroup Analysis

In the consumer subgroup analysis, DOE estimated the impact of the considered TSLs on low-income households, senior-only households, and small businesses. Table V.8 through Table V.13 compare the average LCC savings and PBP at each efficiency level for the consumer subgroups with similar metrics for the entire consumer sample for all product classes. In most cases, the average LCC savings and PBP for low-income households and senior-only households at the considered efficiency levels are not substantially different from the average for all households. Chapter 11 of the direct final rule TSD presents the complete LCC and PBP results for the subgroups.

TABLE V.8—COMPARISON OF LCC SAVINGS AND PBP FOR RESIDENTIAL CONSUMER SUBGROUPS AND ALL HOUSEHOLDS; PRODUCT CLASS 1: 10–100 $PM_{2.5}$ CADR

TSL **	Low-income households ‡	Senior-only households §	All households
Average LCC Savings * (2021$)			
TSL 1	$17	$19	$17
TSL 2	10	13	11
TSL 3 ***	17	19	17
	10	13	11
TSL 4	(95)	(87)	(95)
TSL 5	(97)	(85)	(95)
Payback Period (years)			
TSL 1	1.2	1.0	1.2
TSL 2	1.9	1.5	1.8
TSL 3 ***	1.2	1.0	1.2
	1.9	1.5	1.8
TSL 4	NA	NA	NA
TSL 5	NA	NA	NA
Consumers With Net Benefit (%)			
TSL 1	29	29	29
TSL 2	61	64	63
TSL 3 ***	29	29	29
	61	64	63
TSL 4	0	1	0
TSL 5	1	2	1
Consumers With Net Cost (%)			
TSL 1	0	0	0
TSL 2	10	7	9
TSL 3 ***	0	0	0
	10	7	9
TSL 4	89	89	89
TSL 5	96	94	95

* The savings represent the average LCC for affected consumers.
** All TSLs except TSL 3 have a compliance year of 2028.
*** For TSL 3, the first results row has a 2024 compliance year. The second results row has a 2026 compliance year.
‡ Low-income households represent 13.8 percent of all households for this product class.
§ Senior-only households represent 22.7 percent of all households for this product class.

TABLE V.9—COMPARISON OF LCC SAVINGS AND PBP FOR COMMERCIAL CONSUMER SUBGROUP AND ALL COMMERCIAL BUILDINGS; PRODUCT CLASS 1: 10–100 $PM_{2.5}$ CADR

TSL **	Small business ‡	All commercial buildings
Average LCC Savings * (2021$)		
TSL 1	$18	$19
TSL 2	14	14
TSL 3 ***	18	19
	14	14
TSL 4	(77)	(77)
TSL 5	(75)	(75)
Payback Period (years)		
TSL 1	0.7	0.7
TSL 2	1.0	1.0
TSL 3 ***	0.7	0.7
	1.0	1.0
TSL 4	NA	NA
TSL 5	NA	NA
Consumers With Net Benefit (%)		
TSL 1	28	28
TSL 2	68	68
TSL 3 ***	28	28

TABLE V.9—COMPARISON OF LCC SAVINGS AND PBP FOR COMMERCIAL CONSUMER SUBGROUP AND ALL COMMERCIAL BUILDINGS; PRODUCT CLASS 1: 10–100 $PM_{2.5}$ CADR—Continued

TSL **	Small business ‡	All commercial buildings
	68	68
TSL 4	0	0
TSL 5	3	3
Consumers With Net Cost (%)		
TSL 1	0	0
TSL 2	1	1
TSL 3 ***	0	0
	1	1
TSL 4	87	86
TSL 5	92	91

* The savings represent the average LCC for affected consumers.
** All TSLs except TSL 3 have a compliance year of 2028.
*** For TSL 3, the first results row has a 2024 compliance year. The second results row has a 2026 compliance year.
‡ Small business buildings represent 70.9 percent of all commercial buildings for this product class.

TABLE V.10—COMPARISON OF LCC SAVINGS AND PBP FOR RESIDENTIAL CONSUMER SUBGROUPS AND ALL HOUSEHOLDS; PRODUCT CLASS 2: 100–150 $PM_{2.5}$ CADR

TSL **	Low-income households ‡	Senior-only households §	All households
Average LCC Savings * (2021$)			
TSL 1	34	43	35
TSL 2	44	56	46
TSL 3 ***	34	43	35
	44	56	46
TSL 4	(78)	(54)	(75)
TSL 5	(9)	23	(4)
Payback Period (years)			
TSL 1	0.6	0.4	0.6
TSL 2	0.7	0.5	0.6
TSL 3 ***	0.6	0.4	0.6
	0.7	0.5	0.6
TSL 4	NA	NA	NA
TSL 5	NA	1.5	NA
Consumers With Net Benefit (%)			
TSL 1	24	24	24
TSL 2	60	60	60
TSL 3 ***	24	24	24
	60	60	60
TSL 4	8	15	8
TSL 5	35	54	38
Consumers With Net Cost (%)			
TSL 1	0	0	0
TSL 2	0	0	0
TSL 3 ***	0	0	0
	0	0	0
TSL 4	82	74	81
TSL 5	64	46	61

* The savings represent the average LCC for affected consumers.
** All TSLs except TSL 3 have a compliance year of 2028.
*** For TSL 3, the first results row has a 2024 compliance year. The second results row has a 2026 compliance year.
‡ Low-income households represent 13.8 percent of all households for this product class.
§ Senior-only households represent 22.7 percent of all households for this product class.

TABLE V.11—COMPARISON OF LCC SAVINGS AND PBP FOR CONSUMER SUBGROUPS AND ALL COMMERCIAL BUILDINGS; PRODUCT CLASS 2: 100–150 $PM_{2.5}$ CADR

TSL **	Small business ‡	All commercial buildings
Average LCC Savings * (2021$)		
TSL 1	$44	$44
TSL 2	$57	$57
TSL 3 ***	$44	$44
	$57	$57
TSL 4	($38)	($38)
TSL 5	$32	$33
Payback Period (years)		
TSL 1	0.3	0.3
TSL 2	0.3	0.3
TSL 3 ***	0.3	0.3
	0.3	0.3
TSL 4	NA	NA
TSL 5	1.1	1.0
Consumers With Net Benefit (%)		
TSL 1	23%	23%
TSL 2	59%	59%
TSL 3 ***	23%	23%
	59%	59%
TSL 4	20%	20%
TSL 5	56%	55%
Consumers With Net Cost (%)		
TSL 1	0%	0%
TSL 2	0%	0%
TSL 3 ***	0%	0%
	0%	0%
TSL 4	67%	67%
TSL 5	41%	42%

* The savings represent the average LCC for affected consumers.
** All TSLs except TSL 3 have a compliance year of 2028.
*** For TSL 3, the first results row has a 2024 compliance year. The second results row has a 2026 compliance year.
‡ Small business buildings represent 70.9 percent of all commercial buildings for this product class.

TABLE V.12—COMPARISON OF LCC SAVINGS AND PBP FOR RESIDENTIAL CONSUMER SUBGROUPS AND ALL HOUSEHOLDS; PRODUCT CLASS 3: 150+ $PM_{2.5}$ CADR

TSL **	Low-income households ‡	Senior-only households §	All households
Average LCC Savings * (2021$)			
TSL 1	$85	$127	$88
TSL 2	$76	$111	$80
TSL 3 ***	$85	$127	$88
	$76	$111	$80
TSL 4	$2	$47	$7
TSL 5	($7)	$38	($2)
Payback Period (years)			
TSL 1	0.2	0.1	0.2
TSL 2	0.2	0.1	0.2
TSL 3 ***	0.2	0.1	0.2
	0.2	0.1	0.2
TSL 4	0.4	0.2	0.4
TSL 5	NA	0.3	NA
Consumers With Net Benefit (%)			
TSL 1	22%	22%	22%
TSL 2	56%	56%	56%
TSL 3 ***	22%	22%	22%
	56%	56%	56%

TABLE V.12—COMPARISON OF LCC SAVINGS AND PBP FOR RESIDENTIAL CONSUMER SUBGROUPS AND ALL HOUSEHOLDS; PRODUCT CLASS 3: 150+ $PM_{2.5}$ CADR—Continued

TSL **	Low-income households ‡	Senior-only households §	All households
TSL 4	32%	49%	35%
TSL 5	29%	47%	32%
Consumers With Net Cost (%)			
TSL 1	0%	0%	0%
TSL 2	0%	0%	0%
TSL 3 ***	0%	0%	0%
	0%	0%	0%
TSL 4	61%	44%	59%
TSL 5	67%	49%	64%

* The savings represent the average LCC for affected consumers.
** All TSLs except TSL 3 have a compliance year of 2028.
*** For TSL 3, the first results row has a 2024 compliance year. The second results row has a 2026 compliance year.
‡ Low-income households represent 13.8 percent of all households for this product class.
§ Senior-only households represent 22.7 percent of all households for this product class.

TABLE V.13—COMPARISON OF LCC SAVINGS AND PBP FOR COMMERCIAL CONSUMER SUBGROUPS AND ALL COMMERCIAL BUILDINGS; PRODUCT CLASS 3: 150+ $PM_{2.5}$ CADR

TSL **	Small business ‡	All commercial buildings
Average LCC Savings * (2021$)		
TSL 1	$133	$132
TSL 2	$117	$116
TSL 3 ***	$133	$132
	$117	$116
TSL 4	$61	$61
TSL 5	$54	$54
Payback Period (years)		
TSL 1	0.1	0.1
TSL 2	0.1	0.1
TSL 3 ***	0.1	0.1
	0.1	0.1
TSL 4	0.2	0.2
TSL 5	0.2	0.2
Consumers With Net Benefit (%)		
TSL 1	21%	21%
TSL 2	55%	54%
TSL 3 ***	21%	21%
	55%	54%
TSL 4	54%	54%
TSL 5	51%	51%
Consumers With Net Cost (%)		
TSL 1	0%	0%
TSL 2	0%	0%
TSL 3 ***	0%	0%
	0%	0%
TSL 4	37%	37%
TSL 5	43%	43%

* The savings represent the average LCC for affected consumers.
** All TSLs except TSL 3 have a compliance year of 2028.
*** For TSL 3, the first results row has a 2024 compliance year. The second results row has a 2026 compliance year.
‡ Small business buildings represent 70.9 percent of all commercial buildings for this product class.

c. Rebuttable Presumption Payback

As discussed in section III.F.2 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. (42 U.S.C. 6295(o)(2)(iii)) 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 procedures for air cleaners. In contrast, the PBPs presented in section V.B.1.a were calculated using distributions that reflect the range of energy use in the field.

Table V.14 presents the rebuttable-presumption payback periods for the considered TSLs for air cleaners. While DOE examined the rebuttable-presumption criterion, it considered whether the standard levels considered for this rule 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.14—REBUTTABLE-PRESUMPTION PAYBACK PERIODS

Product class	Trial standard level (years)					
	1	2	3		4	5
			Tier 1	Tier 2		
PC 1: 10–100 $PM_{2.5}$ CADR	0.6	0.7	0.6	0.7	0.9	1.1
PC 2: 100–150 $PM_{2.5}$ CADR	0.2	0.2	0.2	0.2	0.3	0.4
PC 3: 150+ $PM_{2.5}$ CADR	0.0	0.0	0.0	0.0	0.1	0.1

2. Economic Impacts on Manufacturers

DOE performed an MIA to estimate the impact of energy conservation standards on manufacturers of air cleaners. The next section describes the expected impacts on manufacturers at each considered TSL. Chapter 12 of the direct final rule 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 energy conservation standards on manufacturers of air cleaners, as well as the conversion costs that DOE estimates manufacturers of air cleaners would incur at each TSL.

To evaluate the range of cash-flow impacts on the air cleaners industry, DOE modeled two manufacturer markup scenarios to evaluate a range of cash flow impacts on the air cleaners industry: (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. In the preservation of gross margin percentage scenario, DOE applied a gross margin percentage of 31 percent for all product classes and all efficiency levels.[75] As MPCs increase with efficiency, this scenario implies that the absolute dollar markup will increase. This scenario assumes that a manufacturer's absolute dollar markup would increase as MPCs increase in the standards cases and represents the upper-bound to industry profitability under potential new or 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 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 (2023–2057). 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 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 new or 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 standards. Conversion costs are independent of the manufacturer markup scenarios and are not presented as a range in this analysis.

Table V.15 and Table V.16 show the MIA results for each TSL using the manufacturer markup scenarios previously described.

[75] The gross margin percentage of 31 percent is based on manufacturer markup of 1.45.

TABLE V.15—MANUFACTURER IMPACT ANALYSIS FOR AIR CLEANERS UNDER THE PRESERVATION OF GROSS MARGIN SCENARIO

	Units	No-new-standards case	Trial standard level				
			1	2	3*	4	5
INPV	2021$ millions	1,565.9	1,535.7	1,528.0	1,525.2	1,535.8	1,574.0
Change in INPV	2021$ millions		(30.2)	(37.9)	(40.7)	(30.2)	8.1
	%		(1.9)	(2.4)	(2.6)	(1.9)	0.5
Free Cash Flow (2027)	2021$ millions	53.8	42.1	30.9	20.8 and 40.1**	(2.4)	(6.0)
Change in Free Cash Flow (2027)	%		(21.8)	(42.6)	(55.7) and (19.7)**	(104.5)	(111.2)
Product Conversion Costs	2021$ millions		17.2	23.2	23.2	42.4	44.7
Capital Conversion Costs	2021$ millions		13.6	34.1	34.1	94.1	100.5
Total Conversion Costs	2021$ millions		30.8	57.3	57.3	136.6	145.2

*TSL 3 represents the standards case presented in the Joint Proposal which corresponds to a two-tiered approach. Conversion costs reflect the sum of Tier 1 and Tier 2 standards.
**The Free Cash Flow and % Change in Free Cash Flow for TSL 3 is presented to the years 2023 and 2025 due to the 2-step structure of the Joint Proposal. DOE presents FCF in the year before the standard year.

TABLE V.16—MANUFACTURER IMPACT ANALYSIS FOR AIR CLEANERS UNDER THE PRESERVATION OF OPERATING PROFIT SCENARIO

	Units	No-new-standards case	Trial standard level				
			1	2	3*	4	5
INPV	2021$ millions	1,565.9	1,528.3	1,503.5	1,499.2	1,422.3	1,394.4
Change in INPV	2021$ millions		(37.7)	(62.4)	(66.7)	(143.7)	(171.5)
	%		(2.4)	(4.0)	(4.3)	(9.2)	(11.0)
Free Cash Flow (2027)	2021$ millions	53.8	42.1	30.9	20.8 and 40.1**	(2.4)	(6.0)
Change in Free Cash Flow (2027)	%		(21.8)	(42.6)	(55.7) and (19.7)**	(104.5)	(111.2)
Product Conversion Costs	2021$ millions		17.2	23.2	23.2	42.4	44.7
Capital Conversion Costs	2021$ millions		13.6	34.1	34.1	94.1	100.5
Total Conversion Costs	2021$ millions		30.8	57.3	57.3	136.6	145.2

*TSL 3 represents the standards case presented in the Joint Proposal which corresponds to a two-tiered approach. Conversion costs reflect the sum of Tier 1 and Tier 2 standards.
**The Free Cash Flow and % Change in Free Cash Flow for TSL 3 is presented to the years 2023 and 2025 due to the 2-step structure of the Joint Proposal. DOE presents FCF in the year before the standard year.

At TSL 1, DOE estimates that impacts on INPV will range from −$30.2 million to −$37.7 million, or a change in INPV of −2.4 to −1.9 percent. At TSL 1, industry free cash-flow is $42.1 million, which is a decrease of approximately $11.7 million compared to the no-new-standards case value of $53.8 million in 2027, the year leading up to the standards.

TSL 1 corresponds to EL 1 for all product classes. DOE noted in the engineering analysis, section IV.C.3, the efficiency improvements at EL 1 are achievable by optimizing the fan motor-filter relationship. In evaluating the design paths for optimization, DOE noted that increasing the surface area of the filter would improve test performance, but could also require changes to the injection molded component of air cleaners. DOE estimated capital conversion costs based on the costs for manufacturer to purchase new injection mold dies in order to accommodate filters with greater surface area. Manufacturers using soft tooling or that do not rely on injection molding would have lower capital conversion costs than modeled by DOE. DOE estimated the product conversion costs for testing all models, identifying product that would not meet the standard, and redesigning that portion of market offerings. DOE estimates capital conversion costs of $13.6 million and product conversion costs of $17.2 million for the industry. Conversion costs total $30.8 million.

At TSL 1, the shipment-weighted average MPC for all air cleaners is expected to increase by 1 percent relative to the no-new-standards case shipment-weighted average MPC for all air cleaners in 2028. Given this relatively small increase in production costs, DOE does not project a notable drop in shipments in the year the standard takes effect. In the preservation of gross margin percentage scenario, the slight increase in MSP is outweighed by the $30.8 million in conversion costs, causing a negative change in INPV at TSL 1 under this scenario. Under the preservation of operating profit scenario, the reduction in the manufacturer markup and the $30.8 million in conversion costs incurred by manufacturers cause a slightly negative change in INPV.

At TSL 2, the standard corresponds to current ENERGY STAR V.2.0 efficiency levels for air cleaners in all product classes. DOE estimates that impacts on INPV will range from −$62.4 million to −$37.9 million, or a change in INPV of −4.0 to −2.4 percent. At TSL 2, industry free cash-flow is $30.9 million, which is a decrease of approximately $22.9 million compared to the no-new-standards case value of $53.8 million in 2027, the year leading up to the standards.

TSL 2 corresponds to EL 2 for all product classes. A sizeable portion of the market, approximately 40 percent, can currently meet the TSL 2 level. Additionally, a substantial portion of existing models can be updated to meet TSL 2 through optimization and improved components rather than a full product redesign. In particular, manufacturers may be able to leverage their existing cabinet designs. However, the product interior may require updates to accommodate more efficient motors and larger filters. Some manufacturers may be able to alter existing tooling to accommodate minor changes in internal dimensions. To avoid underestimating costs to industry, DOE estimated capital conversion costs based on the cost to replace tooling—specifically injection molding dies. Also, DOE estimated the product conversion costs for testing all models,

identifying product that would not meet the standard, and redesigning that portion of market offerings. Capital conversion costs may reach $34.1 million and product conversion costs may reach $23.2 million for the industry. Conversion costs total $57.3 million.

At TSL 2, the shipment-weighted average MPC for all air cleaners is expected to increase by 2 percent relative to the no-new-standards case shipment-weighted average MPC for all air cleaners in 2028. Given the relatively small increase in production costs, DOE does not project a notable drop in shipments in the year the standard takes effect. In the preservation of gross margin percentage scenario, the slight increase in MSP is outweighed by the $57.3 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 2029, the year after the analyzed compliance year. This reduction in the manufacturer markup and the $57.3 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, DOE estimates that impacts on INPV will range from −$66.7 million to −$40.7 million, or a change in INPV of −4.3 to −2.6 percent. At TSL 3, industry free cash-flow is $40.1 million in 2027, which is a decrease of approximately $9.9 million compared to the no-new-standards case value of $53.8 million in 2027, the year leading up to the standards.

For TSL 3, DOE analyzed the standards case presented in the Joint Proposal which corresponds to a two-tier approach of the lowest efficiency level (EL 1)[76] for Tier 1 standards (going to effect in 2024) and the current ENERGY STAR V.2.0 efficiency level (EL 2) for Tier 2 standards (going to effect in 2026) for all the product classes. The industry impacts at TSL 3 are very similar to the impacts at TSL 2 because both scenarios result in standards at the Tier 2 level. However, TSL 3 is a two-tier standard with earlier compliance dates. While conversion costs for TSL 3 and TSL 2 are identical, the timing of the costs are different. As a result, the earlier timing of conversion costs result in lower INPV values at TSL 3 than at TSL 2. However, industry may benefit from a national standard at Tier 1 in the 2024 timeframe in the form of potential reductions in stock keeping units (SKUs), marketing and sales complexity, and reduced consumer confusion associated with a patchwork of state-level energy performance standards for air cleaners. The MIA does not attempt to calculate the cost savings from industry that results from single national standard.

At TSL 3, the shipment-weighted average MPC for all air cleaners is expected to increase by 2 percent relative to the no-new-standards case shipment-weighted average MPC for all air cleaners in 2028. Given the relatively small increase in production costs, DOE does not project a notable drop in shipments in the year the standard takes effect. In the preservation of gross margin percentage scenario, the increase in MSP is outweighed by the $57.3 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 2029, the year after the analyzed compliance year. This reduction in the manufacturer markup and the $57.3 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, DOE estimates that impacts on INPV will range from −$143.7 million to −$30.2 million, or a change in INPV of −9.2 to −1.9 percent. At TSL 4, industry free cash-flow is −$2.4 million, which is a decrease of approximately $56.2 million compared to the no-new-standards case value of $53.8 million in 2027, the year leading up to the standards.

At TSL 4, all three product classes would likely incorporate cylindrical shaped filters and BLDC motors without an optimized motor-filter relationship. The cylindrical filter, which reduces the pressure drop across the filter because it allows for a larger surface area for the same volume of filter material, provides the improvement in efficiency at TSL 4 compared to TSL 3, which utilizes rectangular shaped filters. However, most models on the market today do not use BLDC motors and cannot accommodate cylindrical filters. Manufacturers would incur conversion costs to redesign the product to incorporate a different filter shape and more efficient components. Additionally, manufacturers that own tooling would incur conversion costs for updated cabinet designs. DOE estimates capital conversion costs of $94.1 million and product conversion of costs of $42.4 million. Conversion costs total $136.6 million.

At TSL 4, the shipment-weighted average MPC for all air cleaners is expected to increase by 8 percent relative to the no-new-standards case shipment-weighted average MPC for all air cleaners in 2028. Given the projected increase in production costs, DOE expects an estimated 4 percent drop in shipments in the year the standard takes effect. In the preservation of gross margin percentage scenario, the increase in MSP is outweighed by the $136.6 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 2029, the year after the analyzed compliance year. This reduction in the manufacturer markup and the $136.6 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, DOE estimates that impacts on INPV will range from −$171.5 million to $8.1 million, or a change in INPV of −11.0 to 0.5 percent. At TSL 5, industry free cash-flow is −$6.0 million, which is a decrease of approximately $59.8 million compared to the no-new-standards case value of $53.8 million in 2027, the year leading up to the standards.

At TSL 5, DOE's expected design path for TSL 5 incorporates cylindrical shaped filters and BLDC motors with an optimized motor-filter relationship. As noted for TSL 4, the adoption of cylindrical filters would necessitate platform level redesign for most products on the market. Additionally, the move to cylindrical filters could necessitate significantly different cabinet designs. DOE estimates capital conversion costs of $100.5 million and product conversion of costs of $44.7 million. Conversion costs total $145.2 million.

At TSL 5, the shipment-weighted average MPC for all air cleaners is expected to increase by 13 percent relative to the no-new-standards case shipment-weighted average MPC for all air cleaners in 2028. Given the projected increase in production costs, DOE expects an estimated 6 percent drop in shipments in the year the standard takes effect. In the preservation of gross margin percentage scenario, INPV remains roughly the same as in the no-new-standards scenario. Under the preservation of operating profit scenario, reduction in the manufacturer markup, reduction in shipments, and the $145.2 million in conversion costs incurred by manufacturers cause a negative change in INPV at TSL 5.

[76] EL 1 also corresponds to individual standards established by certain states and the District of Colombia.

b. Direct Impacts on Employment

To quantitatively assess the potential impacts of energy conservation standards on direct employment in the air cleaner 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 U.S. Census Bureau's 2020 Annual Survey of Manufacturers (''ASM''),[77] BLS employee compensation data,[78] results of the engineering analysis, and reports from Dunn & Bradstreet.[79]

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 2.5 percent of air cleaners 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 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 previously, 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 58 domestic workers for air cleaners in 2028. Table V.17 shows the range of the impacts of energy conservation standards on U.S. manufacturing employment in the air cleaner industry. The following discussion provides a qualitative evaluation of the range of potential impacts presented in Table V.17.

TABLE V.17—DOMESTIC DIRECT EMPLOYMENT IMPACTS FOR AIR CLEANERS MANUFACTURERS IN 2028

	No-new-standards case	Trial standard level				
		1	2	3**	4	5
Domestic Production Workers in 2028	58	59	59	59	59	59
Domestic Non-Production Workers in 2028	25	26	26	26	26	26
Total Direct Employment in 2028	83	85	85	85	85	85
Potential Changes in Total Direct Employment in 2028		(58) to 1	(58) to 1	(58) to 1	(58) to 1	(58) to 1

* Parentheses denote negative values.
** For TSL 3, Tier 2 standard goes into effect in 2026. DOE presents 2028 Direct Employment for consistent comparison in this table.

The direct employment impacts shown in Table V.17 represent the potential domestic employment changes that could result following the compliance date of the air cleaner standards considered. The upper bound estimate corresponds to an increase in the number of domestic workers that would result from energy conservation standards if manufacturers continue to produce the same scope of covered equipment 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 their air cleaners in countries with lower labor costs.

Of the 300 air cleaner brands DOE identified, the vast majority are produced outside of the U.S. DOE identified 4 companies that have U.S. manufacturing. These companies have distinct designs and manufacturing processes from companies that import air cleaners. DOE found these companies largely do not rely on injection molding, the production process that drives capital expenditures resulting from the standard. Additionally, DOE found many of these companies focus on air cleaners for commercial applications. These companies leverage design and production processes used for their commercial air cleaner models to offer conventional air cleaners. Additionally, when product literature with technical detail were available, DOE found that most conventional air cleaners from these domestic manufacturers would likely meet standards for TSLs 1, 2, and 3. DOE concludes it is unlikely these companies would relocate production overseas solely due to the adoption of this final rule.

Additional detail on the analysis of direct employment can be found in chapter 12 of the direct final rule TSD.

[77] U.S. Census Bureau, Annual Survey of Manufacturers: Summary Statistics for Industry Groups and Industries in the U.S.: 2018–20201. Available at *https://www.census.gov/data/tables/time-series/econ/asm/2018-2021-asm.html* (last accessed June 29, 2022).

[78] U.S. Bureau of Labor Statistics. *Employer Costs for Employee Compensation.* June 17, 2021. Available at: *www.bls.gov/news.release/pdf/ecec.pdf.*

[79] The Dun & Bradstreet Hoovers login is available at *app.dnbhoovers.com.*

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 direct final rule TSD.

c. Impacts on Manufacturing Capacity

DOE did not observe any design options at the adopted level that would require changes to the fundamental construction or manufacturing of air cleaners. Generally, DOE observed incremental increases in cabinet dimension, incremental changes in filter volume and dimension, and improved motors or optimized motor/filter relationship in the more efficient products meeting the adopted level. Changes in cabinet and filter dimensions could require tooling adjustments and replacement, which DOE accounted for in its analysis of conversion costs. However, DOE's analysis does not suggest there would be design changes that could lead to insufficient availability of product to meet market demand.

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 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 Small Business Administration (SBA) defines a ''small business'' as having 1,500 employees or less for North American Industry Classification System (NAICS) 335210, ''Small Electrical Appliance Manufacturing.'' [80] Based on this classification, DOE identified four domestic OEMs that qualify as small businesses. For a discussion of the impacts on the small business manufacturer subgroup, see chapter 12 of the direct final rule TSD.

e. Cumulative Regulatory Burden

One aspect of assessing manufacturer burden involves looking at the cumulative impact of multiple DOE standards and the regulatory actions of other Federal agencies and States 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.18—COMPLIANCE DATES AND EXPECTED CONVERSION EXPENSES OF FEDERAL ENERGY CONSERVATION STANDARDS AFFECTING AIR CLEANER ORIGINAL EQUIPMENT MANUFACTURERS

Federal energy conservation standard	Number of OEMs *	Number of OEMs affected from this rule **	Approx. standards year	Industry conversion costs (Millions $)	Industry conversion costs/product revenue *** (%)
Residential Central Air Conditioners and Heat Pumps 82 FR 1786 (January 6, 2017)	30	1	2023	$342.6 (2015$)	0.50
Portable Air Conditioners 85 FR 1378 (January 10, 2020)	11	1	2025	320.90 (2015$)	6.70
Room Air Conditioners † 87 FR 20608 (April 7, 2022)	8	1	2026	22.80 (2020$)	0.50

* This column presents the total number of manufacturers identified in the energy conservation standard rule contributing to cumulative regulatory burden.

** This column presents the number of manufacturers producing room air conditioner products that are also listed as manufacturers in the listed 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.

† This rulemaking is in the proposed rule stage and all values are subject to change until finalized.

In a written comment, Lennox indicated heating, ventilation, air conditioning, and refrigeration (HVACR) manufacturers may be facing DOE standards for: Central Air Conditioners in 2023, Commercial Air Conditioners in 2023, Commercial Warm Air Furnaces in 2023, Consumer Furnaces, Air Cooled, Three-Phase, Small Commercial Air Conditioners and Heat Pumps With a Cooling Capacity of Less Than 65,000 Btu/h and Air-Cooled, Walk-In Coolers and Freezers, and Three-Phase, Variable Refrigerant Flow Air Conditioners and Heat Pumps With a Cooling Capacity of Less Than 65,000 Btu/h. The commenter also stated manufacturers may be impacted by test procedures for Variable Refrigerant Flow Air Conditioners and Heat Pumps, Commercial Warm Air Furnaces, and Walk-In Coolers and Freezers. Lennox mentioned manufacturers may also experience EPA Phase-down to lower global warming potential (GWP) refrigerants to meet the American Innovation and Manufacturing (AIM) Act objectives, National and Regional Cold Climate Heat Pump Specifications, EPA Energy Star 6.0+ for Residential

[80] U.S. Small Business Administration. ''Table of Small Business Size Standards.'' (Effective July 14, 2022). Available at: *www.sba.gov/document/support-table-size-standards* (last accessed September 28, 2022).

HVAC, and EPA Energy Star 4.0 for Light Commercial HVAC. (Lennox, No. 7, pp. 3–4)

Regarding the other rulemakings mentioned, DOE examines Federal, product-specific regulations that could affect air cleaner manufacturers that take effect approximately three years before the 2024 compliance date and three years after the 2026 compliance date of this final rule. In-duct devices, such as those offered by Lennox, were not included within the proposed scope of the test procedure. 87 FR 63324, 63331.

3. National Impact Analysis

This section presents DOE's estimates of the national energy savings and the NPV of consumer benefits that would result from each of the TSLs considered as potential new or amended standards.

a. Significance of Energy Savings

To estimate the energy savings attributable to potential standards for air cleaners, 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 standards (2024–2057 for TSL 3 and 2028–2057 for the other TSLs). Table V.19 presents DOE's projections of the national energy savings for each TSL considered for air cleaners. The savings were calculated using the approach described in section IV.H.2 of this document.

TABLE V.19—CUMULATIVE NATIONAL ENERGY SAVINGS FOR AIR CLEANERS; 30 YEARS OF SHIPMENTS THROUGH 2057

	Trial standard level (quads)				
	1	2	3*	4	5
Primary energy	0.73	1.67	1.73	3.90	4.42
FFC energy	0.76	1.73	1.80	4.05	4.59

*TSL3 has an analysis period of 2024–2057 to take into account the Joint Proposal recommended compliance dates for the two-tiered approach and to align the end of the analysis period with the other TSLs.

OMB Circular A–4 [81] 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.[82] The review timeframe established in EPCA is generally not synchronized with the product lifetime, product manufacturing cycles, or other factors specific to air cleaners. 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.20. The impacts are counted over the lifetime of air cleaners purchased in 2024–2036.

TABLE V.20—CUMULATIVE NATIONAL ENERGY SAVINGS FOR AIR CLEANERS; 9 YEARS OF SHIPMENTS

[Through 2036]

	Trial standard level (quads)				
	1	2	3*	4	5
Primary energy	0.12	0.28	0.34	0.65	0.73
FFC energy	0.13	0.29	0.36	0.68	0.76

*TSL3 has an analysis period of 2024–2036 to take into account the Joint Proposal recommended compliance dates for the two-tiered approach and to align the end of the analysis period with the other TSLs.

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 air cleaners. In accordance with OMB's guidelines on regulatory analysis,[83] DOE calculated NPV using both a 7-percent and a 3-percent real discount rate. Table V.21 shows the consumer NPV results with impacts counted over the lifetime of products purchased through 2057.

[81] U.S. Office of Management and Budget. *Circular A–4: Regulatory Analysis.* September 17, 2003. *https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf* (last accessed December 5, 2022).

[82] 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.

[83] U.S. Office of Management and Budget. *Circular A–4: Regulatory Analysis.* September 17, 2003. *https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf* (last accessed December 5, 2022).

TABLE V.21—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR AIR CLEANERS; SHIPMENTS THROUGH 2057

Discount rate	Trial standard level (billion 2021$)				
	1	2	3*	4	5
3 percent	5.4	12.8	13.7	(8.4)	(4.5)
7 percent	2.2	5.1	5.8	(3.4)	(1.9)

*TSL3 has an analysis period of 2024–2057 to take into account the Joint Proposal recommended compliance dates for the two-tiered approach and to align the end of the analysis period with the other TSLs.

The NPV results based on the aforementioned 9-year analytical period are presented in Table V.22. The impacts are counted over the lifetime of products purchased in 2024–2036. 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.22—CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR AIR CLEANERS; SHIPMENTS THROUGH 2036

Discount rate	Trial standard level (billion 2021$)				
	1	2	3*	4	5
3 percent	1.3	3.1	4.0	(1.9)	(0.9)
7 percent	0.8	1.9	2.5	(1.2)	(0.6)

*TSL3 has an analysis period of 2024–2036 to take into account the Joint Proposal recommended compliance dates for the two-tiered approach and to align the end of the analysis period with the other TSLs.

The previous results reflect the use of a trend to estimate the change in price for air cleaners over the analysis period (see section IV.F.1 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 direct final rule 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

DOE estimates that energy conservation standards for air cleaners will 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 (2024–2029 for TSL 3 and 2028–2033 for all other TSLs), where these uncertainties are reduced.

The results suggest that the adopted standards are 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 direct final rule TSD presents detailed results regarding anticipated indirect employment impacts.

4. Impact on Utility or Performance of Products

As discussed in section III.F.1.d of this document, DOE has concluded that the standards adopted in this direct final rule will not lessen the utility or performance of the air cleaners under consideration in this rulemaking. Manufacturers of these products currently offer units that meet or exceed the adopted standards.

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.F.1.e, the Attorney General determines the impact, if any, of any lessening of competition likely to result from a standard and to transmit such determination in writing to the Secretary within 60 days of the publication of a rule, together with an analysis of the nature and extent of the impact. To assist the Attorney General in making this determination, DOE will provide the DOJ with copies of the direct final rule and the TSD for review. DOE will also publish and respond to the DOJ's comments in the **Federal Register** in a separate document. DOE invites comment from the public regarding the competitive impacts that are likely to result from this direct final rule. In addition, stakeholders may also provide comments separately to DOJ regarding these potential impacts. See the **ADDRESSES** section of the NOPR published elsewhere in this issue of the **Federal Register** 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 direct final rule TSD presents the estimated impacts on electricity-generating capacity, relative to the no-new-standards case, for the TSLs that DOE considered in this rulemaking.

Energy conservation resulting from potential energy conservation standards

for air cleaners is expected to yield environmental benefits in the form of reduced emissions of certain air pollutants and greenhouse gases. Table V.23 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 direct final rule TSD.

TABLE V.23—CUMULATIVE EMISSIONS REDUCTION FOR AIR CLEANERS SHIPPED FROM COMPLIANCE YEAR THROUGH 2057

	Trial standard level				
	1	2	3	4	5
Electric Power Sector Emissions					
CO_2 (*million metric tons*)	22.3	50.8	53.4	118.8	134.7
CH_4 (*thousand tons*)	1.6	3.7	3.9	8.6	9.8
N_2O (*thousand tons*)	0.2	0.5	0.5	1.2	1.4
SO_2 (*thousand tons*)	9.9	22.5	23.9	52.6	59.6
NO_X (*thousand tons*)	10.8	24.6	25.9	57.4	65.1
Hg (*tons*)	0.1	0.1	0.2	0.3	0.4
Upstream Emissions					
CO_2 (*million metric tons*)	1.8	4.1	4.3	9.6	10.9
CH_4 (*thousand tons*)	171.4	391.1	407.5	914.1	1,036.3
N_2O (*thousand tons*)	0.0	0.0	0.0	0.0	0.1
SO_2 (*thousand tons*)	0.1	0.3	0.3	0.7	0.7
NO_X (*thousand tons*)	27.4	62.6	65.2	146.3	165.8
Hg (*tons*)	0.0	0.0	0.0	0.0	0.0
Total FFC Emissions					
CO_2 (*million metric tons*)	24.1	55.0	57.7	128.5	145.7
CH_4 (*thousand tons*)	173.0	394.8	411.4	922.8	1,046.1
N_2O (*thousand tons*)	0.2	0.5	0.6	1.2	1.4
SO_2 (*thousand tons*)	10.0	22.8	24.2	53.2	60.4
NO_X (*thousand tons*)	38.2	87.2	91.2	203.7	231.0
Hg (*tons*)	0.1	0.1	0.2	0.3	0.4

As part of the analysis for this 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 air cleaners. Section IV.L of this document discusses the estimated SC–CO_2 values that DOE used. Table V.24 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 selected TSL in chapter 14 of the direct final rule TSD.

TABLE V.24—PRESENT VALUE OF CO_2 EMISSIONS REDUCTION FOR AIR CLEANERS SHIPPED FROM COMPLIANCE YEAR THROUGH 2057

TSL	SC–CO_2 Case			
	Discount rate and statistics (billion 2021$)			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
1	0.2	0.9	1.5	2.8
2	0.5	2.1	3.4	6.4
3	0.5	2.3	3.6	6.9
4	1.1	5.0	7.8	15.0
5	1.3	5.6	8.9	17.0

As discussed in section IV.L.2 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 air cleaners. Table V.25 presents the value of the CH_4 emissions reduction at each TSL, and Table V.26 presents the value of the N_2O emissions reduction at each TSL. The time-series of annual values is presented for the selected TSL in chapter 14 of the direct final rule TSD.

TABLE V.25—PRESENT VALUE OF METHANE EMISSIONS REDUCTION FOR AIR CLEANERS SHIPPED FROM COMPLIANCE YEAR THROUGH 2057

TSL	SC–CH_4 Case			
	Discount rate and statistics (billion 2021$)			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
1	0.1	0.2	0.3	0.6
2	0.2	0.5	0.7	1.3
3	0.2	0.5	0.7	1.4
4	0.4	1.1	1.6	3.0
5	0.4	1.3	1.8	3.4

TABLE V.26—PRESENT VALUE OF NITROUS OXIDE EMISSIONS REDUCTION FOR AIR CLEANERS SHIPPED FROM COMPLIANCE THROUGH 2057

TSL	SC–N_2O Case			
	Discount rate and statistics (billion 2021$)			
	5%	3%	2.5%	3%
	Average	Average	Average	95th percentile
1	0.8	3.2	5.0	8.6
2	1.8	7.3	11.5	19.5
3	1.9	7.9	12.3	20.9
4	4.1	17.2	26.8	45.6
5	4.7	19.5	30.4	51.7

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. Thus, any value placed on reduced GHG emissions in this rulemaking is subject to change. That said, because of omitted damages, DOE agrees with the IWG that these estimates most likely underestimate the climate benefits of greenhouse gas reductions. 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, however, that the adopted standards would be economically justified even without inclusion of monetized benefits of reduced GHG emissions.

DOE also estimated the monetary value of the economic benefits associated with NO_X and SO_2 emissions reductions anticipated to result from the considered TSLs for air cleaners. The dollar-per-ton values that DOE used are discussed in section IV.L of this document. Table V.27 presents the present value for NO_X emissions reduction for each TSL calculated using 7-percent and 3-percent discount rates, and Table V.28 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 selected TSL in chapter 14 of the direct final rule TSD.

TABLE V.27—PRESENT VALUE OF NO_X EMISSIONS REDUCTION FOR AIR CLEANERS SHIPPED FROM COMPLIANCE YEAR THROUGH 2057

TSL	7% discount rate	3% discount rate
	billion 2021$	
1	0.5	1.4
2	1.2	3.2
3	1.3	3.4
4	2.7	7.5
5	3.1	8.5

TABLE V.28—PRESENT VALUE OF SO_2 EMISSIONS REDUCTION FOR AIR CLEANERS SHIPPED FROM COMPLIANCE YEAR THROUGH 2057

TSL	7% discount rate	3% discount rate
	billion 2021$	
1	0.2	0.5
2	0.4	1.1
3	0.5	1.2
4	1.0	2.7
5	1.1	3.0

DOE has not considered the monetary benefits of the reduction of Hg for this direct final rule. Not all the public health and environmental benefits from the reduction of greenhouse gases, NO_X, and SO_2 are captured in the values previously mentioned, 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.29 presents the NPV values that result from adding the monetized estimates of the potential economic, climate, and health 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 rulemaking. The consumer benefits are domestic U.S. monetary savings that occur as a result of purchasing the covered air cleaners and are measured for the lifetime of products shipped in 2024–2057. 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 air cleaners shipped in 2024–2057.

TABLE V.29—CONSUMER NPV COMBINED WITH PRESENT VALUE OF CLIMATE BENEFITS AND HEALTH BENEFITS

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Using 3% discount rate for Consumer NPV and Health Benefits (billion 2021$)					
5% Average SC–GHG case	7.6	17.8	19.0	3.3	8.8
3% Average SC–GHG case	8.5	19.8	21.1	7.9	14.0
2.5% Average SC–GHG case	9.1	21.2	22.7	11.3	17.8
3% 95th percentile SC–GHG case	10.7	24.9	26.6	19.9	27.6
Using 7% discount rate for Consumer NPV and Health Benefits (billion 2021$)					
5% Average SC–GHG case	3.1	7.3	8.2	1.8	3.9
3% Average SC–GHG case	4.0	9.3	10.3	6.4	9.2
2.5% Average SC–GHG case	4.6	10.7	11.8	9.8	13.0
3% 95th percentile SC–GHG case	6.3	14.4	15.8	18.4	22.8

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 direct final rule, DOE considered the impacts of establishing standards for air cleaners 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. DOE refers to this process as the ''walk-down'' analysis.

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. There is evidence that consumers undervalue future energy savings as a result of (1) a lack of information; (2) a lack of sufficient salience of the long-term or aggregate benefits; (3) a lack of sufficient 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; (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). 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 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 direct final rule 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.[84]

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

[84] 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.

which these impacts are defined and estimated in the regulatory process.[85]

DOE welcomes comments on how to more fully assess the potential impact of energy conservation standards on consumer choice and how to quantify this impact in its regulatory analysis in future rulemakings.

1. Benefits and Burdens of TSLs Considered for Air Cleaner Standards

Table V.30 and Table V.31 summarize the quantitative impacts estimated for each TSL for air cleaners. The national impacts are measured over the lifetime of air cleaners purchased in the analysis period that begins in the anticipated year of compliance with standards (2024–2057 for TSL3 and 2028–2057 for the other TSLs). The energy savings, emissions reductions, and value of emissions reductions refer to full-fuel-cycle results. DOE is exercising its own judgment in presenting monetized benefits in accordance with the applicable Executive orders and DOE would reach the same conclusion presented in this document in the absence of the social cost of greenhouse gases, including the Interim Estimates presented by the Interagency Working Group. The efficiency levels contained in each TSL are described in section V.A of this document.

TABLE V.30—SUMMARY OF ANALYTICAL RESULTS FOR AIR CLEANER TSLS: NATIONAL IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4	TSL 5
Cumulative FFC National Energy Savings					
Quads	0.76	1.73	1.80	4.05	4.59
Cumulative FFC Emissions Reduction					
CO_2 (*million metric tons*)	24.1	55.0	57.7	128.5	145.7
CH_4 (*thousand tons*)	173.0	394.8	411.4	922.8	1,046.1
N_2O (*thousand tons*)	0.2	0.5	0.6	1.2	1.4
SO_2 (*thousand tons*)	10.0	22.8	24.2	53.2	60.4
NO_X (*thousand tons*)	38.2	87.2	91.2	203.7	231.0
Hg (*tons*)	0.1	0.1	0.2	0.3	0.4
Present Value of Benefits and Costs (*3% discount rate, billion 2021$*)					
Consumer Operating Cost Savings	5.6	13.2	14.1	(5.9)	(0.8)
Climate Benefits *	1.1	2.6	2.8	6.1	6.9
Health Benefits **	1.9	4.4	4.7	10.2	11.6
Total Benefits †	8.6	20.2	21.6	10.4	17.7
Consumer Incremental Product Costs	0.1	0.4	0.5	2.4	3.7
Consumer Net Benefits	5.4	12.8	13.7	(8.4)	(4.5)
Total Net Benefits	8.5	19.8	21.1	7.9	14.0
Present Value of Benefits and Costs (*7% discount rate, billion 2021$*)					
Consumer Operating Cost Savings	2.2	5.3	6.0	(2.3)	(0.2)
Climate Benefits *	1.1	2.6	2.8	6.1	6.9
Health Benefits **	0.7	1.6	1.8	3.7	4.2
Total Benefits †	4.1	9.5	10.6	7.5	10.9
Consumer Incremental Product Costs	0.1	0.2	0.2	1.1	1.7
Consumer Net Benefits	2.2	5.1	5.8	(3.4)	(1.9)
Total Net Benefits	4.0	9.3	10.3	6.4	9.2

Note: This table presents the costs and benefits associated with air cleaners shipped from the compliance year through 2057. These results include benefits to consumers which accrue after 2057 from the products shipped starting in the compliance year up through 2057.

* 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. To monetize the benefits of reducing greenhouse gas emissions this analysis uses the interim 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 Interagency Working Group on the Social Cost of Greenhouse Gases (IWG).

** 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 sets of SC–GHG estimates.

[85] 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 1, 2021).

TABLE V.31—SUMMARY OF ANALYTICAL RESULTS FOR AIR CLEANER TSLS: MANUFACTURER AND CONSUMER IMPACTS

Category	TSL 1	TSL 2	TSL 3		TSL 4	TSL 5
			Tier 1	Tier 2		
Manufacturer Impacts:						
Industry NPV (million 2021$) (No-new-standards case INPV = 1,565.94).	1,528 to 1,536.	1,504 to 1,528.	1,479 to 1,479.	1,499 to 1,525.	1,422 to 1,536.	1,394 to 1,574
Industry NPV (% change)	(2) to (2)	(4) to (2)	(2) to (2)	(4) to (3)	(9) to (2)	(11) to 1
Consumer Average LCC Savings (2021$):						
PC1: 10 ≤ $PM_{2.5}$ CADR < 100	$18	$12	$18	$12	($87)	($87)
PC2: 100 ≤ $PM_{2.5}$ CADR < 150	$38	$50	$38	$50	($60)	$11
PC3: $PM_{2.5}$ CADR ≥ 150	$105	$94	$105	$94	$29	$20
Shipment-Weighted Average *	$67	$62	$67	$62	($23)	($10)
Consumer Simple PBP (years):						
PC1: 10 ≤ $PM_{2.5}$ CADR < 100	0.9	1.4	0.9	1.4	NA	NA
PC2: 100 ≤ $PM_{2.5}$ CADR < 150	0.4	0.5	0.4	0.5	NA	1.6
PC3: $PM_{2.5}$ CADR ≥ 150	0.1	0.1	0.1	0.1	0.3	0.3
Shipment-Weighted Average *	0.4	0.5	0.4	0.5	NA	NA
Percent of Consumers that Experience a Net Cost:						
PC1: 10 ≤ $PM_{2.5}$ CADR < 100	0%	6%	0%	6%	88%	94%
PC2: 100 ≤ $PM_{2.5}$ CADR < 150	0%	0%	0%	0%	75%	54%
PC3: $PM_{2.5}$ CADR ≥ 150	0%	0%	0%	0%	50%	56%
Shipment-Weighted Average *	0%	1%	0%	1%	66%	65%

Parentheses indicate negative (-) values. The entry "NA" 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 2028.

DOE first considered TSL 5, which represents the max-tech efficiency levels for all the three product classes. Specifically, for all three product classes, DOE's expected design path for TSL 5 (which represents EL 4 for all product classes) incorporates cylindrical shaped filters and BLDC motors with an optimized motor-filter relationship. In particular, the cylindrical filter, which reduces the pressure drop across the filter because it allows for a larger surface area for the same volume of filter material, optimized with the size of the BLDC motor provides the improvement in efficiency at TSL 5 compared to TSL 4. TSL 5 would save an estimated 4.59 quads of energy, an amount DOE considers significant. Under TSL 5, the NPV of consumer benefit would be -$1.9 billion using a discount rate of 7 percent, and -$4.5 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 5 are 145.7 Mt of CO_2, 60.4 thousand tons of SO_2, 231.0 thousand tons of NO_X, 0.4 tons of Hg, 1,046.1 thousand tons of CH_4, and 1.4 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 $6.9 billion. The estimated monetary value of the health benefits from reduced SO_2 and NO_X emissions at TSL 5 is $4.2 billion using a 7-percent discount rate and $11.6 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 $9.2 billion. Using a 3-percent discount rate for all benefits and costs, the estimated total NPV at TSL 5 is $14.0 billion. The estimated total NPV is provided for additional information, however DOE primarily relies upon the NPV of consumer benefits when determining whether a standard level is economically justified.

At TSL 5, the average LCC impact is a loss of $87 for Product Class 1 (10 ≤ $PM_{2.5}$ CADR < 100), an average LCC savings of $11 for Product Class 2 (100 ≤ $PM_{2.5}$ CADR < 150), and an average LCC savings of $20 for Product Class 3 ($PM_{2.5}$ CADR ≥ 150). The simple payback period cannot be calculated for Product Class 1 due to the max-tech EL not being cost effective compared to the baseline EL, and is 1.6 years for Product Class 2 and 0.3 years for Product Class 3. The fraction of consumers experiencing a net LCC cost is 94 percent for Product Class 1, 54 percent for Product Class 2 and 56 percent for Product Class 3.

For the low-income consumer group, the average LCC impact is a loss of $97 for Product Class 1, an average LCC loss of $9 for Product Class 2, and an average LCC loss of $7 for Product Class 3. The simple payback period cannot be calculated for Product Class 1 due to a higher annual operating cost for the selected EL than the cost for baseline units, and is 2.7 years and 0.5 years for Product Class 2 and Product Class 3, respectively. The fraction of low-income consumers experiencing a net LCC cost is 95 percent for Product Class 1, 64 percent for Product Class 2 and 67 percent for Product Class 3.

At TSL 5, the projected change in INPV ranges from a decrease of $171.5 million to an increase of $8.1 million, which corresponds to a decrease of 11.0 percent and an increase of 0.5 percent, respectively. DOE estimates that industry may need to invest $145.2 million to comply with standards set at TSL 5.

At TSL 5, compliant models are typically designed to house a cylindrical filter, and the cabinets of these units are also typically cylindrical in shape. The move to cylindrical designs would require investment in new designs and new production tooling for most of the industry, as only 3% of units shipped meet TSL 5 today. Manufacturers would need to invest in both updated designs and updated cabinet tooling. The vast majority of product is made from injection molded plastic and DOE expect the need for new injection molding dies to drive conversion cost for the industry.

The Secretary concludes that at TSL 5 for air cleaners, the benefits of energy savings, emission reductions, and the estimated monetary value of the emissions reductions would be outweighed by the economic burden on many consumers (negative LCC savings of Product Class 1, a majority of consumers with net costs for all three

product classes, and negative NPV of consumer benefits), and the capital conversion costs and profit margin impacts that could result in reductions in INPV for manufacturers.

DOE next considered TSL 4, which represents the second highest efficiency levels. TSL 4 comprises EL 3 for all three product classes. Specifically, DOE's expected design path for TSL 4 incorporates many of the same technologies and design strategies as described for TSL 5. At TSL 4, all three product classes would incorporate cylindrical shaped filters and BLDC motors without an optimized motor-filter relationship. The cylindrical filter, which reduces the pressure drop across the filter because it allows for a larger surface area for the same volume of filter material, provides the improvement in efficiency at TSL 4 compared to TSL 3 which utilizes rectangular shaped filters and less efficient motor designs. TSL 4 would save an estimated 4.05 quads of energy, an amount DOE considers significant. Under TSL 4, the NPV of consumer benefit would be -$3.4 billion using a discount rate of 7 percent, and -$8.4 billion using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 4 are 128.5 Mt of CO_2, 53.2 thousand tons of SO_2, 203.7 thousand tons of NO_X, 0.3 tons of Hg, 922.8 thousand tons of CH_4, and 1.2 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 4 is $6.1 billion. The estimated monetary value of the health benefits from reduced SO_2 and NO_X emissions at TSL 4 is $3.7 billion using a 7-percent discount rate and $10.2 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 4 is $6.4 billion. Using a 3-percent discount rate for all benefits and costs, the estimated total NPV at TSL 4 is $7.9 billion. The estimated total NPV is provided for additional information, however DOE primarily relies upon the NPV of consumer benefits when determining whether a standard level is economically justified.

At TSL 4, the average LCC impact is a loss of $87 for Product Class 1, an average LCC loss of $60 for Product Class 2 and an average savings of $29 for Product Class 3. The simple payback period cannot be calculated for Product Class 1 and Product Class 2 due to the higher annual operating cost compared to the baseline units, and is 0.3 years for Product Class 3. The fraction of consumers experiencing a net LCC cost is 88 percent for Product Class 1, 75 percent for Product Class 2 and 50 percent for Product Class 3.

For the low-income consumer group, the average LCC impact is an average loss of $95 for Product Class 1, an average LCC loss of $78 for Product Class 2 and an average savings of $2 for Product Class 3. The simple payback period cannot be calculated for Product Class 1 and Product Class 2 due to a higher annual operating cost for the selected EL than the cost for baseline units, and is 0.4 years for Product Class 3. The fraction of low-income consumers experiencing a net LCC cost is 89 percent for Product Class 1, 82 percent for Product Class 2 and 61 percent for Product Class 3.

At TSL 4, the projected change in INPV ranges from a decrease of $143.7 million to a decrease of $30.2 million, which correspond to decreases of 9.2 percent and 1.9 percent, respectively. Industry conversion costs could reach $136.6 million at this TSL.

At TSL 4, compliant models are typically designed to house a cylindrical filter, and the cabinets of these units are also typically cylindrical in shape—much like TSL 5. Again, the major driver of impacts to manufacturers is the move to cylindrical designs, requiring redesign of products and investment in new production tooling for most of the industry, as only 7% of sales meet TSL 4 today.

Based upon the previous considerations, the Secretary concludes that at TSL 4 for air cleaners, the benefits of energy savings, emission reductions, and the estimated monetary value of the health benefits and climate benefits from emissions reductions would be outweighed by negative LCC savings for Product Class 1 and Product Class 2, the high percentage of consumers with net costs for all product classes, negative NPV of consumer benefits, and the capital conversion costs and profit margin impacts that could result in reductions in INPV for manufacturers. Consequently, the Secretary has tentatively concluded that TSL 4 is not economically justified.

DOE then considered the recommended TSL (TSL3), which represents the Joint Proposal with EL 1 (Tier 1) going into effect in 2024 (compliance date December 31, 2023) and EL 2 (Tier 2) going into effect in 2026 (compliance date December 31, 2025). EL 1 comprises the lowest EL considered which aligns with the standards established by the States of Maryland, Nevada, and New Jersey, and the District of Columbia. EL 2 comprises the current ENERGY STAR V. 2.0 level and the standard adopted by the State of Washington. DOE's design path for TSL 3, which includes both EL 1 and EL 2 for all three product classes, includes rectangular shaped filters and either SPM or PSC motors. Specifically, for Product Class 1, the Tier 1 standard, which is represented by EL 1, includes a rectangular filter and SPM motor with an optimized motor-filter relationship while the Tier 2 standard, which is represented by EL 2, includes a rectangular filter and PSC motor, which is generally more efficient than an SPM motor. For Product Class 2 and Product Class 3, the Tier 1 standard, which is represented by EL 1, includes a rectangular filter and PSC motor while the Tier 2 standard, which is represented by EL 2, also includes a rectangular filter and PSC motor but with an optimized motor-filter relationship, which improves the efficiency of EL 2 over EL 1. TSL3 would save an estimated 1.80 quads of energy, an amount DOE considers significant. Under TSL 3, the NPV of consumer benefit would be $13.7 billion using a discount rate of 7 percent, and $5.8 billion using a discount rate of 3 percent.

The cumulative emissions reductions at the recommended TSL are 57.7 Mt of CO_2, 24.2 thousand tons of SO_2, 91.2 thousand tons of NO_X, 0.2 tons of Hg, 411.4 thousand tons of CH_4, and 0.6 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 the recommended TSL is $2.8 billion. The estimated monetary value of the health benefits from reduced SO_2 and NO_X emissions at the recommended TSL is $1.8 billion using a 7-percent discount rate and $4.7 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 the recommended TSL is $10.3 billion. Using a 3-percent discount rate for all benefits and costs, the estimated total NPV at TSL 3 is $21.1 billion. The estimated total NPV is provided for additional information, however DOE primarily relies upon the NPV of consumer benefits when determining whether a standard level is economically justified.

At the recommended TSL with the two-tier approach, the average LCC impacts are average savings of $18 and $12 for Product Class 1, $38 and $50 for Product Class 2, and $105 and $94 for Product Class 3, for Tier 1 and Tier 2 respectively. The simple payback periods are below 1.4 years for the two tiers of Product Class 1, below 0.5 years for the two tiers of Product Class 2, and 0.1 for the two tiers of Product Class 3. The fraction of consumers experiencing a net LCC cost is below 6 percent for the two tiers of all three product classes.

For the low-income consumer group, the average LCC impact is a savings of $17 and $10 for the two tiers of Product Class 1, $34 and $44 for the two tiers of Product Class 2, and $85 and $76 for the two tiers of Product Class 3. The simple payback periods for the two-tier approach are 1.2 years for Tier 1 and 1.9 years for Tier 2 for Product Class 1, are 0.6 years and 0.7 years for Tier 1 and Tier 2 respectively for Product Class 2, and is 0.2 years for both tiers of Product Class 3. The fraction of low-income consumers experiencing a net LCC cost is 10 percent for Tier 2 of Product Class 1, and 0 percent for Tier 1 of Product Class 1 and all other tiers of the other product classes.

At the recommended TSL, the projected change in INPV ranges from a decrease of $66.7 million to a decrease of $40.7 million, which correspond to decreases of 4.3 percent and 2.6 percent, respectively. Industry conversion costs could reach $57.3 million at this TSL.

A sizeable portion of the market, approximately 40 percent, can currently meet the Tier 2 level. Additionally, a substantial portion of existing models can be updated to meet Tier 2 through optimization and improved components rather than a full product redesign. In particular, manufacturers may be able to leverage their existing cabinet designs, reducing the level of investment necessitated by the standard.

An even larger portion of the market, approximately 76 percent, can meet the Tier 1 level today. Efficiency improvements to meet Tier 1 are achievable by improving the motor or by optimizing the motor-filter relationship, typically by reducing the restriction of airflow (and therefore, the pressure drop across the filter) by increasing the surface area of the filter, reducing filter thickness, and/or increasing air inlet/outlet size. Manufacturer may be able to leverage their existing cabinet designs, reducing the level of investment necessitated by the standard.

After considering the analysis and weighing the benefits and burdens, the Secretary has concluded that at a standard set at the recommended TSL for air cleaners would be economically justified. At this TSL, the average LCC savings for all three product classes are positive. Only an estimated 6 percent of Product Class 1 consumers experience a net cost. No Product Class 2 and Product Class 3 consumers would experience net cost based on the estimates. The FFC national energy savings are significant and the NPV of consumer benefits is positive using both a 3-percent and 7-percent discount rate. At the recommended TSL, the NPV of consumer benefits, even measured at the more conservative discount rate of 7 percent, is over 84 times higher than the maximum estimated manufacturers' loss in INPV. The standard levels at the recommended TSL are economically justified even without weighing the estimated monetary value of emissions reductions. When those emissions reductions are included—representing $2.8 billion in climate benefits (associated with the average SC–GHG at a 3-percent discount rate), and $4.7 billion (using a 3-percent discount rate) or $1.8 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 new energy conservation standards, DOE notes that as compared to TSL 4 and TSL 5, TSL 3 has positive LCC savings for all selected standards levels, a shorter payback period, smaller percentages of consumers experiencing a net cost, a lower maximum decrease in INPV, and lower manufacturer conversion costs.

Although DOE considered new standard levels for air cleaners by grouping the efficiency levels for each product class into TSLs, DOE analyzes and evaluates all possible ELs for each product class in its analysis. For all three product classes, the adopted standard levels represent units with rectangular filter shape with a PSC motor at EL 1 and an optimized motor-filter relationship at EL 2. Additionally, for all three product classes the adopted standard levels represent the maximum energy savings that does not result in a large percentage of consumers experiencing a net LCC cost. TSL 3 would also realize an additional 0.07 quads FFC energy savings compared to TSL 2, which selects the same standard levels but with a later compliance date. The efficiency levels at the specified standard levels result in positive LCC savings for all three 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 concluded these levels are economically justified, as discussed for TSL 3 in the preceding paragraphs.

Therefore, based on the previous considerations, DOE adopts the energy conservation standards for air cleaners at the recommended TSL. The new energy conservation standards for air cleaners, which are expressed in IEF using $PM_{2.5}$ CADR/W, are shown in Table V.32.

TABLE V.32—NEW ENERGY CONSERVATION STANDARDS FOR AIR CLEANERS

Product class	IEF ($PM_{2.5}$ CADR/W)	
	Tier 1	Tier 2
PC1: $10 \leq PM_{2.5}$ CADR < 100	1.7	1.9
PC2: $100 \leq PM_{2.5}$ CADR < 150	1.9	2.4
PC3: $PM_{2.5}$ CADR ≥ 150	2.0	2.9

2. Annualized Benefits and Costs of the Adopted Standards

The benefits and costs of the adopted 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 adopted 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.

Table V.33 shows the annualized values for air cleaners under the recommended TSL, 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 standards adopted in this rule is $19.8 million per year in increased product costs, while the estimated annual benefits are $499 million in reduced product operating costs, $136 million in climate benefits, and $149 million in health benefits. In this case, the net benefit amounts to $764 million per year.

Using a 3-percent discount rate for all benefits and costs, the estimated cost of the standards is $23.4 million per year in increased equipment costs, while the estimated annual benefits are $690 million in reduced operating costs, $136 million in climate benefits, and $228 million in health benefits. In this case, the net benefit amounts to $1,030 million per year.

TABLE V.33 ANNUALIZED BENEFITS AND COSTS OF ADOPTED STANDARDS (RECOMMENDED TSL) FOR AIR CLEANERS

	Million (2021$/year)		
	Primary estimate	Low-net-benefits estimate	High-net-benefits estimate
3% discount rate			
Consumer Operating Cost Savings	689.7	623.7	773.4
Climate Benefits *	135.6	124.2	149.9
Health Benefits **	228.4	210.1	251.0
Total Benefits †	1,053.6	958.1	1,174.2
Consumer Incremental Product Costs‡	23.4	22.8	24.7
Net Benefits	1,030.2	935.3	1,149.5
7% discount rate			
Consumer Operating Cost Savings	498.8	459.8	546.9
Climate Benefits * (3% discount rate)	135.6	124.2	149.9
Health Benefits **	149.3	139.7	160.9
Total Benefits†	783.7	723.7	857.7
Consumer Incremental Product Costs ‡	19.8	19.3	20.7
Net Benefits	763.9	704.4	837.0

Note: This table presents the costs and benefits associated with air cleaners shipped in 2024–2057. These results include benefits to consumers which accrue after 2057 from the products shipped in 2024–2057. 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.F.1of 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 sets of SC–GHG estimates. To monetize the benefits of reducing greenhouse gas emissions this analysis uses the interim 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 Interagency Working Group on the Social Cost of Greenhouse Gases (IWG).

** 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 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.

‡ Costs include incremental equipment costs as well as filter costs.

VI. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

Executive Order (''E.O.'') 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993), as supplemented and reaffirmed by E.O. 13563, ''Improving Regulation and Regulatory Review,'' 76 FR 3821 (Jan. 21, 2011), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (''OIRA'') in the Office of Management and Budget (''OMB'') has emphasized that such techniques may include identifying changing future compliance

costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in this preamble, this 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 final regulatory action constitutes a ''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 final 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 technical support document 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'') and a final regulatory flexibility analysis (''FRFA'') 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 (*www.energy.gov/gc/office-general-counsel*).

DOE is not obligated to prepare a regulatory flexibility analysis for this rulemaking because there is not a requirement to publish a general notice of proposed rulemaking under the Administrative Procedure Act. See 5 U.S.C. 601(2), 603(a). As discussed previously, DOE has determined that the August 2022 Joint Proposal meets the necessary requirements under EPCA to issue this direct final rule for energy conservation standards for air cleaners under the procedures in 42 U.S.C. 6295(p)(4). DOE notes that the NOPR for energy conservation standards for air cleaners published elsewhere in this issue of the **Federal Register** contains an IRFA.

C. Review Under the Paperwork Reduction Act

Manufacturers of air cleaners 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 air cleaners, 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 air cleaners. (*See generally* 10 CFR part 429) The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (''PRA''). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Certification data will be required for air cleaners; however, DOE is not adopting certification or reporting requirements for air cleaners in this direct final rule. Instead, DOE may consider proposals to establish certification requirements and reporting for air cleaners under a separate rulemaking regarding appliance and equipment certification. DOE will address changes to OMB Control Number 1910–1400 at that time, as necessary.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

Pursuant to the National Environmental Policy Act of 1969 (''NEPA''), DOE has analyzed this rule in accordance with NEPA and DOE's NEPA implementing regulations (10 CFR part 1021). DOE has determined that this rule qualifies for categorical exclusion under 10 CFR part 1021, subpart D, appendix B, B5.1, because it is a rulemaking that establishes energy conservation standards for consumer products or industrial equipment, none of the exceptions identified in B5.1(b) apply, no extraordinary circumstances exist that require further environmental analysis, and it meets the requirements for application of a categorical exclusion. *See* 10 CFR 1021.410. Therefore, DOE has determined that promulgation of this rule is not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA, and does not require an environmental assessment or an environmental impact statement.

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 rule and has determined that it would not have a substantial direct effect 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 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 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 E.O. 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 direct final 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, Sec. 201 (codified at 2 U.S.C. 1531). For a 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 ''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.*

This rule does not contain a Federal intergovernmental mandate, nor is it expected to require expenditures of $100 million or more in any one year by the private sector.

As a result, the analytical requirements of UMRA do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277), requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This 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 (March 18, 1988), DOE has determined that this 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 direct final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

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 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 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 concluded that this regulatory action, which sets forth energy conservation standards for air cleaners, is not a significant energy action because the 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 direct final 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 prepared a report describing that peer review.[86] 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.[87]

AHAM AC–1–2020 is already approved at the location where it appears in the regulatory text.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is a ''major rule'' as defined by 5 U.S.C. 804(2).

VII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this direct final rule.

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, Reporting and recordkeeping requirements, and Small businesses.

Signing Authority

This document of the Department of Energy was signed on March 22, 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 March 24, 2023.

Treena V. Garrett,

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

For the reasons stated in the preamble, DOE amends part 430 of chapter II, subchapter D, of title 10 of the Code of Federal Regulations, as amended at 88 FR 14014 (March 6, 2023), 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 FF to subpart B of part 430 by revising section 5.1.2 to read as follows:

Appendix FF to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Air Cleaners

* * * * *

5. * * *

5.1.2. For determining compliance only with the standards specified in § 430.32(ee)(1), $PM_{2.5}$ CADR may alternately be calculated using the smoke CADR and dust CADR values determined according to Sections 5 and 6, respectively, of AHAM AC–1–2020, according to the following equation:

$$PM_{2.5}CADR = \sqrt{Smoke\ CADR\ (0.1 - 1\ \mu m) \times Dust\ CADR\ (0.5 - 3\ \mu m)}$$

* * * * *

■ 3. Amend § 430.32 by adding paragraph (ee) to read as follows:

§ 430.32 Energy and water conservation standards and their compliance dates.

* * * * *

(ee) *Air cleaners.* (1) Conventional room air cleaners as defined in § 430.2 with a $PM_{2.5}$ clean air delivery rate (CADR) between 10 and 600 (both inclusive) cubic feet per minute (cfm) and manufactured on or after December 31, 2023, and before December 31, 2025, shall have an integrated energy factor (IEF) in $PM_{2.5}$ CADR/W, as determined in § 430.23(hh)(4) that meets or exceeds the following values:

Product capacity	IEF ($PM_{2.5}$ CADR/W)
(i) 10 ≤$PM_{2.5}$ CADR <100	1.7
(ii) 100 ≤$PM_{2.5}$ CADR <150	1.9
(iii) $PM_{2.5}$ CADR ≥150	2.0

(2) Conventional room air cleaners as defined in § 430.2 with a $PM_{2.5}$ clean air delivery rate (CADR) between 10 and 600 (both inclusive) cubic feet per minute (cfm) and manufactured on or after December 31, 2025, shall have an integrated energy factor (IEF) in $PM_{2.5}$ CADR/W, as determined in § 430.23(hh)(4) that meets or exceeds the following values:

Product capacity	IEF ($PM_{2.5}$ CADR/W)
(i) 10 ≤$PM_{2.5}$ CADR <100	1.9
(ii) 100 ≤$PM_{2.5}$ CADR <150	2.4
(iii) $PM_{2.5}$ CADR ≥150	2.9

[FR Doc. 2023–06499 Filed 4–10–23; 8:45 am]

BILLING CODE 6450–01–P

[86] 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 July 19, 2022).

[87] The report is available at *www.nationalacademies.org/our-work/review-of-methods-for-setting-building-and-equipment-performance-standards.*

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Part III

Department of Energy

10 CFR Parts 429 and 431

Energy Conservation Program: Test Procedure for Computer Room Air Conditioners; Final Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 431

[EERE–2021–BT–TP–0017]

RIN 1904–AE45

Energy Conservation Program: Test Procedure for Computer Room Air Conditioners

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

ACTION: Final rule.

SUMMARY: The U.S. Department of Energy (''DOE'') is publishing a final rule to amend its test procedure for computer room air conditioners (''CRACs''). DOE is incorporating by reference the latest version of the relevant industry consensus test standard, AHRI 1360–2022. DOE is also adopting the net sensible coefficient of performance (''NSenCOP'') metric in its test procedures for CRACs. Additionally, DOE is amending certain provisions for representations and enforcement.

DATES: The effective date of this rule is May 11, 2023. The final rule changes will be mandatory for CRAC equipment testing starting April 5, 2024. The incorporation by reference of certain materials listed in this rule is approved by the Director of the Federal Register on May 11, 2023.

ADDRESSES: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *www.regulations.gov* under docket number EERE–2021–BT–TP–0017. All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as those containing information that is exempt from public disclosure.

A link to the docket web page can be found at: *www.regulations.gov/docket/EERE-2021-BT-TP-0017.* The docket web page contains instructions on how to access all documents, including public comments, in the docket.

For further information on how to review the docket, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT:

Ms. Catherine Rivest, 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) 586–7335. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–5827. Email: *Eric.Stas@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE incorporates by reference the following industry standards:

AHRI Standard 1360–2022 (I–P), ''2022 Standard for Performance Rating of Computer and Data Processing Room Air Conditioners'', copyright 2022 (''AHRI 1360–2022'') into parts 429 and 431.

ANSI/ASHRAE Standard 37–2009, ''Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment,'' approved June 24, 2009 (''ANSI/ASHRAE 37–2009'') into part 431.

ASHRAE Standard 127–2007, ''Method of Testing for Rating Computer and Data Processing Room Unitary Air Conditioners'', approved June 28, 2007 (''ANSI/ASHRAE 127–2007'') into part 431.

ANSI/ASHRAE 127–2020, ''Method of Testing for Rating Air-Conditioning Units Serving Data Center (DC) and Other Information Technology Equipment (ITE) Spaces'', ANSI-approved November 30, 2020 (''ANSI/ASHRAE 127–2020'') into part 431.

Copies of AHRI 1360–2022 can be obtained from the Air-Conditioning, Heating, and Refrigeration Institute (''AHRI''), 2311 Wilson Blvd., Suite 400, Arlington, VA 22201, (703) 524–8800, or online at: *www.ahrinet.org.*

Copies of ANSI/ASHRAE 37–2009, ANSI/ASHRAE 127–2007, and ANSI/ASHRAE 127–2020, can be obtained from the American National Standards Institute (''ANSI''), 25 W 43rd Street, 4th Floor, New York, NY 10036, (212) 642–4900, or online at: *webstore.ansi.org/.*

For a further discussion of these standards, see section IV.N of this document.

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I. Authority and Background

Small, large, and very large commercial package air conditioning and heating equipment are included in the list of ''covered equipment'' for which the U.S. Department of Energy (''DOE'') is authorized to establish and amend energy conservation standards and test procedures. (42 U.S.C. 6311(1)(B)–(D)) Commercial package air conditioning and heating equipment includes computer room air conditioners (''CRACs'') as an equipment category. DOE's test procedures for CRACs are currently prescribed at title 10 of the Code of Federal Regulations (''CFR''), Table 1 to § 431.96. The following sections discuss DOE's authority to establish and amend test procedures for CRACs and relevant background information regarding DOE's consideration of amendments to the test procedures for this equipment.

A. Authority

The Energy Policy and Conservation Act, as amended (''EPCA''),[1] among other things, 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 C[2] of EPCA, Public Law 94–163 (42 U.S.C. 6311–6317, as codified), added by Public Law 95–619, Title IV, section 441(a), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency. This covered equipment includes small, large, and very large commercial package air conditioning and heating equipment. (42 U.S.C. 6311(1)(B)–(D)) Commercial package air conditioning and heating equipment includes CRACs, which are the subject of this final rule.

The energy conservation program under EPCA consists essentially of four parts: (1) testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6311), energy conservation standards (42 U.S.C. 6313), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), and the authority to require information and reports from manufacturers (42 U.S.C. 6316).

The Federal testing requirements consist of test procedures that manufacturers of covered equipment must use as the basis for: (1) certifying to DOE that their equipment complies with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6316(b); 42 U.S.C. 6296), and (2) making other representations about the efficiency of that equipment (42 U.S.C. 6314(d)). Similarly, DOE uses these test procedures to determine whether the equipment complies with relevant standards promulgated under EPCA.

Federal energy efficiency requirements for covered equipment established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6316(a) and (b); 42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption in limited circumstances for particular State laws or regulations, in accordance with the procedures and other provisions of EPCA. (42 U.S.C. 6316(b)(2)(D))

Under 42 U.S.C. 6314, EPCA also sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered equipment. Specifically, EPCA requires that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which reflect energy efficiency, energy use, or estimated annual operating cost of a given type of covered equipment (or class thereof) during a representative average use cycle and requires that test procedures not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

EPCA requires that the test procedures for commercial package air conditioning and heating equipment (of which CRACs are a category) be those generally accepted industry testing procedures or rating procedures developed or recognized by the Air-Conditioning, Heating and Refrigeration Institute (''AHRI'') or by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (''ASHRAE''), as referenced in ASHRAE Standard 90.1, ''Energy Standard for Buildings Except Low-Rise Residential Buildings'' (''ASHRAE Standard 90.1''). (42 U.S.C. 6314(a)(4)(A)) Further, if such an industry test procedure is amended, DOE must update its test procedure to be consistent with the amended industry test procedure, unless DOE determines, by rule published in the **Federal Register** and supported by clear and convincing evidence, that such amended test procedure would not meet the requirements in 42 U.S.C. 6314(a)(2) and (3) related to representative use and test burden. (42 U.S.C. 6314(a)(4)(B))

EPCA also requires that, at least once every seven years, DOE evaluate test procedures for each type of covered equipment, including CRACs, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle. (42 U.S.C. 6314(a)(1)–(3))

In addition, if DOE determines that a test procedure amendment is warranted, the Department must publish proposed test procedures in the **Federal Register** and afford interested persons an opportunity (of not less than 45 days' duration) to present oral and written data, views, and arguments on the proposed test procedures. (42 U.S.C. 6314(b)) If DOE determines that test procedure revisions are not appropriate, DOE must publish in the **Federal Register** its determination not to amend the test procedures. (42 U.S.C. 6314(a)(1)(A)(ii))

DOE is publishing this final rule amending the test procedure for CRACs in satisfaction of its aforementioned obligations under EPCA.

B. Background

On May 16, 2012, DOE published a final rule in the **Federal Register**, which, in relevant part, adopted test procedures for CRACs that incorporate by reference American National Standards Institute (''ANSI'')/ASHRAE Standard 127–2007, ''*Method of Testing for Rating Computer and Data Processing Room Unitary Air Conditioners*'' (''ANSI/ASHRAE 127–2007''), which was the industry test procedure referenced in ASHRAE Standard 90.1–2010 for CRACs, as the basis for the Federal test procedure for such equipment. 77 FR 28928, 28989.

On October 26, 2016, ASHRAE published ASHRAE Standard 90.1–2016, which included updates to the test procedure (''TP'') references for CRACs as compared to ASHRAE Standard 90.1–2010 and ASHRAE Standard 90.1–2013.[3] This action by ASHRAE triggered DOE's obligations under 42 U.S.C. 6314(a)(4)(B), as outlined previously. Accordingly, DOE published a request for information (''RFI'') in the **Federal Register** on July 25, 2017 (''July 2017 ASHRAE TP RFI'') to collect information and data in consideration of amendments to DOE's test procedures for commercial package air conditioning and heating equipment, given the test procedure updates included in ASHRAE Standard 90.1–2016. 82 FR 34427. Following the July 2017 ASHRAE TP RFI, AHRI published additional updates to its test procedure standard for CRACs on December 21, 2017 (*i.e.,* AHRI Standard 1360–2017, ''2017 Standard for Performance Rating of Computer and Data Processing Room Air Conditioners'' (''AHRI 1360–2017'')). ASHRAE published ASHRAE Standard 90.1–2019 on October 24, 2019, which updated the test procedure referenced for CRACs from AHRI 1360–2016 to AHRI 1360–2017 and added equipment classes for ceiling-mounted CRACs. Following the publication of ASHRAE Standard 90.1–2019, AHRI initiated work on an update to AHRI Standard 1360 (*i.e.,* AHRI Standard 1360–202X Draft, ''Performance Rating of Computer and Data Processing Room

[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 C was redesignated Part A–1.

[3] More specifically, ASHRAE Standard 90.1–2016 references AHRI 1360–2016, ''Standard for Performance Rating of Computer and Data Processing Room Air Conditioners'' for CRACs.

Air Conditioners (''Draft Standard'')'' (''AHRI 1360–202X Draft'').

On February 7, 2022, DOE published in the **Federal Register** a notice of proposed rulemaking (''NOPR'') (''February 2022 NOPR'') proposing, in relevant part, to update the Federal test procedure for CRACs consistent with AHRI 1360–202X Draft. 87 FR 6948. A copy of the draft was added to the docket for this rulemaking for review by interested parties.[4] As stated in the February 2022 NOPR, if AHRI were to publish a final version of AHRI 1360–202X Draft prior to DOE publishing a final rule, DOE's intention would be to reference the latest version of AHRI 1360 in the final rule. 87 FR 6948, 6951 (Feb. 7. 2022). DOE held a public meeting webinar on March 15, 2022, to discuss the proposed amendments to the CRACs test procedure presented in the February 2022 NOPR.

DOE received several comments in response to the February 2022 NOPR. Table I.1 lists the commenters, along with each commenter's abbreviated name used throughout the final rule. Discussion of these comments, along with DOE's responses, are provided in the appropriate sections of this document.

TABLE I.1—LIST OF COMMENTERS WITH WRITTEN SUBMISSIONS IN RESPONSE TO THE FEBRUARY 2022 NOPR

Commenter(s)	Abbreviation used in this final rule	Comment No. in the docket	Commenter type
Air-Conditioning, Heating and Refrigeration Institute	AHRI [5]	9	Industry Trade Organization.
Appliance Standards Awareness Project, American Council for an Energy-Efficient Economy, Natural Resources Defense Council and New York State Energy Research and Development Authority.	Joint Advocates	7	Efficiency Advocacy Organizations.
Northwest Energy Efficiency Alliance	NEEA	5	Efficiency Advocacy Organization.
Pacific Gas and Electric Company (''PG&E''), San Diego Gas and Electric, and Southern California Edison; collectively, the California Investor-Owned Utilities.	CA IOUs	6	Utilities.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[6] To the extent that interested parties have provided written comments that are substantively similar to any oral comments provided during the March 15, 2022 NOPR public meeting, DOE cites the written comments throughout this final rule. Any oral comments provided during the webinar that are substantively distinct from a submitter's written comments are summarized and cited separately throughout this final rule.[7]

On March 7, 2022, DOE published in the **Federal Register** a NOPR proposing revised energy conservation standards (''March 2022 ECS NOPR'') for CRACs in terms of net sensible coefficient of performance (''NSenCOP''). 87 FR 12802. DOE conducted a crosswalk analysis to translate the current Federal standards in terms of sensible coefficient of performance (''SCOP'') to equivalent levels in terms of NSenCOP to evaluate potential amendments to the energy conservation standards, as appropriate. *Id.* at 87 FR 12817–12826. Any comments received in response to the February 2022 NOPR that pertain to energy conservation standards will be addressed in the energy conservation standards rulemaking and are not addressed in this document.

In November, 2022, AHRI finalized AHRI 1360–202X Draft without substantial change and published AHRI Standard 1360–2022, ''Performance Rating of Computer and Data Processing Room Air Conditioners (''AHRI 1360–2022'').

In January 2023, ASHRAE published the 2022 edition of ASHRAE Standard 90.1, ''Energy Standard for Buildings Except Low-Rise Residential Buildings'' (''ASHRAE Standard 90.1–2022''). ASHRAE Standard 90.1–2022 maintains AHRI 1360–2017 as the referenced test procedure reference for CRACs.

II. Synopsis of the Final Rule

In this final rule, DOE is updating its regulations for CRACs by: (1) incorporating by reference the updated version of AHRI Standard 1360 (*i.e.,* AHRI 1360–2022), as well as the relevant industry test standards referenced in AHRI 1360–2022; (2) establishing provisions for determining NSenCOP for CRACs; (3) clarifying the definition of a ''computer room air conditioner'' to include consideration of how the equipment is marketed; and (4) amending certain provisions for representations and enforcement in 10 CFR part 429, consistent with the changes adopted in the test procedure. In terms of implementation, DOE is adding new appendices E and E1 to subpart F of 10 CFR part 431, ''Uniform test method for measuring the energy consumption of computer room air conditioners,'' (''appendix E'' and ''appendix E1,'' respectively). The current DOE test procedure for CRACs is being relocated to appendix E without change, and the new test procedure incorporating by reference AHRI 1360–2022 is being established in appendix E1 for determining NSenCOP. Testing in accordance with appendix E1 is not required until such time as compliance is required with amended energy conservation standards for CRACs that rely on NSenCOP, should DOE adopt such standards. After such time, appendix E will no longer be used as part of the Federal test procedure.

The adopted amendments are summarized in Table II.1 and compared to the relevant test procedure provisions in place prior to the amendment, as well as the reason for the adopted change.

[4] The AHRI 1360–202X Draft test procedure is available in the docket for this rulemaking at: *www.regulations.gov/document/EERE-2021-BT-TP-0017-0001.*

[5] AHRI's comment was received 23 days after the comment submission deadline.

[6] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop test procedures for CRACs. (Docket No. EERE–2021–BT–TP–0017, which is maintained at *www.regulations.gov.*) The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

[7] The March 15, 2022 TP NOPR Public Meeting Transcript can be found in the docket for this rulemaking at: *www.regulations.gov* under entry number EERE–2021–BT–TP–0017–0008. Comments arising from the public meeting are cited as follows: (commenter name, Public Meeting Transcript, No. 8 at p. X).

TABLE II.1—SUMMARY OF CHANGES IN THE AMENDED CRACS TEST PROCEDURE RELATIVE TO CURRENT TEST PROCEDURE

DOE test procedure prior to amendment	Amended test procedure	Attribution
Located in 10 CFR 431.96	Current test procedure unchanged but relocated to appendix E.	Improve readability.
Incorporates by reference ANSI/ASHRAE 127–2007.	Incorporates by reference in a new appendix E1—AHRI 1360–2022, ANSI/ASHRAE 127–2020, and ANSI/ASHRAE 37–2009.	Updates to the applicable industry test procedures.
Includes provisions for determining SCOP	Includes provisions for determining NSenCOP in appendix E1.	Updates to the applicable industry test procedures.
CRAC definition criteria include: (1) used in computer rooms (or similar applications); (2) whether rated for SCOP and tested in accordance with 10 CFR 431.96; and (3) not a consumer product.	CRAC definition criteria include: (1) marketed for use in computer rooms (or similar applications); and (2) not a consumer product.	To more clearly define CRACs and distinguish from other equipment categories.
Does not specify provisions specific to testing roof, wall, and ceiling-mounted CRAC units.	Defines roof, wall, and ceiling-mounted CRAC configurations and provides test provisions specific to such units.	Updates to the applicable industry test procedures.
Does not include CRAC-specific provisions for determination of represented values in 10 CFR 429.43.	Includes provisions in 10 CFR 429.43 specific to CRACs to determine represented values for models with specific components and prevent cooling capacity over-rating.	Establish CRAC-specific provisions for determination of represented values.
Does not include CRAC-specific enforcement provisions in 10 CFR 429.134.	Adopts product-specific enforcement provisions for CRACs regarding verification of cooling capacity and testing of units with specific components.	Establish provisions for DOE enforcement testing of CRACs.

DOE has determined that the amendments described in section III of this final rule regarding the establishment of appendix E do not alter the measured efficiency of CRACs or require retesting solely as a result of DOE's adoption of the amendments to the test procedure. DOE has determined, however, that the test procedure amendments in appendix E1 do alter the measured efficiency of CRACs and that such amendments are consistent with the updated industry test procedure. Further, use of appendix E1 and the amendments to the representation requirements in 10 CFR 429.43 are not required until the compliance date of any amended standards denominated in terms of NSenCOP, if adopted. However, manufacturers may use appendix E1 to certify compliance with any amended standards prior to the applicable compliance date for those standards. Additionally, DOE has determined that the finalized amendments will not increase the cost of testing. The effective date for the amended test procedures adopted in this final rule is 30 days after publication of this document in the **Federal Register**. Detailed discussion of DOE's actions is included in section III of this final rule.

III. Discussion

A. Scope of Applicability

DOE currently defines ''computer room air conditioner'' as a basic model of commercial package air-conditioning and heating equipment (packaged or split) that is: used in computer rooms, data processing rooms, or other information technology cooling applications; rated for SCOP and tested in accordance with 10 CFR 431.96; and is not a covered consumer product under 42 U.S.C. 6291(1)–(2) and 42 U.S.C. 6292. A CRAC may be provided with, or have as available options, an integrated humidifier, temperature and/or humidity control of the supplied air, and reheating function. 10 CFR 431.92. DOE did not receive any comments from stakeholders regarding any revision of scope for this rulemaking.

As discussed in section III.D.1 of this document, DOE is amending the definition of CRAC in this final rule. Specifically, DOE is revising the definition of ''computer room air conditioner'' to mean commercial package air conditioning and heating equipment (packaged or split) that is: marketed for use in computer rooms, data processing rooms, or other information technology cooling applications and not a covered consumer product under 42 U.S.C. 6291(1)–(2) and 6292. A computer room air conditioner may be provided with, or have as available options, an integrated humidifier, temperature and/or humidity control of the supplied air, and reheating function. Computer room air conditioners include, but are not limited to, the following configurations as defined in 10 CFR 431.92: down-flow, horizontal-flow, up-flow ducted, up-flow non-ducted, ceiling-mounted ducted, ceiling mounted non-ducted, roof-mounted, and wall-mounted. The scope of the CRAC test procedure, as amended by this final rule, is based on this revised definition.

B. Revised Organization of the CRAC Test Procedure

In the February 2022 NOPR, DOE proposed to relocate and centralize the current test procedure for CRACs to a new appendix E to subpart F of 10 CFR part 431, without change. 87 FR 6948, 6952 (Feb. 7, 2022). As proposed, appendix E would continue to reference ANSI/ASHRAE 127–2007 and provide instructions for determining SCOP. *Id.* As proposed, CRACs would be required to be tested according to appendix E until such time as compliance is required with amended energy conservation standards that rely on the NSenCOP metric, should DOE adopt such standards. *Id.*

Accordingly, in parallel, DOE proposed to establish an amended test procedure for CRACs that adopted the substance of AHRI 1360–202X Draft in a new appendix E1 to subpart F of 10 CFR part 431. *Id.* DOE noted that it intended to incorporate by reference the final published version of AHRI 1360–202X Draft in the final rule, unless there were substantive changes between the draft and published versions, in which case DOE may adopt the substance of AHRI 1360–202X Draft or provide additional opportunity for comment on changes presented in the final version of the industry consensus test standard. *Id.* DOE noted that CRACs would not be

required to be tested according to the test procedure in appendix E1 until such time as compliance is required with amended energy conservation standards that rely on the NSenCOP metric, should DOE adopt such standards. *Id.*

DOE did not receive any comments in response to the February 2022 NOPR's proposed reorganization of the test procedure. As discussed in the following sections of this final rule, DOE is adopting the finalized version of AHRI 1360 (*i.e.,* AHRI 1360–2022), including the NSenCOP metric. AHRI 1360–2022 does not include any significant revisions as compared to AHRI 1360–202X Draft Accordingly, for the reasons discussed in the February 2022 NOPR and as discussed in the preceding paragraphs, DOE is finalizing the proposed reorganization of the test procedure by establishing appendices E and E1 for testing CRACs.

C. Updates to Industry Test Standards

As noted previously, DOE's current test procedure for CRACs is codified at 10 CFR 431.96 and incorporates by reference ANSI/ASHRAE Standard 127–2007,[8] which is the test procedure recognized by ASHRAE Standard 90.1–2010 for CRACs. However, the 2019 and 2022 versions of ASHRAE Standard 90.1 recognize AHRI 1360–2017 as the test procedure for CRACs.

After publication of AHRI 1360–2017, DOE and other stakeholders supported the AHRI 1360 committee in its process to further update AHRI Standard 1360, which culminated in the publication of AHRI 1360–2022. AHRI 1360–2022 references ANSI/ASHRAE 127–2020, ''Method of Testing for Rating Computer and Data Processing Room Unitary Air Conditioners'' (''ANSI/ASHRAE 127–2020''),[9] and ANSI/ASHRAE 37–2009, ''Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment'' (''ANSI/ASHRAE 37–2009''). Both AHRI 1360–2017 and AHRI 1360–2022 include significant changes from ANSI/ASHRAE 127–2007, including the use of NSenCOP instead of SCOP as the test metric. Both efficiency metrics (NSenCOP and SCOP) are ratios of net sensible cooling capacity delivered to the power consumed, but there are several differences in the conditions at which tests are performed. Section III.E.1 of this final rule includes further discussion of the differences between these test metrics.

In the February 2022 NOPR, DOE proposed to adopt AHRI 1360–202X Draft and provided a copy of that industry test standard in the regulatory docket.[10] 87 FR 6948, 6952 (Feb. 7, 2022).

In response to the February 2022 NOPR, AHRI commented that the AHRI 1360–202X draft standard was not yet complete (at the time), and manufacturers, particularly those of newly included equipment, had not yet had an opportunity to evaluate the impact of this change, nor had the ASHRAE 90.1 committee. (AHRI, No. 9 at p. 2) AHRI further commented that DOE does not have the authority to adopt a test procedure edition not yet cited in ASHRAE Standard 90.1 as the national test procedure. *Id.* Consequently, AHRI recommended that DOE should adopt AHRI 1360–2017, continue to work with AHRI and other relevant stakeholders to finalize the new edition of the test procedure, support the introduction of a proposed amendment to ASHRAE Standard 90.1, and then adopt the new procedure as the national test procedure during the next rulemaking for these products. (AHRI, No. 9 at p. 3)

After the publication of the February 2022 NOPR, AHRI 1360–202X Draft was finalized and issued as AHRI 1360–2022 in November, 2022. AHRI 1360–2022 does not include any significant deviations from AHRI 1360–202X Draft. As such, the adoption of AHRI 1360–2022 in this final rule is consistent with the proposal to reference AHRI 1360–202X Draft in the February 2022 NOPR.

AHRI's concern regarding the draft status of AHRI 1360–202X Draft no longer applies, given the subsequent finalization of the draft and publication of AHRI 1360–2022. DOE notes that the Department was heavily involved with the AHRI 1360 committee, along with relevant industry stakeholders, to aid in the development of AHRI 1360–2022. DOE further notes that AHRI 1360–2022 represents an industry consensus update to AHRI 1360–2017. DOE disagrees with AHRI's argument that it lacks statutory authority for the adoption of AHRI 1360–2022, rather than AHRI 1360–2017, for the reasons that follow.

With respect to small, large, and very large commercial package air conditioning and heating equipment (of which CRACs are a category), EPCA directs that when the generally accepted industry testing procedures or rating procedures developed or recognized by AHRI or by ASHRAE, as referenced in ASHRAE Standard 90.1, is amended, the Secretary shall amend the DOE test procedure consistent with the amended industry test procedure or rating procedure unless the Secretary determines, by clear and convincing evidence, that to do so would not meet the requirements for test procedures to produce results representative of an average use cycle and is not unduly burdensome to conduct. (42 U.S.C. 6314(a)(4)(B))

As noted, DOE has a duty under the statute to adopt a test procedure that produces results representative of the covered equipment's average use cycle. Here, DOE has concluded, supported by clear and convincing evidence, that AHRI 1360–2022 would better meet that criterion of EPCA than AHRI 1360–2017. First, AHRI 1360–2022 includes test provisions for measuring performance of roof-mounted and wall-mounted CRACs, configurations which are not considered in AHRI 1360–2017. Were DOE to adopt AHRI 1360–2017 instead of AHRI 1360–2022, the DOE test procedure would not address representations for these configurations in terms of NSenCOP. Second, AHRI 1360–2022 provides clarifications and additional test requirements on several test procedure elements, including test tolerances, enclosure for CRACs with compressors in indoor units, secondary verification of capacity, ducted condensers, and refrigerant charging instructions. These elements were discussed in detail in the February 2022 NOPR. *See* 87 FR 6948, 6960–6963 (Feb. 7, 2022). These additional test requirements improve the representativeness of the CRACs test procedure. For these reasons, DOE considers AHRI 1360–2022 to be more representative of CRAC operation than AHRI 1360–2017. With this finding made, DOE does not read EPCA as requiring the Department to dissect the industry standard and surgically transplant individual provisions of the new industry standard into the prior industry standard. DOE views the industry test standard as a functioning whole, so the approach AHRI suggests could insert errors and inconsistencies into the industry standard, as would prevent its proper functioning in practice as part of the DOE test procedure. Further, even if AHRI's approach were possible, it would be largely unnecessary; adoption of all the major provisions of the latest industry

[8] While ANSI/ASHRAE Standard 127–2007 is incorporated by reference in its entirety, Table 1 to 10 CFR 431.96 (which defines the applicable test methods for each category of equipment) excludes section 5.11 of ANSI/ASHRAE Standard 127–2007 for testing CRACs. The test procedure also includes additional provisions related to break-in period and test set-up. *See* 10 CFR 431.96(c) and (e).

[9] ASHRAE published ANSI/ASHRAE Standard 127–2020 on November 30, 2020.

[10] *See* Document No. EERE–2021–BT–TP–0017–0001 at *www.regulations.gov.*

test standard would arguably result in the remaining provisions being uncontroversial. Again, DOE would point out that the test procedure in question is the most current version of the industry's own approved test procedure, even if ASHRAE Standard 90.1 has not yet caught up with such change. DOE considered AHRI 1360–2017, as EPCA requires, but it ultimately determined that AHRI 1360–2022 would produce results that better reflect an average use cycle than would AHRI 1360–2017. DOE has concluded that EPCA does not allow the Department to turn a blind eye to such real world developments.

Furthermore, DOE believes that Congress foresaw the practical benefits of a statutory reading consistent with DOE's interpretation. Although DOE recognizes that adopting AHRI 1360–2022 as the Federal test procedure for CRACs may create some disharmony between the Federal test procedure and the test procedure currently specified in ASHRAE Standard 90.1 for a period of time, such situation is arguably preferable to the alternative in which DOE and stakeholders would need to waste significant resources to reinitiate another rulemaking in short order after this proceeding to once again amend the Federal test procedure for CRACs to update the reference therein from AHRI 1360–2017 to AHRI 1360–2022—the very same testing standard available for consideration at the present time.

Finally, DOE notes that manufacturers are not required to use the test procedure to certify compliance with any energy conservation standards for CRACs until the compliance date established for such standards denominated in terms of the NSenCOP metric, if DOE proceeds to adopt such standards. The difference in ratings between measuring SCOP per the current Federal test procedure and measuring NSenCOP per the test procedure adopted in this final rule (which incorporates by reference AHRI 1360–2022) is addressed in the ongoing energy conservation standards rulemaking (*see* 87 FR 12802 (March 7, 2022)).

Therefore, in light of these updates to the relevant industry consensus standards and for the reasons explained, DOE is amending its test procedure for CRACs by incorporating by reference AHRI 1360–2022 for use in the new appendix E1. Specifically, in the new test procedure for CRACs at appendix E1, DOE is adopting sections 3.1, 3.2.2, 3.2.7, 3.2.22, 3.2.25, 3.2.27, 3.2.28, 3.2.37, 3.2.38, 5, 6.1–6.3, 6.6, and 6.8 and Appendices C, E, and F of AHRI 1360–2022 for the Federal test procedure for CRACs.[11]

In the February 2022 NOPR, DOE proposed to incorporate by reference several industry standards that are internally referenced by AHRI 1360–202X Draft. First, DOE proposed to incorporate by reference ANSI/ASHRAE 127–2020. Specifically, in the proposed test procedure for CRACs at 10 CFR part 431, subpart F, appendix E1, DOE proposed to reference Figure A–1, *Test duct for measuring air flow and static pressure on downflow units,* of Appendix A of ANSI/ASHRAE 127–2020, because Figure A–1 of Appendix A is referenced in section 5.8 of AHRI 1360–202X Draft. Second, DOE proposed to incorporate by reference ANSI/ASHRAE 37–2009 because section 5, Appendix D, and Appendix E of AHRI 1360–202X Draft reference methods of test in ANSI/ASHRAE 37–2009. More specifically, DOE proposed to adopt all sections of ANSI/ASHRAE 37–2009, except sections 1, 2, and 4. 87 FR 6948, 6952 (Feb. 7, 2022).

DOE did not receive any comments in response to its proposal to reference ANSI/ASHRAE 127–2020 and ANSI/ASHRAE 37–2009 in the test method for CRACs. These standards are also referenced in the finalized standard, AHRI 1360–2022, which DOE is incorporating by reference in this final rule. Therefore, for the reasons discussed in the preceding paragraphs and in the February 2022 NOPR, DOE incorporates by reference ANSI/ASHRAE 127–2020 and ANSI/ASHRAE 37–2009, and adopts the relevant sections for testing CRACs, as proposed in the February 2022 NOPR.

D. Definitions

1. CRAC Definition

As discussed, DOE currently defines a CRAC as a basic model of commercial package air-conditioning and heating equipment (packaged or split) that is: used in computer rooms, data processing rooms, or other information technology cooling applications; rated for SCOP and tested in accordance with 10 CFR 431.96; and is not a covered consumer product under 42 U.S.C. 6291(1)–(2) and 42 U.S.C. 6292. 10 CFR 431.92. A computer room air conditioner may be provided with, or have as available options, an integrated humidifier, temperature and/or humidity control of the supplied air, and reheating function. *Id.* In defining a CRAC, DOE was unable to identify physical characteristics that consistently distinguish CRACs from other categories of commercial package air conditioning and heating equipment that provide comfort-cooling. *See* 77 FR 16769, 16772–16774 (March 22, 2012); 77 FR 28928, 28947–28948 (May 16, 2012).

In the February 2022 NOPR, DOE proposed to amend the CRAC definition to include how the manufacturer markets a model for use, consistent with the definition in the draft industry standard, AHRI 1360–202X Draft, which also defines CRACs based on marketing.[12] 87 FR 6948, 6952–6954 (Feb. 7, 2022). DOE also proposed to remove the current wording ''. . . rated for sensible coefficient of performance (SCOP) and tested in accordance with 10 CFR 431.96'' to ensure that a unit that otherwise meets the definition of a CRAC would be covered as a CRAC regardless of how the manufacturer has tested and rated the model. *Id.* DOE also proposed to remove the unnecessary current wording ''. . . a basic model of'' to avoid confusion as to whether the equipment constitutes a basic model—DOE specifies different basic model definitions for each equipment category at 10 CFR 431.92—before the determination is made whether the equipment meets the CRAC definition. *Id.* Specifically, DOE proposed to define ''computer room air conditioner'' as commercial package air conditioning and heating equipment (packaged or split) that is: marketed for use in computer rooms, data processing rooms, or other information technology cooling applications; and not a covered consumer product under 42 U.S.C. 6291(1)–(2) and 6292. *Id.* The definition stated that a computer room air conditioner may be provided with, or have as available options, an integrated humidifier, temperature and/or humidity control of the supplied air, and reheating function. *Id.* Additionally, DOE proposed to specify in the definition that computer room air conditioners include, but are not limited to, the following configurations as defined in 10 CFR 431.92: down-flow, horizontal-flow, up-flow ducted, up-flow non-ducted, ceiling-mounted

[11] DOE notes that the substance of these provisions remains the same as those proposed in the February 2022 TP NOPR, but AHRI did some reorganization in moving from AHRI 1360–202X Draft to AHRI 1360–2022. Consequently, the adopted section numbers cited here differ from those presented in DOE's proposed rule. *See* 87 FR 6948, 6952 (Feb. 7, 2022).

[12] Section 3.5 of AHRI 1360–202X Draft defines ''computer room air conditioner'' as a subset of ''computer and data processing room air conditioner.'' Section 3.4 of AHRI 1360–202X Draft defines ''computer and data processing room air conditioner,'' as an air conditioning unit specifically marketed for cooling data centers and information technology equipment.

ducted, ceiling mounted non-ducted, roof-mounted, and wall-mounted. *Id.*

In the February 2022 NOPR, DOE requested comment on the proposed definition for ''computer room air conditioner'' that distinguishes between CRACs and other categories of air conditioning equipment, based on the marketing of the equipment. 87 FR 6948, 6954 (Feb. 7, 2022).

AHRI recommended that DOE remove roof-mounted and wall-mounted units from the CRAC definition, as they are currently not included in the scope of AHRI 1360–2017 and of ASHRAE Standard 90.1–2019. (AHRI, No. 9 at pp. 4–5) Instead, AHRI expressed support for a definition consistent with DOE's proposal, but with roof-mounted and wall-mounted CRACs redacted from the definition. *Id.*

The CA IOUs recommended adding the term ''exclusively'' to the proposed revised CRAC definition and to exclude comfort cooling products that are sometimes marketed for use in computer rooms (or similar applications) from the requirement to be tested to the CRAC test procedure. (CA IOUs, No. 6 at p. 1) The CA IOUs provided estimated performance data at CRAC rating conditions for commercial unitary air conditioners (''CUACs'') and 3-phase central air conditioners that they asserted as indicating that these equipment categories will always meet the CRAC efficiency standards in ASHRAE Standard 90.1–2019. (CA IOUs, No. 6 at pp. 1–5) The CA IOUs did not analyze the performance of single-packaged vertical air conditioners (''SPVU'') equipment under the CRAC test conditions but noted that DOE's energy efficiency metric for SPVUs is also energy efficiency ratio (''EER''), that SPVUs are tested at the same conditions as CUACs, and that the energy conservation standards for SPVUs are similar to the CUAC EER requirements in ASHRAE Standard 90.1–2019. Therefore, the CA IOUs recommended that DOE should also exclude SPVUs from the requirement of testing to the CRAC test procedure for equipment marketed for use in computer rooms (or similar applications). *Id.* Alternatively, the CA IOUs recommended that DOE allow NSenCOP to be calculated with an alternate efficiency determination method (''AEDM''). (CA IOUs, No. 6 at p. 6)

In response to AHRI, the addition of roof-mounted and wall-mounted CRACs to the scope of AHRI 1360–202X Draft, and as finalized in AHRI 1360–2022, occurred after considerable deliberation in the AHRI 1360 committee, in which DOE actively participated. As such, DOE considers this inclusion in a published AHRI standard to now represent industry consensus that models meeting the definition of roof-mounted and wall-mounted CRACs should be tested to AHRI 1360–2022. Further, DOE has concluded that because such models meet the definition of CRAC and exist on the market, the Federal test procedure should include test provisions for such models. Therefore, DOE has determined the addition of these configurations to be appropriate for the CRAC Federal test procedure.

In response to CA IOUs, DOE is not adopting the suggested exclusionary language (*i.e.,* limiting coverage of CRAC regulations to models marketed exclusively for computer room cooling applications) because this would cause any CRAC equipment marketed for both data centers and comfort cooling to not meet the definition of a CRAC as set out in AHRI 1360–2022. To the extent that a basic model is covered under more than one equipment category (*e.g.,* CRAC and CUAC), it would be subject to the regulations applicable to each equipment class that covers that basic model. Regarding AEDMs, DOE notes that current DOE regulations already allow manufacturers to use AEDMs to develop CRAC efficiency ratings, provided they perform physical testing on two test models per validation class. 10 CFR 429.70(c)(2).

In summary, for the reasons discussed, DOE is updating the ''computer room air conditioner'' definition in 10 CFR 431.92 as proposed in the February 2022 NOPR. Further, regarding the ''marketed for'' criterion in the revised CRAC definition, DOE will consider any publicly-available document published by the manufacturer (*e.g.,* product literature, catalogs, and packaging labels) to determine the application for which the equipment is marketed.

2. CRAC Configuration Definitions

CRACs can be installed in a variety of different configurations that vary by installation location, direction of airflow over the evaporator coil (*e.g.,* up, down, or horizontal), and by return and discharge air connections (*e.g.,* raised floor plenum, ducted, free air). To provide additional instruction as to which configuration (and, thus, which testing requirements and standards, as applicable) should be used for testing, the February 2022 NOPR proposed to add definitions for the following terms, consistent with the definitions in AHRI 1360–202X Draft: floor-mounted, ceiling-mounted, wall-mounted, roof-mounted, up-flow, down-flow, horizontal-flow, up-flow ducted, up-flow non-ducted, ceiling-mounted ducted, ceiling-mounted non-ducted, and fluid economizer. 87 FR 6948, 6954 (Feb. 7, 2022). DOE requested comment on the proposed definitions. *Id.*

AHRI suggested that DOE should adopt definitions consistent with AHRI 1360–2017, stating that the current draft procedure was not yet ready for adoption. Instead, AHRI recommended that DOE should wait to adopt the definitions in AHRI 1360–202X Draft until they are adopted through the ASHRAE Standard 90.1 process. (AHRI, No. 9 at p. 5)

DOE notes that AHRI's concern about the draft status of AHRI 1360–202X Draft no longer applies, given the finalization and publication of AHRI 1360–2022. Furthermore, for the reasons discussed in section III.C of this document, the Department has concluded that EPCA does not preclude the agency from considering this updated industry test standard until it has been formally adopted through the ASHRAE Standard 90.1 process. Accordingly, DOE has concluded that the inclusion of revised definitions for CRAC configurations in the published AHRI standard represent industry consensus that these revised definitions in AHRI 1360–2022 appropriately classify different configurations of CRACs. DOE notes that the definitions finalized in AHRI 1360–2022 are substantively the same as those included in DOE's proposal. DOE further notes that AHRI did not raise substantive issues with the specific proposed definitions for CRAC configurations. Therefore, DOE has concluded that the definitions proposed in the February 2022 NOPR, which are consistent with the updated industry consensus test procedure AHRI 1360–2022, appropriately classify different configurations of CRACs to clarify which test conditions apply to each configuration.

As such, DOE is finalizing the definitions as proposed in the February 2022 NOPR. Specifically, DOE is defining ''floor-mounted,'' ''ceiling-mounted,'' ''wall-mounted,'' ''roof-mounted,'' ''up-flow,'' ''down-flow,'' ''horizontal-flow,'' ''up-flow ducted,'' ''up-flow non-ducted,'' ''ceiling-mounted ducted,'' ''ceiling-mounted non-ducted,'' and ''fluid economizer'' as set out in 10 CFR 431.92 [13] at the end of this document.

[13] As explained in the February 2022 NOPR, DOE is italicizing the defined terms within these definitions at 10 CFR 431.92 in order to signal to the reader which terms are separately defined. 87 FR 6948, 6954 (Feb. 7, 2022).

E. Metric

1. NSenCOP

DOE's current efficiency metric for CRACs is SCOP, which is a ratio of sensible cooling capacity delivered to the power consumed. For most categories of air conditioners and heat pumps other than CRACs, efficiency metrics are calculated based on total cooling capacity (which includes both sensible cooling and latent cooling). However, unlike the conditioned spaces in most commercial buildings, computer rooms and data centers typically have limited human occupancy and minimal dehumidification requirements, and, thus, primarily require only sensible cooling. Therefore, SCOP is calculated based on sensible cooling capacity rather than total cooling capacity.

As discussed, ASHRAE Standard 90.1–2016 amended the efficiency metric for CRACs from SCOP (measured per ANSI/ASHRAE 127–2007) to NSenCOP (measured per AHRI 1360–2016). ASHRAE Standard 90.1–2019 subsequently retained NSenCOP as the test metric, but it updated the test reference to AHRI 1360–2017 (which specifies NSenCOP as the test metric and has the same test conditions as AHRI 1360–2016). AHRI 1360–202X Draft also specifies NSenCOP as the test metric and maintains the rating conditions found in AHRI 1360–2017, while also adding rating conditions for roof-mounted and wall-mounted units.

Like SCOP, NSenCOP is a ratio of sensible cooling capacity to the power consumed. However, as discussed in the February 2022 NOPR, the test procedure to determine NSenCOP differs from that to determine SCOP in four key aspects: (1) For several CRAC configurations (*e.g.,* down-flow, up-flow ducted), different indoor entering air temperatures are specified; (2) for water-cooled CRACs, different entering water temperatures are specified; (3) for up-flow ducted configurations, different indoor air external static pressure (''ESP'') requirements are specified; and (4) for water-cooled and glycol-cooled CRACs, NSenCOP accounts for energy consumed by fans and pumps that would be installed in the outdoor heat rejection loop, which is not accounted for in SCOP. 87 FR 6948, 6956–6957 (Feb. 7, 2022).

In response to the changes to the efficiency metric and referenced industry test standard for CRACs in ASHRAE Standard 90.1–2019 and AHRI 1360–202X Draft, DOE proposed to update its efficiency metric for CRACs to NSenCOP and requested comment on its proposal. 87 FR 6948, 6957 (Feb. 7, 2022). DOE also sought feedback on whether the rating conditions in AHRI 1360–202X Draft are appropriately representative of field applications. *Id.*

On this topic, AHRI commented at the NOPR public meeting that it supported the adoption of NSenCOP as calculated in AHRI 1360–2017, as opposed to AHRI 1360–202X Draft. (AHRI, Public Meeting Transcript, No. 8 at pp. 11–12) AHRI stated that a minor clarification would be required to be made in AHRI 1360–2017, which would align the capacity bins in AHRI 1360–2017 with those in ASHRAE 90.1–2019. *Id.* AHRI asserted that the revised approach for up-flow CRACs in a limited-height set-up would have a measurable impact on the efficiency of those units, and that the stringency of the standard level established in ASHRAE Standard 90.1–2019 for this equipment would not correlate to the efficiency of the equipment as tested with the draft test procedure. *Id.* AHRI further asserted that the SCOP to NSenCOP crosswalk would, therefore, not be a direct crosswalk, at least for the up-flow units and for any other products for which ESP test requirements have changed. *Id.*

In response, DOE notes the fact that the clarification mentioned by AHRI regarding the capacity demarcations is appropriately addressed in AHRI 1360–2022.

Regarding the issue of testing up-flow units in a limited-height set-up, DOE surmises that the inclusion of a limited-height approach in the finalized AHRI 1360–2022 that aligns with the approach in AHRI 1360–202X Draft indicates that this limited-height approach represents industry consensus on an appropriate test method. Further, DOE notes that the current Federal test procedure, which references ANSI/ASHRAE 127–2007, does not have any provisions that allow for testing up-flow CRAC units in a limited-height set-up. As such, the crosswalk analysis conducted to translate standards from SCOP to NSenCOP (as presented in the March 2022 ECS NOPR; *see* 87 FR 12802, 12817–12822 (March 7, 2022)) compared SCOP as measured per ANSI/ASHRAE 127–2007 to NSenCOP as measured per AHRI 1360–202X Draft (which is the test procedure DOE proposed to adopt in the February 2022 NOPR). Therefore, the test approaches in any intermediate CRAC industry test procedures released between ANSI/ASHRAE 127–2007 and AHRI 1360–202X Draft (*e.g.,* AHRI 1360–2017 as mentioned by AHRI) are not relevant for DOE's crosswalk analysis, as such intermediate industry test procedures were never proposed or adopted as part of the Federal test procedure.

The CA IOUs provided several recommendations to modify the proposed test procedure. (CA IOUs, No. 6 at p. 6) First, the CA IOUs recommended that DOE adopt the same entering air dry-bulb temperature for all CRAC configurations, asserting that containment, server rack orientation, and room temperature setpoints have much more significant impacts on return air temperature than CRAC configuration; therefore, basing test temperature on CRAC configuration may create arbitrary differences in efficiency representations among CRAC configurations, which would result in a market distortion in favor of some configurations over others. *Id.* Second, the CA IOUs recommended DOE use 86 °F as the full-load condenser entering water temperature, as opposed to 83 °F as prescribed in AHRI 1360–202X Draft, asserting that typically water-cooled CRACs and other water-cooled heating, ventilation, and air conditioning (HVAC) equipment receive condenser water via a water-to-water heat exchanger, and that the 86 °F point takes into account the approach temperature of such a heat exchanger. *Id.* The CA IOUs added that test procedures for three other equipment categories have used 86 °F as the full-load condenser entering water temperature: direct expansion-dedicated outdoor air system units (*i.e.,* AHRI Standard 920–2020), variable refrigerant flow (''VRF'') water-source heat pumps (*i.e.,* AHRI Standard 1230–2021), and water-source heat pumps less than 135,000 Btu/h (*i.e.,* ISO 13256–1:1998) Third, the CA IOUs supported the inclusion of cooling tower/dry cooler fan and heat rejection pump energy in the CRAC efficiency rating, but suggested that DOE examine if the power demand adders of 5 percent and 7.5 percent for water-cooled and glycol-cooled CRACs, respectively, are representative. *Id.*

The Joint Advocates supported the inclusion of a power adder for heat rejection components to improve the representativeness of the test for water-cooled and glycol-cooled CRACs. (Joint Advocates, No. 7 at p. 1) The Joint Advocates encouraged DOE to investigate the representativeness of the proposed entering air dry-bulb temperatures,[14] asserting that it did not appear that DOE has performed a thorough analysis of the representativeness of the proposed temperature values, but was rather simply proposing to adopt the values in AHRI 1360–202X Draft. (Joint Advocates, No. 7 at p. 1) The Joint

[14] In their comment, the Joint Advocates refer to this as ''return air temperature.''

Advocates referenced the March 2022 ECS NOPR, noting that the impact of increasing the entering air dry-bulb temperature from 75 °F to 95 °F for up-flow ducted and down-flow CRACs, led to an increase of net sensible cooling capacity and SCOP by approximately 22 percent and 19 percent, respectively. (Joint Advocates, No. 7 at pp. 1–2) The Joint Advocates commented that given the large potential magnitude of change to the metrics, DOE should scrutinize the appropriateness of updating the entering air dry-bulb temperature values and, if a revision is found to be justified, the representativeness of the proposed entering air dry-bulb temperature values. *Id.*

NEEA recommended that DOE ensure that the required ESP test conditions are representative of actual ESP conditions that units experience in the field. (NEEA, No. 5 at p. 4)

As noted earlier, EPCA requires that the test procedures for commercial package air conditioning and heating equipment be those generally accepted industry testing procedures or rating procedures developed or recognized by AHRI or ASHRAE, as referenced in ASHRAE Standard 90.1. (42 U.S.C. 6314(a)(4)(A)) Further, if such an industry test procedure is amended, DOE must update its test procedure to be consistent with the amended industry test procedure, unless DOE determines, by rule published in the **Federal Register** and supported by clear and convincing evidence, that such amended test procedure would not meet the requirements in 42 U.S.C. 6314(a)(2) and (3) related to representative use and test burden. (42 U.S.C. 6314(a)(4)(B)) As discussed in section III.C, DOE has concluded, supported by clear and convincing evidence, that AHRI 1360–2022 would better meet the criterion of EPCA than AHRI 1360–2017. DOE is not aware of any data or information indicating that the entering air dry-bulb temperature or ESP conditions in AHRI 1360–2022 are not representative of an average CRAC use cycle, and commenters did not provide any data or information to contradict this understanding. Therefore, DOE concludes that the rating conditions finalized in AHRI 1360–2022 are appropriate. The following paragraphs include DOE's responses to some of the comments received regarding specific rating conditions in AHRI 1360–202X Draft (and the subsequently finalized AHRI 1360–2022).

Regarding entering air dry-bulb temperature, it is DOE's understanding that CRAC configurations in which the return air inlet is located close to the heat source (*e.g.,* horizontal flow units, which are typically located adjacent to server racks) have higher entering air dry-bulb temperatures than configurations with return air inlets located further from the heat source. Numerous other versions of CRAC industry test procedures (*i.e.,* ANSI/ASHRAE 127–2020, AHRI 1360–2017, and AHRI 1360–2016) also include different entering air dry-bulb temperatures for each configuration that are consistent with AHRI 1360–202X Draft (and the subsequently finalized AHRI 1360–2022). Regarding the comment from Joint Advocates, while DOE agrees that differing entering air dry-bulb temperature values lead to a measurable change in the evaluated metrics for each configuration, DOE also notes that the standards proposed in the March 2022 ECS NOPR are separate for each configuration and reflect the different rating conditions. *See* 87 FR 12802, 12809–12816 (March 7, 2022). Additionally, industry consensus as reflected in AHRI 1360–2022 suggests that using the same entering air dry-bulb temperature for all CRAC configurations would be less representative of an average use cycle for each unique CRAC configuration. Therefore, DOE has concluded that different entering air dry-bulb temperatures for each separate configuration are appropriate for inclusion in the revised test procedure.

Similarly, ESP conditions may differ for CRAC configurations depending on how and where they may be installed. As noted earlier, DOE is not aware of any data or information indicating that the ESP conditions in AHRI 1360–2022 are not representative of an average CRAC use cycle, and NEEA did not provide any data or information to contradict this understanding.

Regarding condenser entering water temperature, ANSI/ASHRAE 127–2007 prescribes a test condition of 86 °F (as suggested by the CA IOUs) for SCOP, but the lower 83 °F condition was adopted in subsequent CRAC industry test procedures—ASHRAE 127–2020, AHRI 1360–2016, and AHRI 1360–2017—in addition to AHRI 1360–202X Draft (and the subsequently finalized AHRI 1360–2022). DOE considers that this decrease in the condenser entering water temperature test condition from 86 °F to 83 °F was made after industry deliberation and represents industry consensus. DOE also notes that not all industry test procedures for other categories of commercial air conditioning and heating equipment are consistent in entering water temperature test conditions, as AHRI Standard 340/360–2022, ''Performance Rating of Commercial and Industrial Unitary Air-conditioning and Heat Pump Equipment,'' specifies an entering water temperature of 85 °F for water-cooled CUACs. Therefore, DOE has concluded that the proposed 83 °F condition as the condenser entering water temperature for water-cooled CRACs is appropriate and would produce the most representative results.

Regarding the power consumption adders for heat rejection components for water-cooled and glycol-cooled CRACs, ANSI/ASHRAE 127–2020, AHRI 1360–2016, and AHRI 1360–2017 also specify the same adders of 5 percent and 7.5 percent for water-cooled and glycol-cooled CRACs as proposed in the February 2022 NOPR. After a careful review, DOE was not able to find any information indicating that these values are not representative for CRAC installations. Therefore, DOE considers these demand adders to be appropriate for CRACs.

In summary, DOE is updating its efficiency metric for CRACs to NSenCOP as measured per AHRI 1360–2022, at appendix E1. Appendix E continues to reference ANSI/ASHRAE 127–2007 and to provide instructions for determining SCOP. As noted earlier, CRACs are not required to be tested according to the test procedure in appendix E1 until such time as compliance is required with an amended energy conservation standard that relies on the NSenCOP metric, should DOE adopt such a standard.

2. Integrated Efficiency Metric

In contrast to an efficiency metric that measures performance at only one test point, an annualized, or ''integrated'' efficiency metric measures performance at multiple test points (*i.e.,* tests with different outdoor test conditions) that are intended to reflect seasonal variation in outdoor ambient temperatures that would be experienced by the equipment installed in the field.

AHRI 1360–2016, AHRI–1360–2017, and AHRI 1360–202X Draft include an integrated efficiency metric—integrated net sensible coefficient of performance (''iNSenCOP''). The iNSenCOP metric comprises a weighted average of NSenCOP values for four test points at different outdoor conditions.[15]

In the February 2022 NOPR, DOE noted that section D1 of AHRI 1360–2017 (and section G1 of the subsequently updated AHRI 1360–202X Draft) states that ''a long-term goal is for iNSenCOP to replace NSenCOP after a more readily testable means has been

[15] The rating conditions A, B, C, and D for iNSenCOP for air-cooled units correspond to outdoor entering air temperatures of 95.0 °F, 80.0 °F, 65.0 °F, and 40.0 °F, respectively.

standardized.'' 87 FR 6948, 6957 (Feb. 7. 2022). DOE indicated that it was not aware of any test data that verify the validity of the iNSenCOP metric and that minimum efficiency levels in terms of iNSenCOP have not been adopted in ASHRAE Standard 90.1. *Id.* DOE acknowledged the potential benefit regarding representativeness that would be provided with an annualized metric for CRACs but concluded that given the apparent need for further validation and the lack of test data, DOE was unable to propose to use the iNSenCOP metric at this time. *Id.*

The Joint Advocates and NEEA encouraged DOE to continue to investigate an annualized metric for CRACs. (Joint Advocates, No. 7 at p. 2; NEEA, No. 5 at pp. 1–2) The Joint Advocates commented that CRACs are designed to provide year-round cooling at a stable indoor cooling load and that an annualized metric that reflects an integrated measure of CRAC performance at different outdoor temperatures would be more representative of the efficiency of this equipment. (Joint Advocates, No. 7 at p. 2) NEEA commented that it supports DOE's proposal to use NSenCOP instead of SCOP, but encouraged DOE to conduct the research required to transition to the iNSenCOP metric, which NEEA asserted better accounts for the energy efficiency of CRACs given that it provides a standardized evaluation of the annualized cooling energy consumption of a unit operated across the specified range of outdoor ambient temperatures. (NEEA, No. 5 at pp. 1–2) NEEA commented that it believed integrating a part-load operation assessment was also feasible when this efficiency metric is adopted for CRACs in the future. *Id.*

As noted in the February 2022 NOPR, DOE acknowledges the potential benefit regarding representativeness that would be provided with an annualized, integrated metric for CRACs. However, given the need for further validation and the lack of test data, DOE is not adopting the iNSenCOP metric at this time.

3. Part-Load Operation and Air Circulation Mode

In the July 2017 ASHRAE TP RFI, DOE noted that CRACs typically operate at part-load (*i.e.,* less than designed full cooling capacity) in the field. 82 FR 34427, 34432 (July 25, 2017). DOE discussed that the reasons for this may include, but are not limited to, redundancy in installed units to prevent server shutdown if a CRAC unit stops working, and server room designers building in extra cooling capacity to accommodate additional server racks in the future. *Id.* DOE also noted that while the current DOE test procedure measures performance at full-load, DOE has estimated that CRACs operate on average at a sensible load of 65 percent of the full-load sensible capacity.[16] *Id.*

Comments received in response to the July 2017 ASHRAE TP RFI and discussed in the February 2022 NOPR also suggested that CRACs are commonly oversized when installed in the field, and that this oversizing can significantly influence performance. 87 FR 6948, 6958 (Feb. 7, 2022). Additionally, in the February 2022 NOPR, DOE noted it understands that many CRACs operate in air circulation mode and that incorporating air circulation mode in testing might incentivize use of more-efficient fan technologies for CRACs that typically operate at lower fan speeds in air circulation mode. *Id.* However, DOE did not have information or data on part-load or air circulation mode operation of CRACs to support a proposal to amend the efficiency metric to account for performance in these operating modes. *Id.*

In response to the February 2022 NOPR, NEEA encouraged DOE to gather more data on the conditions and the percentage of time when CRACs typically operate in air circulation mode, noting that this information will help ensure that DOE's metric for CRACs is representative of average annual operation, which includes accounting for energy consumption in these modes. (NEEA, No. 5 at p. 2) Similarly, NEEA commented that it believes that incorporating part-load performance in the efficiency metric for CRACs would encourage the adoption of technologies that improve performance, such as variable-speed fans and compressors. (NEEA, No. 5 at pp. 2–3) NEAA asserted that incorporating part-load and air-circulation modes into efficiency ratings would give consumers better information about the performance of different CRAC units. (NEEA, No. 5 at p. 3) NEEA agreed with DOE's statement that there is a lack of information and data on part-load or air-circulation-mode operation of CRACs, but the commenter recommended that DOE conduct more research to collect the necessary data to amend the proposed efficiency metric. *Id.*

The Joint Advocates encouraged DOE to capture the part-load operation and air-circulation-mode operation of CRACs. (Joint Advocates, No. 7 at p. 2) The Joint Advocates asserted that the CRAC test procedure for determining NSenCOP is not representative of an average use cycle because many CRACs operate in part-load and air-circulation mode, and fan energy is not accounted for in the NSenCOP metric. *Id.*

The CA IOUs commented that CRACs operate at part load at nearly all times, so efficient part-load performance is more important than full-load performance for optimal energy use. (CA IOUs, No. 6 at p. 7) The CA IOUs referenced studies conducted by PG&E, which they commented indicate that data centers are typically operated at part load to ensure maximum temperature and humidity control stability, reliability, and margin for future load increases. *Id.* The CA IOUs suggested that instead of adopting a part-load performance rating requirement at this time, DOE should consider requiring manufacturers to state the temperature at which capacity control becomes unstable and when the CRAC cannot operate within acceptable test capacity tolerance, and that this information would allow designers to evaluate the suitability of the part-load performance of different equipment options for specific applications. *Id.*

These comments suggest that many CRACs operate in part load and in air-circulation mode and that incorporating these modes in testing could lead to a more representative test procedure. However, CRAC operation in these operating modes has not been addressed in any CRAC industry consensus test procedures. At this time, DOE does not have enough information or data on part-load or air-circulation mode operation of CRACs to support amending the efficiency metric to account for performance in these operating modes. Regarding CA IOUs' suggestion to require manufacturers to state the temperature at which capacity control becomes unstable, DOE has concluded that such provisions do not apply for testing to a full-load metric, which does not involve modulation of capacity below full-load. Because the Department is not adopting a part-load metric in this final rule, DOE is correspondingly not adopting the CA IOU's suggestion.

4. Controls Verification Procedure

Neither the current Federal test procedure nor AHRI 1360–2022 incorporates a controls verification procedure (''CVP'') for CRACs. The purpose of a CVP is to validate that the

[16] *See* the analysis for a final rule for standards and test procedures for certain commercial heating, air conditioning, and water heating equipment (including CRACs) published in the **Federal Register** on May 16, 2012 (77 FR 28928). (Technical Support Document, EERE–2011–BT–STD–0029–0021, pp. 4–15, 4–16)

observed positions of critical parameters for modulating components during the CVP are within tolerance of the certified critical parameter values in the supplementary test instructions (''STI'') that are set by the manufacturer in steady-state tests. This ensures that the measured results of the test procedure are based on critical parameter settings that are representative of critical parameter behavior that would be experienced in the field.

In response to the February 2022 NOPR, NEEA commented that CRACs could benefit from a CVP and that a CVP would help ensure that manufacturer claims of energy savings from controls are accurate and can help verify that units are achieving the variable-speed benefits that are claimed. (NEEA, No. 5 at p. 3) NEEA noted that there is precedence for including a CVP in commercial HVAC products, such as VRF multi-split air conditioners and heat pumps. *Id.* NEEA further commented that a CVP may also check and test the energy savings from economizers, given that they are not a component of the proposed test procedure for basic CRAC models, and that incorporating a CVP is one potential way to capture those energy saving benefits for CRAC units that have an economizer. *Id.*

As noted, AHRI 1360–2022, the industry standard that DOE is adopting in this final rule, does not include a CVP for CRACs. Further, DOE is not aware of any industry test procedures that include a CVP that would apply for CRACs. While DOE understands that there may be potential benefits of implementing a CVP for CRACs and acknowledges the precedent of a CVP for other commercial equipment such as VRF multi-split systems, DOE understands that the market penetration of variable-speed CRAC equipment is much smaller than for VRF multi-split systems. Given that DOE is not aware of an established CVP for CRAC nor any test data that could support adopting such a CVP, DOE is not adopting a CVP for CRACs in this final rule.

F. Configuration of Unit Under Test

1. Background and Summary

CRACs are sold with a wide variety of components, including many that can optionally be installed on or within the unit both in the factory and in the field. In all cases, these components are distributed in commerce with the CRAC, but can be packaged or shipped in different ways from the point of manufacture for ease of transportation. Some optional components may affect a model's measured efficiency when tested to the DOE test procedure adopted in this final rule, and others may not. DOE is handling CRAC components in two distinct ways in this final rule to help manufacturers better understand their options for developing representations for their differing product offerings.

First, the treatment of some components is specified by the test procedure to limit their impact on measured efficiency. For example, a fire/smoke/isolation damper must be set in the closed position and sealed during testing, resulting in a measured efficiency that would be similar or identical to the measured efficiency for a unit without a fire/smoke/isolation damper.

Second, for certain components not directly addressed in the DOE test procedure, this final rule provides more specific instructions on how each component should be handled for the purposes of making representations in 10 CFR part 429. Specifically, these instructions provide clarity to manufacturers on how components should be treated and how to group individual models with and without optional components for the purposes of representations, in order to reduce burden. DOE is adopting these provisions in 10 CFR part 429 to allow for testing of certain individual models that can be used as a proxy to represent the performance of equipment with multiple combinations of components. DOE is adopting provisions expressly allowing certain models to be grouped together for the purposes of making representations and allowing the performance of a model without certain optional components to be used as a proxy for models with any combinations of the specified components, even if such components would impact the measured efficiency of a model. Steam/hydronic heat coils are an example of such a component. The efficiency representation for a model with a steam/hydronic heat coil is based on the measured performance of the CRAC as tested without the component installed because the steam/hydronic heat coil is not easily removed from the CRAC for testing.[17]

2. Approach for Exclusion of Certain Components

a. Proposals

Appendix D of AHRI 1360–2022 (and Appendix D of AHRI 1360–202X Draft) provides discussion of components which would not be considered in representations, and provides instructions either to neutralize their impact during testing or for determining representations for individual models with such components based on other individual models that do not include them.

Instead of referencing Appendix D of AHRI 1360–202X Draft, DOE tentatively determined in the February 2022 NOPR that it would be necessary to include related provisions in the proposed appendix E1 test procedure and in the proposed representation requirements at 10 CFR 429.43. 87 FR 6948, 6964 (Feb. 7. 2022). DOE noted that this revised approach would provide more detailed direction and clarity between test procedure provisions (*i.e.,* how to test a specific unit) and certification and enforcement provisions (*e.g.,* which model(s) to test). *Id.* Specifically, DOE proposed to include provisions for certain specific components to limit their impact on measured efficiency during testing. 87 FR 6948, 6981 (Feb. 7, 2022). Additionally, DOE proposed representation requirements in 10 CFR 429.43(a)(4) that explicitly allowed representations for individual models with certain components to be based on testing for individual models without those components. The proposal included a table listing the components for which these provisions would apply: air economizers, process heat recovery/reclaim coils/thermal storage, evaporative pre-cooling of air-cooled condenser intake air, steam/hydronic heat coils, refrigerant reheat coils, powered exhaust/powered return air fans, compressor variable frequency drive (''VFD''), fire/smoke/isolation dampers, non-standard indoor fan motors, humidifiers, flooded condenser head pressure controls, chilled water dual cooling coils, and condensate pump. 87 FR 6948, 6974–6975 (Feb. 7. 2022). Finally, DOE proposed specific product enforcement provisions in 10 CFR 429.134 indicating that DOE would conduct enforcement testing on individual models that do not include the components listed in the aforementioned table, except in certain enumerated circumstances. 87 FR 6948, 6977 (Feb. 7. 2022).

b. General Comments

AHRI generally supported DOE's proposals and agreed with the approach to include the optional features provisions in the test procedure directly and remove them from DOE's

[17] Note that in certain cases, as explained further in section III.F.2.c of this document, the representation may have to be based on an individual model with a steam/hydronic coil.

Commercial HVAC Enforcement Policy.[18] (AHRI, No. 9 at p. 6)

In this final rule, DOE is adopting its proposals in the February 2022 NOPR regarding the exclusion of certain components, with some additional simplifications to further improve clarity. The different aspects of the provisions are described in the following sections.

c. Test Provisions Within Appendix E1

DOE is adopting test provisions in section 4 of appendix E1 to prescribe how certain components must be configured for testing, as proposed in the February 2022 NOPR. Specifically, DOE is requiring in appendix E1 that steps be taken during unit set-up and testing to limit the impacts on the measurement of these components:

- Air economizers
- Process heat recovery/reclaim coils/thermal storage
- Evaporative pre-cooling of condenser intake air
- Steam/hydronic heat coils
- Refrigerant reheat coils
- Fire/smoke/isolation dampers
- Harmonic distortion mitigation devices
- Humidifiers
- Electric reheat elements
- Non-standard power transformer
- Chilled water dual cooling coils
- High-effectiveness indoor air filtration

The components are listed and described along with their corresponding test provisions in Table 4.1 in section 4 of the new appendix E1.

In response to the February 2022 NOPR, AHRI suggested the inclusion of provisions for four specific components (*i.e.,* harmonic distortion mitigation devices, humidifiers, non-standard power transformers, and chilled water coils) to limit their impact on measured efficiency during testing. (AHRI, No. 9 at pp. 6–7) For harmonic distortion mitigation devices and non-standard power transformers, AHRI commented that these components cannot be removed for testing and that AHRI will consider including relevant provisions in the finalized version of AHRI 1360–202X Draft. For humidifiers and chilled water coils, AHRI commented that these should be de-energized and removed from testing, respectively. *Id.*

For humidifiers and chilled water coils, appendix E1 (as proposed in the February 2022 NOPR) includes provisions consistent with AHRI's suggestions. For harmonic distortion mitigation devices and non-standard power transformers, AHRI 1360–2022 does not provide any further guidance on these components as AHRI's comment indicated. In the absence of any suggested alternative provisions, DOE has concluded that the provisions that were proposed for testing with these components in appendix E1 in the February 2022 NOPR are appropriate for the CRAC test procedure. Therefore, DOE is adopting the appendix E1 provisions for these components as proposed.

d. Representation Provisions Within 10 CFR 429.43

As discussed, in the February 2022 NOPR, DOE proposed representation requirements in 10 CFR 429.43(a)(4) that explicitly allowed representations for individual models with certain components to be based on testing for individual models without those components. The proposal included a table[19] listing the components for which these provisions would apply (*i.e.,* air economizers, process heat recovery/reclaim coils/thermal storage, evaporative pre-cooling of air-cooled condenser intake air, steam/hydronic heat coils, refrigerant reheat coils, powered exhaust/powered return air fans, compressor VFD, fire/smoke/isolation dampers, non-standard indoor fan motors, humidifiers, flooded condenser head pressure controls, chilled water dual cooling coils, and condensate pump). 87 FR 6948, 6974–6975 (Feb. 7, 2022).

In this final rule, DOE is making two clarifications to the representation requirements as proposed in the February 2022 NOPR.

First, DOE is specifying that the basic model representation must be based on the least-efficient individual model that is a part of the basic model, and clarifying how this long-standing basic model provision interacts with the component treatment in 10 CFR 429.43 that this final rule adopts. Adoption of this clarification in the regulatory text is consistent with the February 2022 NOPR, in which DOE noted that in some cases, individual models may include more than one of the specified components or there may be individual models within a basic model that include various versions of the specified components that result in more or less energy use. 87 FR 6948, 6965 (Feb. 7, 2022). In such cases, DOE stated that the represented values of performance must be representative of the individual model with the lowest efficiency found within the basic model. *Id.*

DOE has determined that regulated entities may benefit from clarity in the regulatory text as to how the least-efficient individual model within a basic model provision is applied with the additional component-specific instructions for CRACs. The amendments in this final rule explicitly state that the exclusion of the specified components from consideration in determining basic model efficiency in certain scenarios is an exception to basing representations on the least-efficient individual model within a basic model. In other words, the components listed in 10 CFR 429.43 are not being considered as part of the representation under DOE's regulatory framework if certain conditions are met as discussed in the following paragraphs, and, thus, their impact on efficiency is not reflected in the representation. In this case, the basic model's representation is generally determined by applying the testing and sampling provisions to the least-efficient individual model in the basic model that does not have a component listed in 10 CFR 429.43.

Second, DOE is also clarifying instructions for determining the unit used for basic model representation to resolve instances where individual models within a basic model may have more than one of the specified components and there may be no individual model without any of the specified components. DOE is adopting the concept of an ''otherwise comparable model group'' (''OCMG'') instead of using the ''otherwise identical'' provisions proposed in the February 2022 NOPR. 87 FR 6948, 6964–6965 (Feb. 7, 2022). DOE is using the term ''comparable'' as opposed to ''identical'' to indicate that components that impact energy consumption as measured by the applicable test procedure are the relevant components to consider for the purpose of representations. Differences that do not impact energy consumption, such as unit color and presence of utility outlets, would, therefore, not warrant separate OCMGs. DOE developed and placed in the docket a document of examples to illustrate the approach in this final rule for determining represented values for CRACs with specific components, and in particular the OCMG concept. *See* EERE–2021–BT–TP–0017–0010.

[18] On January 30, 2015, DOE issued a Commercial HVAC Enforcement Policy addressing the treatment of specific features during DOE testing of commercial HVAC equipment. (*See www.energy.gov/gc/downloads/commercial-equipment-testing-enforcement-policies.*)

[19] In the February 2022 NOPR, this table was referred to as ''Table 1''; however, due to the publication of other test procedure actions subsequent to the February 2022 NOPR, this final rule refers to this table as ''Table 5 to paragraph (a)(3)(iv)(A)—Specific Components for Computer Room Air Conditioners'' of 10 CFR 429.43.

An OCMG is a group of individual models within the basic model that do not differ in components that affect energy consumption as measured according to the applicable test procedure other than the specific components listed in Table 5 of 10 CFR 429.43(a)(3)(iv)(A) (''Table 5 of § 429.43''). An OCMG may include individual models with any combination of such specified components, including no specified components, and an OCMG can be comprised of one individual model. Because every model within each OCMG is within the definition of the basic model, a basic model can be composed of multiple OCMGs. Each OCMG represents a unique combination of components that affect energy consumption, as measured according to the applicable test procedure, other than the specified components listed in Table 5 of § 429.43; this means that a new combination of such components represents a new OCMG. For example, a manufacturer might include two tiers of control system within the same basic model, in which one of the control systems has sophisticated diagnostics capabilities that require a more powerful control board with a higher wattage input. CRAC individual models with the ''standard'' control system would be part of OCMG A, while individual models with the ''premium'' control system would be part of a different OCMG B, since the control system is a component that affects energy consumption and is not one of the specified exempt components listed in Table 5 of § 429.43. However, OCMG A and OCMG B both may include individual models with different combinations of steam/hydronic coils, harmonic distortion mitigation devices, and humidifiers, for example. Both OCMGs may also include any combination of characteristics that do not affect the efficiency measurement, such as paint color.

The OCMG is used to identify which individual models are used to determine a represented value for the basic model. Specifically, only the individual model(s) with the least number (which could be zero) of the specific components listed in Table 5 of § 429.43 is considered when identifying the individual model. This clarifies which individual models are exempted from consideration for determination of represented values in the case of an OCMG with multiple specified components and no individual models with zero specific components listed in Table 5 of § 429.43. Models with a number of specific components listed in Table 5 greater than the model(s) with the least number in the OCMG are exempted from consideration. In the case that the OCMG includes an individual model with no specific components listed in Table 5 of § 429.43, then all individual models in the OCMG with any specified components would be excluded from consideration. Among the remaining non-excluded models, the least efficient individual model across the OCMGs would be used to determine the representation of the basic model. In the case where there are multiple individual models within a single OCMG with the same non-zero least number of specified components, the least efficient of these would be considered.

The use of the OCMG concept results in representations being based on the same individual models as the approach proposed in the February 2022 NOPR, *i.e.,* the represented values of performance are representative of the individual model(s) with the lowest efficiency found within the basic model, excluding certain individual models with the specific components listed in Table 5 of § 429.43. However, the approach as adopted in this final rule is structured to more explicitly address individual models with more than one of the specific components listed in Table 5 of § 429.43, as well as instances in which there is no comparable model without any of the specified components.

Finally, DOE notes that use of the OCMG concept for CRACs is consistent with the approach finalized by DOE in test procedure final rules for direct expansion-dedicated outdoor air systems (*see* 87 FR 45164 (July 27, 2022)) [20] and single package vertical units (*see* 87 FR 75144 (Dec. 7, 2022),[21] and proposed in a test procedure NOPR for water-source heat pumps (*see* 87 FR 53302 (August 30, 2022)).[22]

In response to the February 2022 NOPR, AHRI suggested that DOE should include in appendix E six additional components (coated coils, sound traps/sound attenuators, indoor or outdoor fans with VFD, compressor VFD, evaporative pre-cooling of condenser intake air, and hot gas bypass) at 10 CFR 429.134; AHRI commented that these components were included in the Commercial HVAC Enforcement Policy. (AHRI, No. 9 at pp. 6–7)

In response, DOE notes that none of these six components are specified for CRACs in the Commercial HVAC Enforcement Policy. However, AHRI 1360–202X Draft (and the subsequently finalized AHRI 1360–2022) includes three of the components—compressor VFD, evaporative pre-cooling of condenser intake air, and coated coils—as optional features for CRACS. In the February 2022 NOPR, DOE tentatively concluded that it was appropriate to consider inclusion of compressor VFD and evaporative pre-cooling of condenser intake air as optional features, and the Department proposed provisions for these features at 10 CFR 429.43. 87 FR 6948, 6975 (Feb. 7, 2022). Correspondingly, in this final rule DOE is including these two components as specific components listed in Table 5 of § 429.43.

Regarding sound traps/sound attenuator, indoor or outdoor fans with VFD, and hot gas bypass, DOE notes that these components are not included in AHRI 1360–202X Draft (and the subsequently finalized industry consensus test procedure AHRI 1360–2022). Further, DOE notes that AHRI did not provide any rationale as to the need for including these components as specific components in Table 5 of § 429.43. Additionally, these components are not included for CRACs in the Commercial HVAC Enforcement Policy. Therefore, DOE has concluded that it has no basis to include these components as specific components listed in Table 5 of § 429.43.

Regarding coated coils, in the February 2022 NOPR, DOE proposed to exclude coated coils from the specific components list specified in 10 CFR 429.43 because DOE tentatively concluded that the presence of coated coils does not result in a significant impact to performance of CRACs, and, therefore, that models with coated coils should be rated based on performance of models with coated coils. 87 FR 6948, 6965 (Feb. 7, 2022). As discussed, DOE received comments from AHRI in response to the February 2022 NOPR that DOE should consider including coated coils in the list of specific components for CRACs at 10 CFR 429.134. DOE also received similar comments pertaining to coated coils in response to other commercial HVAC equipment test procedure NOPRs, specifically the test procedure supplemental notice of proposed

[20] *See also* ''Direct Expansion Dedicated Outdoor Air Systems (DX–DOAS) Illustration of Specified Components Requirements Presentation'' (available at: *www.regulations.gov/document/EERE-2017-BT-TP-0018-0038*).

[21] *See also* ''Single Package Vertical Units (SPVU) Illustration of Specified Components Requirements, November 2022'' (available at: *www.regulations.gov/document/EERE-2017-BT-TP-0020-0025*).

[22] *See also* ''Water Source Heat Pumps (WSHP) Illustration of Specified Components Requirements, Test Procedure NOPR—August 2022'' (available at: *www.regulations.gov/document/EERE-2017-BT-TP-0029-0013*).

rulemaking (''SNOPR'') published for direct expansion-dedicated outdoor air systems (''DX–DOASes'').[23] (Docket No. EERE–2017–BT–TP–0018, AHRI, No. 34 at p. 4) In response to the DX–DOAS SNOPR, AHRI and Madison Indoor Air Quality (''MIAQ'') asserted that some coated coils impact performance, but that each coating is different. (Docket No. EERE–2017–BT–TP–0018, AHRI, No. 34 at p. 4; MIAQ, No. 29 at p. 4)

AHRI's and MIAQ's assertions that some coated coils do impact energy use suggest that there are other implementations of coated coils that do not impact energy consumption as measured by the adopted test procedure (*i.e.,* the implementation of coated coils does not necessarily or inherently impact energy use). DOE has no data indicating the range of impacts for those coatings that do affect energy use, or how other characteristics of the coatings, such as durability and cost, correlate with energy use impacts. Absent such data, DOE is unable to determine the specific range of impacts on energy use made by coated coils. Nevertheless, given that comments on the DX–DOAS SNOPR suggest that certain implementations of coated coils do not impact energy use, DOE has determined that for those units for which coated coils do impact energy use, representations should include those impacts, thereby providing full disclosure for commercial customers. Consequently, DOE is not incorporating coated coils into DOE's provisions specified in 10 CFR 429.43(a)(3) that allow for the exclusion of specified components when determining represented values for CRACs. This approach is consistent with the one DOE has established in a final rule for the DX–DOAS test procedure. 87 FR 45164, 45186 (July 27, 2022).

e. Enforcement Provisions Within 10 CFR 429.134

In the February 2022 NOPR, DOE sought to address CRACs that include components specified in 10 CFR 429.43(a)(4)(i) both in the requirements for representations (*i.e.,* 10 CFR 429.43) and in the equipment-specific enforcement provisions for assessing compliance (*i.e.,* 10 CFR 429.134). 87 FR 6948, 6975–6977 (Feb. 7, 2022). DOE received no comments on this topic.

Instructions on which units to test for the purpose of representations are addressed in 10 CFR 429.43. Consequently, DOE has determined that including parallel enforcement provisions in 10 CFR 429.134 would be redundant and potentially cause confusion because DOE would select for enforcement only those individual models that are the basis for making basic model representations as specified in 10 CFR 429.43. Therefore, in this final rule, DOE is providing the requirements for making representations of CRACs that include the specified components in 10 CFR 429.43 and is not including parallel direction in the enforcement provisions of 10 CFR 429.134 established in this final rule. However, DOE is finalizing the provision that allows enforcement testing of alternative individual models with specific components, if DOE cannot obtain for test the individual models without the components that are the basis of representation.

3. Non-Standard Indoor Fan Motors

The Commercial HVAC Enforcement Policy includes high-static indoor blowers/oversized motors as an optional feature for CRACs, among other equipment. The Commercial HVAC Enforcement Policy states that when selecting a unit of a basic model for DOE-initiated testing, if the basic model includes a variety of high-static indoor blowers or oversized motor options,[24] DOE will test a unit that has a standard indoor fan assembly (as described in the STI that is part of the manufacturer's certification, including information about the standard motor and associated drive that was used in determining the certified rating). This policy only applies where: (a) the manufacturer distributes in commerce a model within the basic model with the standard indoor fan assembly (*i.e.,* standard motor and drive), and (b) all models in the basic model have a motor with the same or better relative efficiency performance as the standard motor included in the test unit, as described in a separate guidance document discussed subsequently. If the manufacturer does not offer models with the standard motor identified in the STI or offers models with high-static motors that do not comply with the comparable efficiency guidance, DOE will test any indoor fan assembly offered for sale by the manufacturer.

DOE subsequently issued a draft guidance document (''Draft Commercial HVAC Guidance Document'') on June 29, 2015 to request comment on a method for comparing the efficiencies of a standard motor and a high-static indoor blower/oversized motor.[25] As presented in the Draft Commercial HVAC Guidance Document, the relative efficiency of an indoor fan motor would be determined by comparing the percentage losses of the standard indoor fan motor to the percentage losses of the non-standard (oversized) indoor fan motor. The percentage losses would be determined by comparing each motor's wattage losses to the wattage losses of a corresponding reference motor. Additionally, the draft method contains a table that includes a number of situations with different combinations of characteristics of the standard motor and oversized motor (*e.g.,* whether each motor is subject to Federal standards for motors, whether each motor can be tested to the Federal test procedure for motors, whether each motor horsepower is less than one) and specifies for each combination whether the non-standard fan enforcement policy would apply (*i.e.,* whether DOE would not test a model with an oversized motor, as long as the relative efficiency of the oversized motor is at least as good as performance of the standard motor). DOE has not issued a final guidance document and is instead addressing the issue for CRACs in this test procedure rulemaking.

In the February 2022 NOPR, DOE noted that the approaches in section D3 of AHRI 1360–202X Draft for non-standard indoor fan motors and integrated fan and motor combinations (''IFMs'') generally align with the approaches of the Commercial HVAC Enforcement Policy and the Draft Commercial HVAC Guidance Document, while providing greater detail and accommodating a wider range of fan motor options. 87 FR 6948, 6966 (Feb. 7, 2022). DOE also tentatively determined that section D3 of Appendix D of AHRI 1360–202X Draft would more fully provide the guidance intended by the Commercial HVAC Enforcement Policy with regard to non-standard indoor fan motors. *Id.* DOE proposed to adopt the provisions in section D3 of AHRI 1360–202X Draft for comparing the performance of standard and non-standard indoor fan motors and IFMs in the proposed appendix E1.[26] *Id.*

[23] *See* 86 FR 72874 (Dec. 23, 2021).

[24] The Commercial HVAC Enforcement Policy defines ''high-static indoor blower or oversized motor'' as an assembly that drives the fan and can deliver higher external static pressure than the standard indoor fan assembly sold with the equipment.

[25] Available at *www1.eere.energy.gov/buildings/appliance_standards/pdfs/draft-commercial-hvac-motor-faq-2015-06-29.pdf.*

[26] Per DOE's existing certification regulations, if a manufacturer were to use the proposed approach to certify a basic model, the manufacturer would be required to maintain documentation of how the relative efficiencies of the standard and non-standard fan motors or the input power of the standard and non-standard IFMs were determined, as well as the supporting calculations. *See* 10 CFR 429.71.

Additionally, DOE proposed to adopt the provisions in section D3 of Appendix D of AHRI 1360–202X Draft for the determination of the represented efficiency value of CRACs at 10 CFR 429.43(a)(3)(v)(C) and for DOE assessment and enforcement testing of CRACs at 10 CFR 429.134(s)(1). *Id.*

In commenting on this issue, AHRI stated support for maintaining enforcement policy guidance even if such guidance moves to the test procedure provisions, and that for future adoption, AHRI would support provisions included in section D3 of Appendix D of 1360–202X Draft. (AHRI, No. 9 at p. 7)

In the February 2022 NOPR, the Department proposed provisions (referencing section D3 of AHRI 1360–202X Draft) regarding non-standard indoor fan motors in the proposed 10 CFR 429.43(a)(3), which addresses representation requirements for CRACs, rather than in the DOE test procedure (*i.e.,* appendix E1). Section D2 of AHRI 1360–2022 includes the same provisions as those present in AHRI 1360–202X Draft. DOE has concluded that maintaining provisions in both enforcement guidance and DOE regulations would be redundant, and that including provisions in DOE regulations provides better clarity to stakeholders. For the reasons discussed in the preceding paragraphs and the February 2022 NOPR, DOE is finalizing its proposals regarding non-standard indoor fan motors as proposed in the February 2022 NOPR.

G. Represented Values

1. Multiple Refrigerants

In the February 2022 NOPR, DOE noted that some commercial package air conditioning and heating equipment may be sold with more than one refrigerant option, and that DOE has identified at least one CRAC manufacturer that provides two refrigerant options under the same model number. 87 FR 6948, 6967 (Feb. 7, 2022). DOE stated that the use of a refrigerant (such as R–407C as compared to R–410A) that requires different hardware (*i.e.,* compressors, heat exchangers, or air moving systems that are not the same or comparably performing) would represent a different basic model, and according to current DOE regulations, separate representations of energy efficiency are required for each basic model under 10 CFR 429.43(a). *Id.* DOE also noted that some refrigerants (such as R–422D and R–427A) would not require different hardware, and a manufacturer may consider them to be the same basic model. *Id.* In the February 2022 NOPR, DOE proposed and requested comment specifying that a manufacturer must determine the represented values for that basic model based on the refrigerant(s)—among all refrigerants listed on the unit's nameplate—that result in the lowest cooling efficiency. *Id.*

AHRI supported the concept of DOE's proposal regarding representations for CRAC models approved for use with multiple refrigerants. (AHRI, No. 9 at p. 7) The CA IOUs also supported DOE's proposal to require only ratings for the worst-performance refrigerant for a given basic model and noted that this approach is consistent with DOE's policy for other HVAC equipment. (CA IOUs, No. 6 at p. 7) However, the CA IOUs recommended that DOE allow manufacturers to report test results of the same basic model with multiple refrigerants, stating that this would highlight equipment with the same hardware that can be operated with better-performing refrigerants. *Id.* The CA IOUs commented that commercial refrigeration equipment uses more than one refrigerant for rating, and that DOE allows representations using multiple refrigerants for consumer central air conditioners and heat pumps. *Id.*

As discussed in section III.F.2 of this final rule, DOE is generally clarifying in 10 CFR 429.43(a)(3)(iv)(A) that representations for a CRAC basic model must be based on the least-efficient individual model(s) distributed in commerce within the basic model (with the exception specified in 10 CFR 429.43(a)(3)(iv)(A) for certain individual models with the components listed in Table 5 to 10 CFR 429.43(a)(3); this list does not include different refrigerants). Therefore, upon further consideration, DOE has determined that the content of the proposal in the February 2022 NOPR regarding multiple refrigerants (which would have required representations based on the least-efficient refrigerant) is already included and clarified in the provision adopted at 10 CFR 429.43(a)(3)(iv)(A) (which require representations based on the least-efficient individual model (and thus also the least-efficient refrigerant), with the exception mentioned earlier in this paragraph), and that the refrigerant-specific provisions proposed in the February 2022 NOPR at 10 CFR 429.43(a)(3) would be redundant. As such, in this final rule, DOE is not adopting the refrigerant-specific language proposed in the February 2022 NOPR.

Regarding the CA IOU's comment requesting provision allowing additional representations within a basic model for different refrigerants, DOE has concluded that because the efficiency of the CRAC could be impacted by different refrigerant choices, the least-efficient individual model requirement necessitates consideration of the least-efficient refrigerant when determining represented values for that basic model. Therefore, DOE is not adopting the CA IOUs' suggestion to allow representations for multiple refrigerants within a single basic model, because it would be inconsistent with the Department's adopted requirement that the represented values for a basic model be based on the least-efficient individual model.

2. Net Sensible Cooling Capacity

For CRACs, net sensible cooling capacity (''NSCC'') determines equipment class, which in turn determines the applicable energy conservation standard. 10 CFR 431.97. In the February 2022 NOPR, DOE noted that while NSCC is a required represented value for CRACs, DOE does not currently specify provisions for CRACs regarding how close the represented value of NSCC must be to the tested or alternative energy-efficiency determination method (''AEDM'') simulated NSCC, or whether DOE will use measured or certified NSCC to determine equipment class for enforcement testing. 87 FR 6948, 6967 (Feb. 7, 2022). DOE proposed to add to its regulations the following provisions regarding NSCC for CRACs: (1) a requirement that the represented NSCC be between 95 percent and 100 percent of the tested or AEDM-simulated cooling capacity; and (2) an enforcement provision stating that DOE would use the mean of measured NSCC values from testing, rather than the certified cooling capacity, to determine the applicable standards. *Id.*

AHRI expressed support for DOE's proposal that the represented NSCC be between 95 percent and 100 percent of the tested or AEDM-simulated cooling capacity. (AHRI, No. 9 at p. 8) However, AHRI opposed DOE's proposed enforcement provision of using the mean of measured NSCC values from testing to determine the applicable standards, rather than the certified NSCC, stating that this is a deviation from the current requirement that DOE conduct statistical averaging of three units to confirm published capacity, and that this proposal was presented without supporting evidence necessary to make the change. *Id.* AHRI recommended that DOE apply enforcement provisions similar to those for packaged terminal air conditioners

(''PTACs''), which specify in paragraph (e) of 10 CFR 429.134 that if the certified cooling capacity is found to be ''valid'' based on the 5-percent allowance to the tested mean, the reported certified value of cooling capacity is used in the next steps of decision making rather than just the mean itself. *Id.* AHRI noted that this 5-percent allowance is also currently provided for portable air conditioners, water heaters, and dehumidifiers. AHRI stated that using just the mean of the measurement(s) to determine the applicable standard with which the model must comply is too restrictive and does not follow precedence set by similar products. *Id.*

In response, DOE acknowledges that the enforcement provisions for PTACs specified at 10 CFR 429.134(e) are different than those specified for CUACs at 10 CFR 429.134(g) (which are consistent with the provisions proposed for CRACs). However, the efficiency standards for PTACs are linearly variable with capacity (*i.e.,* a change in PTAC capacity changes the minimum efficiency required). This relationship between capacity and the applicable standard justifies DOE's approach for PTACs to use the reported certified value of cooling capacity if the certified cooling capacity is found to be within tolerance. In contrast, the energy conservation standards for CRACs are based on equipment classes that are differentiated based on fixed-capacity thresholds (*i.e.,* no linear relationship between capacity and the applicable standard). As noted, the proposed provisions for CRACs are consistent with the current enforcement provisions for CUACs at 10 CFR 429.134(g), which have similar capacity thresholds for equipment classes and also have fixed efficiency standards within each class. To maintain consistency with the approach used for other similarly situated commercial air conditioning and heating equipment with equipment classes based on fixed-capacity thresholds, DOE is adopting the enforcement provisions specifying that DOE would use the mean of measured cooling capacity values from testing to determine the applicable standards.

3. Validation Class for Glycol-Cooled CRACs

DOE's existing testing regulations allow the use of an AEDM, in lieu of actual testing, to simulate the efficiency of CRACs. 10 CFR 429.43(a). In the AEDM requirements for CRACs in 10 CFR 429.70, the table itemizing validation classes for commercial HVAC equipment inadvertently omits glycol-cooled CRACs, which DOE understands to be similar in design to water-cooled CRACs. To address this, in the February 2022 NOPR, DOE proposed to include glycol-cooled CRACs in the existing validation class for water-cooled CRACs at 10 CFR 429.70(c)(2)(iv). 87 FR 6948, 6968 (Feb. 7, 2022). Specifically, DOE proposed at 10 CFR 429.70(c)(2)(iv) that the minimum number of distinct water-cooled and/or glycol-cooled models that must be tested per AEDM would be two basic models, which aligns with the ''two basic model'' requirement that currently applies to the water-cooled CRACs validation class. *Id.*

DOE did not receive any comments regarding this proposal, and for the reasons discussed in the preceding paragraph and the February 2022 NOPR, DOE is adopting this change as proposed.

H. Effective and Compliance Dates

As noted in the **DATES** section of this document, the effective date for the adopted test procedure amendments for CRACs is 30 days after publication of this final rule in the **Federal Register**. Regarding the compliance date, EPCA prescribes that, if DOE amends a test procedure, all representations of energy efficiency and energy use, including those made in the context of certification and on marketing materials and product labels, must be made in accordance with an amended test procedure, beginning 360 days after publication of the final rule in the **Federal Register**. (42 U.S.C. 6314(d)(1)) However, CRACs are not required to be tested according to the test procedure in appendix E1 (that relies on the NSenCOP metric) until the compliance date of amended energy conservation standards denominated in terms of the NSenCOP metric, should DOE adopt such standards.

I. Test Procedure Costs

EPCA requires that the test procedures for commercial package air conditioning and heating equipment be generally accepted industry testing procedures or rating procedures developed or recognized by either AHRI or ASHRAE, as referenced in ASHRAE Standard 90.1. (42 U.S.C. 6314(a)(4)(A)) Further, if such an industry test procedure is amended, DOE must amend its test procedure to be consistent with the amended industry test procedure unless DOE determines, by rule published in the **Federal Register** and supported by clear and convincing evidence, that such an amended test procedure would not meet the requirements in 42 U.S.C. 6314(a)(2)–(3) related to representative use and test burden. (42 U.S.C. 6314(a)(4)(B)) In this final rule, DOE is amending the existing test procedure for CRACs, by adopting the industry test standard AHRI 1360–2022, including the energy efficiency metric, NSenCOP. DOE is also amending its representation and enforcement provisions for CRACs.

In the February 2022 NOPR, DOE walked through the anticipated compliance costs associated with the proposed test procedure and tentatively determined that the test procedure proposals presented in the NOPR would not increase testing burden for most CRAC manufacturers (*i.e.,* CRAC manufacturers who are AHRI members), compared to current industry practice as indicated by AHRI 1360–202X Draft, and that those proposed amendments would not have a significant impact on the remaining CRAC manufacturers (*i.e.,* CRAC manufacturers who are not AHRI members). 87 FR 6948, 6968–6970 (Feb. 7, 2022).

AHRI commented that manufacturers, particularly of up-flow CRACs, will experience significant impact if DOE adopts AHRI 1360–202X Draft, rather than AHRI 1360–2017, noting that AHRI 1360–202X Draft includes a revised right-angle static pressure deduction based on a study conducted on forward curve fans, which changes the static pressure deduction from a fixed 0.3 inches water gauge to one based on velocity. (AHRI, No. 9 at pp. 8–9)

In response, DOE first notes that as previously mentioned, AHRI 1360–202X Draft has been finalized as AHRI 1360–2022. The amended test procedure adopted in this final rule does not impose any additional test ducting provisions beyond those included in the amended industry consensus test procedure, AHRI 1360–2022. Additionally, DOE notes that the test provision for up-flow CRACs highlighted by AHRI is an alternate ducting methodology to be used when there is limited chamber height to meet the ducting requirements of ANSI/ASHRAE Standard 37, which are referenced in both ANSI/ASHRAE 127–2007 and AHRI 1360–2022. For most up-flow CRAC units (*i.e.,* all CRACs except for tall units with large discharge duct dimensions), manufacturers can still choose to test their units in taller test chambers using the ducting requirements of ANSI/ASHRAE Standard 37, which comply with both the current CRAC test procedure and the amended test procedure adopted in this final rule. Further, DOE notes that the AEDM provision in 10 CFR 429.70 allow the use of AEDMs to develop ratings for CRACs, and, thus, manufacturers would not be required to test their very tall up-flow CRACs.

DOE has determined that the amendments in this final rule will improve the representativeness, accuracy, and reproducibility of the test results and will not be unduly burdensome for manufacturers to conduct or result in increased testing cost as compared to the current test procedure. Because the current DOE test procedure for CRACs is being relocated to appendix E without change, the test procedure in appendix E for measuring SCOP will result in no change in testing practices. Should DOE adopt the proposed standards in the ongoing energy conservation standards rulemaking (*see* 87 FR 12802 (March 7, 2022)) denominated in terms of the new metric (*i.e.,* NSenCOP), the amended test procedure in appendix E1 for measuring NSenCOP (as per AHRI 1360–2022) would be required for use upon the compliance date of such standards.

DOE has concluded that the test procedure at appendix E will not increase third-party lab testing costs per unit relative to the current DOE test procedure, which DOE estimates to be $10,200 (for CRACs that are physically tested [27]). However, DOE has concluded that the potential adoption of standards denominated in terms of NSenCOP (and the corresponding requirement to use the amended test procedure in appendix E1) would alter the measured energy efficiency for CRACs. Consequently, manufacturers would likely not be able to rely on data generated under the current test procedure and would, therefore, be required to re-rate CRAC models. In accordance with 10 CFR 429.70, CRAC manufacturers may elect to use AEDMs to rate models, which significantly reduces costs to industry. DOE estimates the per-manufacturer cost to develop and validate an AEDM for CRACs to be $46,000. DOE estimates a cost of approximately $50 per basic model [28] for determining energy efficiency using the validated AEDM.

Given that most CRAC manufacturers are AHRI members, and that DOE is adopting the procedure in the prevailing industry test procedure that was established for use in AHRI's certification program, which has already been updated to include NSenCOP, DOE expects that most manufacturers will already be testing using the published version of the AHRI 1360–2022 in the timeframe of any potential future energy conservation standard. Based on this, DOE has determined that the test procedure amendments are not expected to increase the testing burden on CRAC manufacturers that are AHRI members. For the minority of CRAC manufacturers that are not members of AHRI, the test procedure amendments may have costs associated with model re-rating, to the extent that the manufacturers would not already be testing to the updated industry test procedure.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

Executive Order (''E.O.'') 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993), as supplemented and reaffirmed by E.O. 13563, ''Improving Regulation and Regulatory Review,'' 76 FR 3821 (Jan. 21, 2011), requires agencies, to the extent permitted by law, to: (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (''OIRA'') in the Office of Management and Budget (''OMB'') has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, this 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 final regulatory action does not constitute a ''significant regulatory action'' under section 3(f) of E.O. 12866. Accordingly, this action was not submitted to OIRA for review under E.O. 12866.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of a final regulatory flexibility analysis (FRFA) for any final rule where the agency was first required by law to publish a proposed rule for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003 to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website: *www.energy.gov/gc/office-general-counsel.* DOE reviewed this final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003.

On February 7, 2022, DOE published in the **Federal Register** a notice of proposed rulemaking (''February 2022 NOPR'') proposing to update the references in the Federal test procedures to the most recent version of the relevant industry test procedures as they relate to computer room air conditioners (''CRACs'').

As part of the February 2022 NOPR, DOE conducted its initial regulatory flexibility analysis (''IRFA''). 87 FR 6948, 6969–6970 (Feb. 7, 2022). DOE

[27] Manufacturers are not required to perform laboratory testing on all basic models. In accordance with 10 CFR 429.70, CRAC manufacturers may elect to use AEDMs. An AEDM is a computer modeling or mathematical tool that predicts the performance of non-tested basic models. These computer modeling and mathematical tools, when properly developed, can provide a means to predict the energy usage or efficiency characteristics of a basic model of a given covered product or equipment and reduce the burden and cost associated with testing.

[28] DOE estimated initial costs to validate an AEDM assuming 80 hours of general time to develop an AEDM based on existing simulation tools and 16 hours to validate two basic models within that AEDM at the cost of an engineering technician wage of $50 per hour plus the cost of third-party physical testing of two units per validation class (as required in 10 CFR 429.70(c)(2)(iv)). DOE estimated the additional per basic model cost to determine efficiency using an AEDM, assuming 1 hour per basic model at the cost of an engineering technician wage of $50 per hour.

used the Small Business Administration (''SBA'') small business size standards to determine whether manufacturers qualify as small businesses, which are listed by the North American Industry Classification System (NAICS).[29] The SBA considers a business entity to be a small business, if, together with its affiliates, it employs less than a threshold number of workers specified in 13 CFR part 121.

CRAC manufacturers are classified under NAICS code 333415, ''Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.'' In 13 CFR 121.201, the SBA sets a threshold of 1,250 employees or fewer for an entity to be considered as a small business for this category. DOE utilized the California Energy Commission's Modernized Appliance Efficiency Database System (''MAEDbS'')[30] and DOE's Compliance Certification Database (''CCD'')[31] in identifying potential small businesses that manufacture CRACs covered by this rulemaking. DOE used subscription-based business information tools (*e.g.,* reports from Dun & Bradstreet[32]) to determine headcount and revenue of those small businesses. DOE identified nine companies that are original equipment manufacturers (''OEMs'') of CRACs covered by this rulemaking. DOE screened out companies that do not meet the definition of a ''small business'' or are foreign-owned and operated. DOE identified three small, domestic OEMs for consideration and noted that one small, domestic OEM was not an AHRI member, while the other two small, domestic OEMs were AHRI members. 87 FR 6948, 6969 (Feb. 7, 2022). DOE noted that small businesses would be expected to have different potential regulatory costs depending on whether they are a member of AHRI or not. *Id.* at 87 FR 6970. DOE requested comment on the number of small businesses DOE identified and on the potential costs for the small business that is not an AHRI member and manufactures CRACs. *Id.*

On that topic, AHRI commented that it represented the following single package vertical units (''SPVU'') companies that likely met the criteria of small businesses that could be disproportionally impacted by amended energy conservation standards: Bard Manufacturing Company, Marvair, Systemair, Temspec, and United CoolAir. (AHRI, No. 9 at p. 9)

In response to AHRI's comment, DOE evaluated the four manufacturers mentioned by AHRI and their product offerings. While these manufacturers primarily manufacture SPVUs, which are not the subject of this rulemaking, DOE's review found that two of these manufacturers also offer products that meet the definition of wall-mounted CRAC adopted in this final rule. One of the two manufacturers qualifies as a small business under the applicable NAICS code (NAICS code 333415). However, DOE notes that there are currently no energy conservation standards for wall-mounted CRACs, and this is a test procedure rulemaking with no proposed amendments to energy conservation standards. Furthermore, DOE notes that no standards were proposed for wall-mounted CRACs in the March 2022 ECS NOPR. Consequently, these two manufacturers would not incur costs as a result of this final rule unless they choose to make voluntary representations regarding the NSenCOP of the subject equipment. Further, DOE is not adopting any test requirements for wall-mounted CRACs that are not included in the industry consensus test procedure AHRI 1360–2022. Additionally, AHRI's comment suggests that these manufacturers are AHRI members. Therefore, as discussed later in this section, it is DOE's conclusion that the test procedure amendments would not add any additional testing burden (beyond the updated industry consensus test procedure) to manufacturers that are members of AHRI.

In this final rule, DOE is relocating the current DOE test procedure to a new appendix E of subpart F of part 431 (''appendix E'') without change. DOE is also establishing an amended test procedure at appendix E1 to subpart F of part 431 (''appendix E1''), which incorporates by reference the updated industry test standard AHRI 1360–2022 for CRACs. Additionally, this final rule amends certain representation and enforcement provisions for CRACs in 10 CFR part 429.

Appendix E does not contain any changes from the current Federal test procedure, and, therefore, will not impose no cost on industry and will not require retesting solely as a result of DOE's adoption of this amendment to the test procedure.

The amended test procedure in appendix E1 includes amendments for measuring CRAC energy efficiency using the NSenCOP metric so as to be consistent with the updated industry test procedure. Should DOE adopt amended energy conservation standards in the future that are denominated in terms of NSenCOP (as proposed in the March 2022 ECS NOPR), DOE expects there would not be an increase in third-party lab testing costs per unit relative to the current Federal test procedure. DOE estimates such testing costs to be $10,200 per unit for physical testing. DOE has concluded that the amended test procedure may require re-rating of CRAC models; however, this would not be mandatory until such time as DOE amends the energy conservation standards for CRACs based on NSenCOP, should DOE adopt such amendments.

If CRAC manufacturers conduct physical testing to certify a basic model, two units are required to be tested per basic model. However, manufacturers are not required to perform laboratory testing on all basic models, as CRAC manufacturers may elect to use AEDMs.[33] An AEDM is a computer modeling or mathematical tool that predicts the performance of non-tested basic models. These computer modeling and mathematical tools, when properly developed, can provide a means to predict the energy usage or efficiency characteristics of a basic model of a given covered product or equipment and reduce the burden and cost associated with testing.

Small businesses would be expected to have different potential regulatory costs depending on whether they are a member of AHRI. DOE understands that all AHRI members and all manufacturers currently certifying to the AHRI Directory will be testing their CRAC models in accordance with AHRI 1360–2022, the industry test procedure DOE is incorporating by reference, and using AHRI's certification program, which has already been updated to include the NSenCOP metric.

The test procedure amendments would not add any additional testing burden to manufacturers that are members of AHRI, as those members currently are or soon will be using the AHRI 1360–2022 test procedure. If DOE were to adopt energy conservation standards denominated in terms of the NSenCOP metric, the amended test procedure may, however, result in re-rating costs for manufacturers which are

[29] The size standards are listed by NAICS code and industry description and are available at: *www.sba.gov/document/support--table-size-standards* (last accessed on August 30, 2021).

[30] MAEDbS can be accessed at *www.cacertappliances.energy.ca.gov/Pages/Search/AdvancedSearch.aspx* (last accessed August 30, 2021).

[31] Certified equipment in the CCD are listed by product class and can be accessed at *www.regulations.doe.gov/certification-data/#q=Product_Group_s%3A** (last accessed August 30, 2021).

[32] Market research available at: *app.dnbhoovers.com* (last accessed August 30, 2021).

[33] In accordance with 10 CFR 429.70.

not AHRI members (currently one identified OEM).

DOE estimated the range of additional potential testing costs for the single small CRAC manufacturer that is not an AHRI member. This small business would only incur additional testing costs if they would not already be using AHRI 1360–2022 to test their CRAC models. DOE estimates that this small business manufactures 113 basic models.

When developing cost estimates for this single, non-AHRI-member small business, DOE considered the cost to develop an AEDM, the costs to validate the AEDM through physical testing, and the cost per model to determine ratings using the AEDM. DOE anticipates that this small OEM would avail itself of the cost-saving option which the AEDM provides. DOE estimated the cost to develop and validate an AEDM for CRACs to be approximately $46,000, which includes physical testing of two models per validation class. Additionally, DOE estimated a cost of approximately $50 per basic model for determining energy efficiency using the validated AEDM. The estimated cost to rate the 113 basic models with the AEDM would be $5,650. Therefore, should DOE adopt amended energy conservation standards denominated in terms of NSenCOP as the efficiency metric (as proposed in the March 2022 ECS NOPR), this small business could incur total testing and rating costs of $51,650. DOE understands the annual revenue of this small business to be approximately $17 million. Therefore, testing and AEDM costs could cause this small business manufacturer to incur costs of up to 0.30 percent of its annual revenue.

Therefore, for the reasons stated in the preceding paragraphs, DOE concludes and certifies that the cost effects accruing from this test procedure final rule would not have a ''significant economic impact on a substantial number of small entities,'' and that the preparation of a FRFA is not warranted. DOE has submitted a certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of CRACs must certify to DOE that their products comply with any applicable energy conservation standards. To certify compliance, manufacturers must first obtain test data for their products according to the DOE test procedures, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including CRACs. (*See* generally 10 CFR part 429.) The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

DOE is not amending the certification or reporting requirements for CRACs in this final rule. Instead, DOE may consider proposals to amend the certification requirements and reporting for CRACs under a separate rulemaking regarding appliance and equipment certification. DOE will address changes to OMB Control Number 1910–1400 at that time, as necessary.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

DOE has analyzed this regulation in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.;* ''NEPA'') and DOE's NEPA implementing regulations (10 CFR part 1021). In this final rule, DOE establishes test procedure amendments that it expects will be used to develop and implement future energy conservation standards for CRACs. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under NEPA and DOE's implementing regulations, because it is a rulemaking that interprets or amends an existing rule or regulation that does not change the environmental effect of the rule or regulation being amended. Specifically, DOE has determined that adopting test procedures for measuring energy efficiency of consumer products and industrial equipment is consistent with activities identified in 10 CFR part 1021, subpart D, appendix A, sections A5 and A6. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 10, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE examined this final rule and has determined that it 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. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the

retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action resulting in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *www.energy.gov/gc/office-general-counsel.* DOE examined this final rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), that this regulation will not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at *www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf.* DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the regulation is implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This regulatory action to amend the test procedure for measuring the energy efficiency of CRACs is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; ''FEAA'') Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (''FTC'') concerning the impact of the commercial or industry standards on competition.

The amendments to the Federal test procedure for CRACs contained in this final rule adopt testing methods contained in certain sections of the following commercial standards: AHRI 1360–2022, ANSI/ASHRAE 37–2009, and ANSI/ASHRAE 127–2020. DOE has evaluated these standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the FEAA (*i.e.,* whether they were developed in a manner that fully provides for public participation, comment, and review.) DOE has consulted with both the Attorney General and the Chairman of the FTC about the impact on competition of using the methods contained in these standards and has received no comments objecting to their use.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule before its effective date. The report will state that it has been determined that the final rule is not a

''major rule'' as defined by 5 U.S.C. 804(2).

N. Description of Materials Incorporated by Reference

In this final rule, DOE incorporates by reference the following test standards:

AHRI 1360–2022 is an industry-accepted test standard for measuring the performance of CRACs. AHRI 1360–2022 is available from AHRI at *www.ahrinet.org/search-standards.aspx.*

ANSI/ASHRAE 37–2009 is an industry-accepted test procedure that provides a method of test for many categories of air conditioning and heating equipment. ANSI/ASHRAE 37–2009 is available from ASHRAE and on ANSI's website at *webstore.ansi.org/RecordDetail.aspx?sku=ANSI%2FASHRAE+Standard+37-2009.*

ANSI/ASHRAE 127–2007 is an industry-accepted test procedure for measuring the performance of CRACs. ANSI/ASHRAE 127–2007 is available from ASHRAE and on ANSI's website at *https://webstore.ansi.org/standards/ashrae/ansiashrae1272007.*

ANSI/ASHRAE 127–2020 is an industry-accepted test procedure for measuring the performance of CRACs, which updates ANSI/ASHRAE 127–2007 to include new CRAC cooling configurations. ANSI/ASHRAE 127–2020 is available from ASHRAE and on ANSI's website at *webstore.ansi.org/standards/ashrae/ansiashrae1272020.*

The following standards were previously approved for incorporation by reference in the sections where they appear and no change is made: AHRI 210/240–2008, AHRI 340/360–2007, and ISO Standard 13256–1.

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects

10 CFR Part 429

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Small businesses.

10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation, Incorporation by reference, Reporting and recordkeeping requirements.

Signing Authority

This document of the Department of Energy was signed on March 28, 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 March 28, 2023.

Treena V. Garrett,

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

For the reasons stated in the preamble, DOE is amending parts 429 and 431 of chapter II of title 10, Code of Federal Regulations as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 2. Amend § 429.4 by:

■ a. Removing the text ''http://'' wherever it appears;

■ b. Redesignating paragraph (c)(5) as paragraph (c)(6); and

■ c. Adding new paragraph (c)(5).

The addition reads as follows:

§ 429.4 Materials incorporated by reference.

* * * * *

(c) * * *

(5) AHRI Standard 1360–2022 (I–P) (''AHRI 1360–2022''), *2022 Standard for Performance Rating of Computer and Data Processing Room Air Conditioners,* copyright 2022; IBR approved for § 429.43.

* * * * *

■ 3. Amend § 429.43 by adding paragraph (a)(3)(iv) to read as follows.

§ 429.43 Commercial heating, ventilating, air conditioning (HVAC) equipment (excluding air-cooled, three-phase, small commercial package air conditioning and heating equipment with a cooling capacity of less than 65,000 British thermal units per hour and air-cooled, three-phase, variable refrigerant flow multi-split air conditioners and heat pumps with less than 65,000 British thermal units per hour cooling capacity).

(a) * * *

(3) * * *

(iv) *Computer room air conditioners.* When certifying to standards in terms of net sensible coefficient of performance (NSenCOP), the following provisions apply.

(A) For individual model selection:

(*1*) Representations for a basic model must be based on the least-efficient individual model(s) distributed in commerce among all otherwise comparable model groups comprising the basic model, except as provided in paragraph (a)(3)(iv)(A)(*2*) of this section for individual models that include components listed in table 5 to paragraph (a)(3)(iv)(A) of this section. For the purpose of this paragraph (a)(3)(iv)(A)(*1*), *otherwise comparable model group* means a group of individual models distributed in commerce within the basic model that do not differ in components that affect energy consumption as measured according to the applicable test procedure specified at 10 CFR 431.96 other than those listed in table 5 to paragraph (a)(3)(iv)(A) of this section. An otherwise comparable model group may include individual models distributed in commerce with any combination of the components listed in table 5 (or none of the components listed in table 5). An otherwise comparable model group may consist of only one individual model.

(*2*) For a basic model that includes individual models distributed in commerce, with components listed in table 5 to paragraph (a)(3)(iv)(A) of this section, the requirements for determining representations apply only to the individual model(s) of a specific otherwise comparable model group distributed in commerce with the least number (which could be zero) of components listed in table 5 to paragraph (a)(3)(iv)(A) included in individual models of the group. Testing under this paragraph (a)(3)(iv)(A)(*2*) shall be consistent with any component-specific test provisions specified in section 4 of appendix E1 to subpart F of 10 CFR part 431.

TABLE 5 TO PARAGRAPH (a)(3)(iv)(A)—SPECIFIC COMPONENTS FOR COMPUTER ROOM AIR CONDITIONERS

Component	Description
Air Economizers	An automatic system that enables a cooling system to supply and use outdoor air to reduce or eliminate the need for mechanical cooling during mild or cold weather.
Process Heat Recovery/Reclaim Coils/Thermal Storage.	A heat exchanger located inside the unit that conditions the equipment's supply air using energy transferred from an external source using a vapor, gas, or liquid.
Evaporative Pre-cooling of Air-cooled Condenser Intake Air.	Water is evaporated into the air entering the air-cooled condenser to lower the dry-bulb temperature and thereby increase efficiency of the refrigeration cycle.
Steam/Hydronic Heat Coils	Coils used to provide supplemental heat.
Refrigerant Reheat Coils	A heat exchanger located downstream of the indoor coil that heats the supply air during cooling operation using high pressure refrigerant in order to increase the ratio of moisture removal to cooling capacity provided by the equipment.
Powered Exhaust/Powered Return Air Fans	A powered exhaust fan is a fan that transfers directly to the outside a portion of the building air that is returning to the unit, rather than allowing it to recirculate to the indoor coil and back to the building. A powered return air fan is a fan that draws building air into the equipment.
Compressor Variable Frequency Drive (VFD)	A device connected electrically between the equipment's power supply connection and the compressor that can vary the frequency of power supplied to the compressor in order to allow variation of the compressor's rotational speed. If the manufacturer chooses to make representations for performance at part-load and/or low-ambient conditions, compressor VFDs must be treated consistently for all cooling capacity tests for the basic model (*i.e.,* if the compressor VFD is installed and active for the part-load and/or low-ambient tests, it must also be installed and active for the NSenCOP test).
Fire/Smoke/Isolation Dampers	A damper assembly including means to open and close the damper mounted at the supply or return duct opening of the equipment.
Non-Standard Indoor Fan Motors	The standard indoor fan motor is the motor specified in the manufacturer's installation instructions for testing and shall be distributed in commerce as part of a particular model. A non-standard motor is an indoor fan motor that is not the standard indoor fan motor and that is distributed in commerce as part of an individual model within the same basic model. For a non-standard indoor fan motor(s) to be considered a specific component for a basic model (and thus subject to the provisions of paragraph (a)(3)(iv)(A) of this section), the following provisions must be met: 1. Non-standard indoor fan motor(s) must meet the minimum allowable efficiency determined per section D.2.1 of AHRI 1360–2022 (incorporated by reference, see § 429.4) (*i.e.,* for non-standard indoor fan motors) or per section D.2.2 of AHRI 1360–2022 for non-standard indoor integrated fan and motor combinations). If the standard indoor fan motor can vary fan speed through control system adjustment of motor speed, all non-standard indoor fan motors must also allow speed control (including with the use of VFD).
Humidifiers	A device placed in the supply air stream for moisture evaporation and distribution. The device may require building steam or water, hot water, electricity, or gas to operate.
Flooded Condenser Head Pressure Controls	An assembly, including a receiver and head pressure control valve, used to allow for unit operation at lower outdoor ambient temperatures than the standard operating control system.
Chilled Water Dual Cooling Coils	A secondary chilled water coil added in the indoor air stream for use as the primary or secondary cooling circuit in conjunction with a separate chiller.
Condensate Pump	A device used to pump condensate and/or humidifier drain water from inside the unit to a customer drain outside the unit.

(B) The represented value of net sensible cooling capacity must be between 95 percent and 100 percent of the mean of the capacities measured for the units in the sample selected as described in paragraph (a)(1)(ii) of this section, or between 95 percent and 100 percent of the net sensible cooling capacity output simulated by the AEDM as described in paragraph (a)(2) of this section.

* * * * *

■ 4. Amend § 429.70 by revising the table in paragraph (c)(2)(iv) to read as follows:

§ 429.70 Alternative methods for determining energy efficiency and energy use.

* * * * *

(c) * * *

(2) * * *

(iv) * * *

TABLE 1 TO PARAGRAPH (c)(2)(iv)

Validation class	Minimum number of distinct models that must be tested per AEDM
(A) Commercial HVAC Validation Classes	
Air-Cooled, Split and Packaged ACs and HPs Greater than or Equal to 65,000 Btu/h Cooling Capacity and Less than 760,000 Btu/h Cooling Capacity.	2 Basic Models.
Water-Cooled, Split and Packaged ACs and HPs, All Cooling Capacities	2 Basic Models.
Evaporatively-Cooled, Split and Packaged ACs and HPs, All Capacities	2 Basic Models.
Water-Source HPs, All Capacities	2 Basic Models.
Single Package Vertical ACs and HPs	2 Basic Models.
Packaged Terminal ACs and HPs	2 Basic Models.

TABLE 1 TO PARAGRAPH (c)(2)(iv)—Continued

Validation class	Minimum number of distinct models that must be tested per AEDM
Air-Cooled, Variable Refrigerant Flow ACs and HPs Greater than or Equal to 65,000 Btu/h Cooling Capacity.	2 Basic Models.
Water-Cooled, Variable Refrigerant Flow ACs and HPs	2 Basic Models.
Computer Room Air Conditioners, Air Cooled	2 Basic Models.
Computer Room Air Conditioners, Water-Cooled and Glycol-Cooled	2 Basic Models.
Direct Expansion-Dedicated Outdoor Air Systems, Air-cooled or Air-source Heat Pump, Without Ventilation Energy Recovery Systems.	2 Basic Models.
Direct Expansion-Dedicated Outdoor Air Systems, Air-cooled or Air-source Heat Pump, With Ventilation Energy Recovery Systems.	2 Basic Models.
Direct Expansion-Dedicated Outdoor Air Systems, Water-cooled, Water-source Heat Pump, or Ground Source Closed-loop Heat Pump, Without Ventilation Energy Recovery Systems.	2 Basic Models.
Direct Expansion-Dedicated Outdoor Air Systems, Water-cooled, Water-source Heat Pump, or Ground Source Closed-loop Heat Pump, With Ventilation Energy Recovery Systems.	2 Basic Models.
(B) Commercial Water Heater Validation Classes	
Gas-fired Water Heaters and Hot Water Supply Boilers Less than 10 Gallons	2 Basic Models.
Gas-fired Water Heaters and Hot Water Supply Boilers Greater than or Equal to 10 Gallons	2 Basic Models.
Oil-fired Water Heaters and Hot Water Supply Boilers Less than 10 Gallons	2 Basic Models.
Oil-fired Water Heaters and Hot Water Supply Boilers Greater than or Equal to 10 Gallons	2 Basic Models.
Electric Water Heaters	2 Basic Models.
Heat Pump Water Heaters	2 Basic Models.
Unfired Hot Water Storage Tanks	2 Basic Models.
(C) Commercial Packaged Boilers Validation Classes	
Gas-fired, Hot Water Only Commercial Packaged Boilers	2 Basic Models.
Gas-fired, Steam Only Commercial Packaged Boilers	2 Basic Models.
Gas-fired Hot Water/Steam Commercial Packaged Boilers	2 Basic Models.
Oil-fired, Hot Water Only Commercial Packaged Boilers	2 Basic Models.
Oil-fired, Steam Only Commercial Packaged Boilers	2 Basic Models.
Oil-fired Hot Water/Steam Commercial Packaged Boilers	2 Basic Models.
(D) Commercial Furnace Validation Classes	
Gas-fired Furnaces	2 Basic Models.
Oil-fired Furnaces	2 Basic Models.
(E) Commercial Refrigeration Equipment Validation Classes [1]	
Self-Contained Open Refrigerators	2 Basic Models.
Self-Contained Open Freezers	2 Basic Models.
Remote Condensing Open Refrigerators	2 Basic Models.
Remote Condensing Open Freezers	2 Basic Models.
Self-Contained Closed Refrigerators	2 Basic Models.
Self-Contained Closed Freezers	2 Basic Models.
Remote Condensing Closed Refrigerators	2 Basic Models.
Remote Condensing Closed Freezers	2 Basic Models.

[1] The minimum number of tests indicated above must be comprised of a transparent model, a solid model, a vertical model, a semi-vertical model, a horizontal model, and a service-over-the counter model, as applicable based on the equipment offering. However, manufacturers do not need to include all types of these models if it will increase the minimum number of tests that need to be conducted.

* * * * *

■ 5. Amend § 429.134 by adding paragraph (aa) to read as follows:

§ 429.134 Product-specific enforcement provisions.

* * * * *

(aa) *Computer room air conditioners.* The following provisions apply for assessment and enforcement testing of models subject to energy conservation standards denominated in terms of NSenCOP.

(1) *Verification of net sensible cooling capacity.* The net sensible cooling capacity of each tested unit of the basic model will be measured pursuant to the test requirements of 10 CFR part 431, subpart F, appendix E1. The mean of the net sensible cooling capacity measurement(s) will be used to determine the applicable energy conservation standards for purposes of compliance.

(2) *Specific components.* If a basic model includes individual models with components listed at table 5 to § 429.43(a)(3)(iv)(A) and DOE is not able to obtain an individual model with the least number (which could be zero) of those components within an otherwise comparable model group (as defined in § 429.43(a)(3)(iv)(A)(*1*)), DOE may test any individual model within the otherwise comparable model group.

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 6. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 7. Section 431.92 is amended by:

■ a. Revising the introductory text;

■ b. Adding, in alphabetical order, definitions for ''Ceiling-mounted,'' ''Ceiling-mounted ducted,'' and ''Ceiling-mounted non-ducted'';
■ c. Removing the definition for ''Computer Room Air Conditioner'' and adding the definition ''Computer room air conditioner'' in its place; and
■ d. Adding, in alphabetical order, definitions for ''Down-flow,'' ''Floor-mounted,'' ''Fluid economizer,'' ''Horizontal-flow,'' ''Net sensible coefficient of performance, or NSenCOP,'' ''Roof-mounted,'' ''Up-flow,'' ''Up-flow ducted,'' ''Up-flow non-ducted,'' and ''Wall-mounted.''

The revisions and additions read as follows:

§ 431.92 Definitions concerning commercial air conditioners and heat pumps.

The following definitions apply for purposes of this subpart, and of subparts J through M of this part. Any words or terms not defined in this section or elsewhere in this part shall be defined as provided in 42 U.S.C. 6311. For definitions that reference the application for which the equipment is marketed, DOE will consider any publicly available document published by the manufacturer (*e.g.,* product literature, catalogs, and packaging labels) to determine marketing intent. For definitions in this section that pertain to computer room air conditioners, italicized terms within a definition indicate terms that are separately defined in this section.

* * * * *

Ceiling-mounted means a configuration of a *computer room air conditioner* for which the unit housing the evaporator coil is configured for indoor installation on or through a ceiling.

Ceiling-mounted ducted means a configuration of a *ceiling-mounted computer room air conditioner* that is configured for use with discharge ducting (even if the unit is also configurable for use without discharge ducting).

Ceiling-mounted non-ducted means a configuration of a *ceiling-mounted computer room air conditioner* that is configured only for use without discharge ducting.

* * * * *

Computer room air conditioner means commercial package air-conditioning and heating equipment (packaged or split) that is marketed for use in computer rooms, data processing rooms, or other information technology cooling applications and not a covered consumer product under 42 U.S.C. 6291(1)–(2) and 42 U.S.C. 6292. A computer room air conditioner may be provided with, or have as available options, an integrated humidifier, temperature and/or humidity control of the supplied air, and reheating function. Computer room air conditioners include, but are not limited to, the following configurations as defined in this section: *down-flow, horizontal-flow, up-flow ducted, up-flow non-ducted, ceiling-mounted ducted, ceiling mounted non-ducted, roof-mounted,* and *wall-mounted.*

* * * * *

Down-flow means a configuration of *floor-mounted computer room air conditioner* in which return air enters above the top of the evaporator coil and discharge air leaves below the bottom of the evaporator coil.

* * * * *

Floor-mounted means a configuration of a *computer room air conditioner* for which the unit housing the evaporator coil is configured for indoor installation on a solid floor, raised floor, or floor-stand. Floor-mounted *computer room air conditioners* are one of the following three configurations: *down-flow, horizontal-flow,* and *up-flow.*

Fluid economizer means an option available with a *computer room air conditioner* in which a fluid (other than air), cooled externally from the unit, provides cooling of the indoor air to reduce or eliminate unit compressor operation when outdoor temperature is low. The fluid may include, but is not limited to, chilled water, water/glycol solution, or refrigerant. An external fluid cooler such as, but not limited to a dry cooler, cooling tower, or condenser is utilized for heat rejection. This component is sometimes referred to as a free cooling coil, econ-o-coil, or economizer.

* * * * *

Horizontal-flow means a configuration of a *floor-mounted computer room air conditioner* that is neither a *down-flow* nor an *up-flow* unit.

* * * * *

Net sensible coefficient of performance, or *NSenCOP,* means a ratio of the net sensible cooling capacity in kilowatts to the total power input in kilowatts for *computer room air conditioners,* as measured in appendix E1 of this subpart.

* * * * *

Roof-mounted means a configuration of a *computer room air conditioner* that is not *wall-mounted,* and for which the unit housing the evaporator coil is configured for outdoor installation.

* * * * *

Up-flow means a configuration of a *floor-mounted computer room air conditioner* in which return air enters below the bottom of the evaporator coil and discharge air leaves above the top of the evaporator coil.

Up-flow ducted means a configuration of an *up-flow computer room air conditioner* that is configured for use with discharge ducting (even if the unit is also configurable for use without discharge ducting).

Up-flow non-ducted means a configuration of an *up-flow computer room air conditioner* that is configured only for use without discharge ducting.

* * * * *

Wall-mounted means a configuration of a *computer room air conditioner* for which the unit housing the evaporator coil is configured for installation on or through a wall.

* * * * *

■ 8. Amend § 431.95 by:
■ a. Adding paragraph (b)(10);
■ b. In paragraph (c)(2), removing the text ''D1, F1'' and adding, in its place, ''D1, E1, F1'';
■ c. In paragraph (c)(7), removing the text ''§ 431.96'' and adding, in its place, ''§ 431.96 and appendix E to this subpart'';
■ d. Redesignating paragraph (c)(8) as paragraph (c)(9); and
■ e. Adding new paragraph (c)(8).

The additions and revisions read as follows:

§ 431.95 Materials incorporated by reference.

* * * * *

(b) * * *

(10) AHRI Standard 1360–2022 (I–P) (''AHRI 1360–2022''), 2022 *Standard for Performance Rating of Computer and Data Processing Room Air Conditioners,* copyright 2022; IBR approved for appendix E1 to this subpart.

(c) * * *

(8) ANSI/ASHRAE Standard 127–2020 (''ANSI/ASHRAE 127–2020''), *Method of Rating Air-Conditioning Units Serving Data Center (DC) and Other Information Technology Equipment (ITE) Spaces,* ANSI-approved on November 30, 2020; IBR approved for appendix E1 to this subpart.

* * * * *

■ 9. Amend § 431.96 by revising table 1 to paragraph (b) to read as follows:

§ 431.96 Uniform test method for the measurement of energy efficiency of commercial air conditioners and heat pumps.

* * * * *

(b) * * *

TABLE 1 TO PARAGRAPH (b)—TEST PROCEDURES FOR COMMERCIAL AIR CONDITIONERS AND HEAT PUMPS

Equipment type	Category	Cooling capacity or moisture removal capacity [2]	Energy efficiency descriptor	Use tests, conditions, and procedures [1] in	Additional test procedure provisions as indicated in the listed paragraphs of this section
Small Commercial Package Air-Conditioning and Heating Equipment.	Air-Cooled, 3-Phase, AC and HP.	<65,000 Btu/h	SEER and HSPF	Appendix F to this subpart [3].	None.
			SEER2 and HSPF2	Appendix F1 to this subpart [3].	None.
	Air-Cooled AC and HP	≥65,000 Btu/h and <135,000 Btu/h.	EER, IEER, and COP	Appendix A of this subpart.	None.
	Water-Cooled and Evaporatively-Cooled AC.	<65,000 Btu/h	EER	AHRI 210/240–2008 (omit section 6.5).	Paragraphs (c) and (e).
		≥65,000 Btu/h and <135,000 Btu/h.	EER	AHRI 340/360–2007 (omit section 6.3).	Paragraphs (c) and (e).
	Water-Source HP	<135,000 Btu/h	EER and COP	ISO Standard 13256–1	Paragraph (e).
Large Commercial Package Air-Conditioning and Heating Equipment.	Air-Cooled AC and HP	≥135,000 Btu/h and <240,000 Btu/h.	EER, IEER, and COP	Appendix A to this subpart.	None.
	Water-Cooled and Evaporatively-Cooled AC.	≥135,000 Btu/h and <240,000 Btu/h.	EER	AHRI 340/360–2007 (omit section 6.3).	Paragraphs (c) and (e).
Very Large Commercial Package Air-Conditioning and Heating Equipment.	Air-Cooled AC and HP	≥240,000 Btu/h and <760,000 Btu/h.	EER, IEER, and COP	Appendix A to this subpart.	None.
	Water-Cooled and Evaporatively-Cooled AC.	≥240,000 Btu/h and <760,000 Btu/h.	EER	AHRI 340/360–2007 (omit section 6.3).	Paragraphs (c) and (e).
Packaged Terminal Air Conditioners and Heat Pumps.	AC and HP	<760,000 Btu/h	EER and COP	Paragraph (g) of this section.	Paragraphs (c), (e), and (g).
Computer Room Air Conditioners.	AC	<760,000 Btu/h	SCOP	Appendix E to this subpart [3].	None.
		<760,000 Btu/h	NSenCOP	Appendix E1 to this subpart [3].	None.
Variable Refrigerant Flow Multi-split Systems.	AC	<65,000 Btu/h (3-phase)	SEER	Appendix F to this subpart [3].	None.
			SEER2	Appendix F1 to this subpart [3].	None.
Variable Refrigerant Flow Multi-split Systems, Air-cooled.	HP	<65,000 Btu/h (3-phase)	SEER and HSPF	Appendix F to this subpart [3].	None.
			SEER2 and HSPF2	Appendix F1 to this subpart [3].	None.
Variable Refrigerant Flow Multi-split Systems, Air-cooled.	AC and HP	≥65,000 Btu/h and <760,000 Btu/h.	EER and COP	Appendix D of this subpart [3].	None.
		≥65,000 Btu/h and <760,000 Btu/h.	IEER and COP	Appendix D1 of this subpart [3].	None.
Variable Refrigerant Flow Multi-split Systems, Water-source.	HP	<760,000 Btu/h	EER and COP	Appendix D of this subpart [3].	None.
		<760,000 Btu/h	IEER and COP	Appendix D1 of this subpart [3].	None.
Single Package Vertical Air Conditioners and Single Package Vertical Heat Pumps.	AC and HP	<760,000 Btu/h	EER and COP	Appendix G to this subpart [3].	None.
			EER, IEER, and COP	Appendix G1 to this subpart [3].	None.
Direct Expansion-Dedicated Outdoor Air Systems.	All	<324 lbs. of moisture removal/hr.	ISMRE2 and ISCOP2	Appendix B of this subpart.	None.

[1] Incorporated by reference; see § 431.95.
[2] Moisture removal capacity applies only to direct expansion-dedicated outdoor air systems.
[3] For equipment with multiple appendices listed in this table, consult the notes at the beginning of those appendices to determine the applicable appendix to use for testing.

* * * * *

■ 10. Add appendix E to subpart F of part 431 to read as follows:

Appendix E to Subpart F of Part 431—Uniform Test Method for Measuring the Energy Consumption of Computer Room Air Conditioners

Note: Manufacturers must use the results of testing under this appendix to determine compliance with the relevant energy conservation standards for computer room air conditioners from § 431.97 as that standard appeared in the January 1, 2022 edition of 10 CFR parts 200 through 499. Specifically, representations, including compliance certifications, must be based upon results generated either under this appendix or under 10 CFR 431.96 as it appeared in the 10 CFR parts 200 through 499 edition revised as of January 1, 2022.

For any amended standards for computer room air conditioners that rely on net sensible coefficient of performance (NSenCOP) published after January 1, 2022, manufacturers must use the results of testing under appendix E1 to this subpart to determine compliance. Manufacturers may use appendix E1 to certify compliance with any amended standards prior to the applicable compliance date for those standards.

Specifically, representations, including compliance certifications, related to energy consumption must be based upon results generated under the appropriate appendix that applies (*i.e.,* this appendix or appendix E1 to this subpart) when determining compliance with the relevant standard.

1. *Incorporation by Reference.*

DOE incorporated by reference in § 431.95 the entire standard for ASHRAE 127–2007. However, certain enumerated provisions of ASHRAE 127–2007, as listed in section 1.1, are inapplicable. To the extent that there is a conflict between the terms or provisions of a referenced industry standard and the CFR, the CFR provisions control.

1.1 ASHRAE 127–2007:

(a) Section 5.11 is inapplicable as specified in section 2 of this appendix.

(b) [Reserved]

1.2 [Reserved]

2. *General.* Determine the sensible coefficient of performance (SCOP) in accordance with ASHRAE 127–2007.

3. *Optional break-in period.* Manufacturers may optionally specify a ''break-in'' period, not to exceed 20 hours, to operate the equipment under test prior to conducting the test method specified in this appendix. A manufacturer who elects to use an optional compressor break-in period in its certification testing should record this period's duration as part of the information in the supplemental testing instructions under 10 CFR 429.43.

4. *Additional provisions for equipment set-up.* The only additional specifications that may be used in setting up the basic model for test are those set forth in the installation and operation manual shipped with the unit. Each unit should be set up for test in accordance with the manufacturer installation and operation manuals. Sections 4.1 and 4.2 of this appendix provide specifications for addressing key information typically found in the installation and operation manuals.

4.1. If a manufacturer specifies a range of superheat, sub-cooling, and/or refrigerant pressure in its installation and operation manual for a given basic model, any value(s) within that range may be used to determine refrigerant charge or mass of refrigerant, unless the manufacturer clearly specifies a rating value in its installation and operation manual, in which case the specified rating value must be used.

4.2. The airflow rate used for testing must be that set forth in the installation and operation manuals being shipped to the commercial customer with the basic model and clearly identified as that used to generate the DOE performance ratings. If a rated airflow value for testing is not clearly identified, a value of 400 standard cubic feet per minute (scfm) per ton must be used.

■ 11. Add appendix E1 to subpart F of part 431 to read as follows:

Appendix E1 to Subpart F of Part 431—Uniform Test Method for Measuring the Energy Consumption of Computer Room Air Conditioners

Note: Prior to the compliance date for any amended energy conservation standards based on NSenCOP for computer room air conditioners, representations with respect to energy use or efficiency of this equipment, including compliance certifications, must be based on testing pursuant to appendix E to this subpart. Subsequently, manufacturers must use the results of testing under this appendix to determine compliance with any amended energy conservation standards for computer room air conditioners provided in § 431.97 that are published after January 1, 2022, and that rely on net sensible coefficient of performance (NSenCOP). Specifically, representations, including compliance certifications, related to energy consumption must be based upon results generated under the appropriate appendix that applies (*i.e.,* appendix E to this subpart or this appendix) when determining compliance with the relevant standard. Manufacturers may use this appendix to certify compliance with any amended standards prior to the applicable compliance date for those standards.

1. *Incorporation by Reference*

DOE incorporated by reference in § 431.95 the entire standards for AHRI 1360–2022, ANSI/ASHRAE 37–2009, and ANSI/ASHRAE 127–2020. However, as listed in sections 1.1, 1.2, and 1.3 of this appendix, only certain enumerated provisions of AHRI 1360–2022 and ANSI/ASHRAE 127–2020 are applicable, and only certain enumerated provisions of ANSI/ASHRAE 37–2009 are not applicable. To the extent that there is a conflict between the terms or provisions of a referenced industry standard and the CFR, the CFR provisions control.

1.1 AHRI 1360–2022:

(a) The following sections of Section 3. Definitions—3.1 (Expressions of Provision), 3.2.2 (Air Sampling Device(s)), 3.2.7 (Computer and Data Processing Room Air Conditioner), 3.2.22 (Indoor Unit), 3.2.25 (Manufacturer's Installation Instruction), 3.2.27 (Net Sensible Cooling Capacity), 3.2.28 (Net Total Cooling Capacity), 3.2.37 (Standard Air) and 3.2.38 (Standard Airflow) are applicable.

(b) Section 5. Test Requirements, is applicable.

(c) The following sections of Section 6. Rating Requirements—6.1–6.3, 6.5 and 6.7 are applicable.

(d) Appendix C. Standard Configurations—Normative, is applicable.

(e) Section D2 of Appendix D. Non-Standard Indoor Fan Motors for CRAC units, is applicable.

(f) Appendix E. Method of Testing Computer and Data Processing Room Air Conditioners—Normative, is applicable.

(g) Appendix F. Indoor and Outdoor Air Condition Measurement—Normative is applicable.

1.2 ANSI/ASHRAE 127–2020:

(a) Appendix A—Figure A–1, Test duct for measuring air flow and static pressure on downflow units, is applicable.

(b) [Reserved].

1.3 ASHRAE 37–2009:

(a) Section 1 Purpose is inapplicable.

(b) Section 2 Scope is inapplicable.

(c) Section 4 Classification is inapplicable.

2. General. Determine the net sensible coefficient of performance (NSenCOP), in accordance with AHRI 1360–2022, ANSI/ASHRAE 127–2020, and ANSI/ASHRAE 37–2009. In cases where there is a conflict between these sources, the language of this appendix takes highest precedence, followed by AHRI 1360–2022, followed by ANSI/ASHRAE 127–2020, followed by ANSI/ASHRAE 37–2009. Any subsequent amendment to a referenced document by a standard-setting organization will not affect the test procedure in this appendix, unless and until this test procedure is amended by DOE. Material is incorporated as it exists on the date of the approval, and notification of any change in the incorporation will be published in the **Federal Register**.

3. *Test Conditions*

3.1. *Test Conditions for Certification.* When testing to certify to the energy conservation standards in § 431.97, test using the ''Indoor Return Air Temperature Standard Rating Conditions'' and ''Heat Rejection/Cooling Fluid Standard Rating Conditions'' conditions, as specified in Tables 3 and 4 of AHRI 1360–2022, respectively.

4. *Set-Up and Test Provisions for Specific Components.* When testing a unit that includes any of the features listed in Table 4.1 of this appendix, test in accordance with the set-up and test provisions specified in Table 4.1 of this appendix.

TABLE 4.1—TEST PROVISIONS FOR SPECIFIC COMPONENTS

Component	Description	Test provisions
Air Economizers	An automatic system that enables a cooling system to supply outdoor air to reduce or eliminate the need for mechanical cooling during mild or cold weather.	For any air economizer that is factory-installed, place the economizer in the 100% return position and close and seal the outside air dampers for testing. For any modular air economizer shipped with the unit but not factory-installed, do not install the economizer for testing.
Process Heat Recovery/Reclaim Coils/Thermal Storage	A heat exchanger located inside the unit that conditions the equipment's supply air using energy transferred from an external source using a vapor, gas, or liquid.	Disconnect the heat exchanger from its heat source for testing.

TABLE 4.1—TEST PROVISIONS FOR SPECIFIC COMPONENTS—Continued

Component	Description	Test provisions
Evaporative Pre-cooling of Condenser Intake Air	Water is evaporated into the air entering the air-cooled condenser to lower the dry-bulb temperature and thereby increase efficiency of the refrigeration cycle.	Disconnect the unit from the water supply for testing (*i.e.,* operate without active evaporative cooling).
Steam/Hydronic Heat Coils	Coils used to provide supplemental heat	Test with steam/hydronic heat coils in place but providing no heat.
Refrigerant Reheat Coils	A heat exchanger located downstream of the indoor coil that heats the supply air during cooling operation using high pressure refrigerant in order to increase the ratio of moisture removal to cooling capacity provided by the equipment.	De-activate refrigerant re-heat coils so as to provide the minimum (none if possible) reheat achievable by the system controls.
Fire/Smoke/Isolation Dampers	A damper assembly including means to open and close the damper mounted at the supply or return duct opening of the equipment.	For any fire/smoke/isolation dampers that are factory-installed, close and seal the dampers for testing. For any modular fire/smoke/isolation dampers shipped with the unit but not factory-installed, do not install the dampers for testing.
Harmonic Distortion Mitigation Devices	A high voltage device that reduces harmonic distortion measured at the line connection of the equipment that is created by electronic equipment in the unit.	Remove harmonic distortion mitigation devices for testing.
Humidifiers	A device placed in the supply air stream for moisture evaporation and distribution. The device may require building steam or water, hot water, electricity, or gas to operate.	Test with humidifiers in place but providing no humidification.
Electric Reheat Elements	Electric reheat elements and controls that are located downstream of the cooling coil that may heat the air using electrical power during the dehumidification process.	Test with electric reheat elements in place but providing no heat.
Non-standard Power Transformer	A device applied to a high voltage load that transforms input electrical voltage to that voltage necessary to operate the load.	Disable the non-standard power transformer during testing.
Chilled Water Dual Cooling Coils	A secondary chilled water coil added in the indoor air stream for use as the primary or secondary cooling circuit in conjunction with a separate chiller.	Test with chilled water dual cooling coils in place but providing no cooling.
High-Effectiveness Indoor Air Filtration	Indoor air filters with greater air filtration effectiveness than Minimum Efficiency Reporting Value (MERV) 8 for ducted units and MERV 1 for non-ducted units.	Test with the filter offered by the manufacturer with the least air filtration effectiveness that meets or exceeds MERV 8 for ducted units and MERV 1 for non-ducted units.

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Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Threatened Species Status With Section 4(d) Rule for Bracted Twistflower and Designation of Critical Habitat; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2021–0013; FF09E21000 FXES11110900000 234]

RIN 1018–BE44

Endangered and Threatened Wildlife and Plants; Threatened Species Status With Section 4(d) Rule for Bracted Twistflower and Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine threatened species status under the Endangered Species Act of 1973 (Act), as amended, for the bracted twistflower (*Streptanthus bracteatus*), a plant species from Texas. In addition, we designate critical habitat for the bracted twistflower. In total, approximately 1,596 acres (646 hectares) in Uvalde, Medina, Bexar, and Travis Counties, Texas, fall within the boundaries of the critical habitat designation. This rule applies the protections of the Act to this species and its designated critical habitat. We also finalize a rule issued under the authority of section 4(d) of the Act (a ''4(d) rule'') that provides measures that are necessary and advisable to provide for the conservation of this species.

DATES: This rule is effective May 11, 2023.

ADDRESSES: This final rule is available on the internet at *https://www.regulations.gov.* Comments and materials we received, as well as supporting documentation we used in preparing this rule, are available for public inspection at *https://www.regulations.gov at* Docket No. FWS–R2–ES–2021–0013.

For the critical habitat designation, the coordinates or plot points or both from which the maps are generated are included in the decision file and are available at *https://www.regulations.gov* at Docket No. FWS–R2–ES–2021–0013. Any additional tools or supporting information that we developed for this critical habitat designation will also be available on the Service's website, at *https://www.regulations.gov,* or both.

FOR FURTHER INFORMATION CONTACT: Karen Myers, Field Supervisor, U.S. Fish and Wildlife Service, Austin Ecological Services Field Office, 1505 Ferguson Lane, Austin, Texas; telephone 512–927–3500. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Executive Summary

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

What this document does. This rule makes final the listing of the bracted twistflower as a threatened species with a 4(d) rule and designates critical habitat for the species under the Act. We are designating critical habitat for the species in three units totaling 1,596 acres (646 hectares) in Uvalde, Medina, Bexar, and Travis Counties in Texas. This rule adds the bracted twistflower to the List of Endangered and Threatened Plants in title 50 of the Code of Federal Regulations (CFR) at 50 CFR 17.12(h), adds a 4(d) rule to 50 CFR 17.73, and adds critical habitat for this species to 50 CFR 17.96(a).

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We have determined that the primary threats to the bracted twistflower are loss of habitat due to urban and residential development, changes in structure and composition of vegetation and wildfire frequency, and herbivory by dense populations of white-tailed deer (*Odocoileus virginianus*) and introduced ungulates.

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

Previous Federal Actions

Please refer to the proposed listing and critical habitat rule (86 FR 62668; November 10, 2021) for a detailed description of previous Federal actions concerning the bracted twistflower.

Summary of Changes From the Proposed Rule

Based on review of survey data and comments received from the City of Austin, we have revised the critical habitat boundary in Subunit 1d to remove the proposed eastern and southern polygons, resulting in a reduction of 10.45 acres (ac) (4.23 hectares (ha)) from the proposed critical habitat designation. Although there was a historical record of bracted twistflower plants within these areas, individuals have not been documented since 1989, despite regular surveying. Therefore, the Service has determined that these polygons are unoccupied and do not meet the definition of occupied critical habitat. Additionally, these areas are not essential for the conservation of the species and, accordingly, should not be designated as unoccupied critical habitat.

Based on a public comment, we revised the species status assessment (SSA) report to include the harmonic mean for those sites for which we have adequate data.

Based on new information we received, in this final rule, we acknowledge that the Balcones Canyonlands Preserve critical habitat units are jointly managed by the Parks and Recreation Department and Austin Water's Wildland Conservation Division, and the City of Austin now owns Bright Leaf Preserve. Additionally, we will update the SSA report to include the new group of bracted twistflower plants that was found at Valburn/Bull Creek District Park in 2020 when we receive the revised data.

Peer Review

A species status assessment (SSA) team prepared an SSA report for the bracted twistflower (Service 2021, entire). The SSA team was composed of Service biologists, in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species. In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we sought the expert opinions of six appropriate specialists regarding the SSA. We received one response. We also sent the SSA report to four partners, including scientists with expertise in local plant species, for review. We received review from all four partners (Texas Parks and Wildlife Department, the City of Austin, the City of San Antonio, and Joint Base San Antonio). The peer reviews can be found at *https://www.regulations.* In preparing the proposed rule, we incorporated the results of these reviews, as appropriate, into the SSA report, which was the foundation for the proposed rule and this final rule. A summary of the peer review comments and our responses can be found in the Summary of Comments and Recommendations below.

I. Final Listing Determination

Background

Bracted twistflower is an annual herbaceous plant in the mustard family (Brassicaceae) that occurs only along the southeastern edge of the Edwards Plateau of central Texas. There are currently 35 described species of *Streptanthus.* Bracted twistflower can be distinguished from most other members of this genus because the leaves borne on the flower stalk lack stems and all flower stems have a small, modified leaf, called a bract, at their bases.

Bracted twistflower habitats occur near the boundary between the Edwards or Devils River limestone formations and the Glen Rose limestone formation. Individual plants commonly occur near or under a canopy of Ashe juniper (*Juniperus ashei*), Texas live oak (*Quercus fusiformis*), Texas mountain laurel (*Sophora secundiflora*), Texas red oak (*Quercus buckleyi*), or other trees.

The seeds germinate in response to fall and winter rainfall, forming basal rosettes, and the flower stalks emerge the following spring bearing showy, lavender-purple flowers. The seed capsules remain attached to the stalks during the summer as they mature and dehisce, releasing the seeds to be dispersed by gravity. The foliage withers as the fruits mature, and the plants die during the heat of summer. This species is primarily an outcrossing species; the leafcutter bee *Megachile comata* (family: Megachilidae) is known to be an effective pollinator. Because the seeds of bracted twistflower do not disperse far, gene flow for this species occurs mainly through pollination.

Since 1989, populations of the bracted twistflower have been documented at 17 naturally occurring element occurrences (EOs) in five counties, as well as one experimental trial in Travis County (see table 1, below). We have adopted the EO standard to maintain consistency with the Texas Parks and Wildlife Department's Natural Diversity Database (TXNDD) and because the EOs used in the TXNDD are practical approximations of populations, based on the best available scientific information. Each EO may consist of one to many ''source features,'' which are specific locations where one or more individuals have been observed one or more times.

Bracted twistflower is an annual plant, and the numbers of individuals that germinate at the source features of each EO vary widely from year to year in response to weather patterns or other stimuli. Thus, the numbers observed in any single year are not useful measures of population size because they do not reveal the numbers of live, dormant seeds that persist in the soil seed reserve. The SSA report (Service 2021, appendix A) describes the method we used to estimate the potential population sizes of EOs, which we define as the largest numbers of individuals that have been observed at each source feature of each EO. We then used aerial imagery to determine whether the habitat of any source features had been destroyed by construction of roads, buildings, or other disturbance, and we calculated the estimated remaining potential population at each EO. For a complete description of the analysis used, see the SSA report (available at *https://www.regulations.gov* at Docket No. FWS–R2–ES–2021–0013). Table 1, below, lists the total potential populations of each EO and the proportions of each that were reported from source features that were destroyed, partially destroyed, or are still intact. In summary, within the naturally occurring EOs, we determined that habitats and potential populations are completely intact at 11 EOs, partially destroyed at 4 EOs, and completely destroyed at 2 EOs. However, even where habitats are intact, populations may decline due to ungulate herbivory, juniper competition, or other factors. A thorough review of the taxonomy, life history, and ecology of the bracted twistflower is presented in the SSA report (Service 2021, entire).

TABLE 1—BRACTED TWISTFLOWER ELEMENT OCCURRENCES (EOS), POTENTIAL POPULATION SIZES (NUMBERS OF INDIVIDUALS), AND HABITAT STATUSES OF SOURCE FEATURES

EO—Site name; owner; representation area [1]	Total potential population of all source features	Potential population by habitat status			Percent remaining intact
		Intact	Destroyed	Partially destroyed	
2—Cat Mountain (Far West); Private; NE	866	123	112	631	14.2
7—Ullrich Water Treatment Plant (Bee Creek Preserve/ Balcones Canyonlands Preserve (BCP)); City of Austin; NE	493	493	0	0	100.0

TABLE 1—BRACTED TWISTFLOWER ELEMENT OCCURRENCES (EOS), POTENTIAL POPULATION SIZES (NUMBERS OF INDIVIDUALS), AND HABITAT STATUSES OF SOURCE FEATURES—Continued

EO—Site name; owner; representation area [1]	Total potential population of all source features	Potential population by habitat status			Percent remaining intact
		Intact	Destroyed	Partially destroyed	
9—Mt. Bonnell/Mt. Bonnell City Park/BCP; Private/City of Austin; NE	919	237	433	249	25.8
17—Barton Creek Wilderness Park; City of Austin (BCP); NE	1,677	1,677	0	0	100.0
21—Mesa-FM 2222; Private; NE	330	0	70	260	0.0
26—Bright Leaf State Natural Area (SNA); City of Austin; NE	10	10	0	0	100.0
32—Rough Hollow Ranch; Private; NE	40	0	40	0	0.0
33 [2]—Vireo Preserve (experimental reintroduction); City of Austin (BCP); NE	120	.....	.....	.....	.....
35—Valburn Drive/Bull Creek District Park; Private/City of Austin/BCP; NE	1,041	343	644	54	32.9
36—Gus Fruh/Barton Creek Greenbelt; City of Austin/BCP; NE	29	29	0	0	100.0
xx [3]—Falls Ranch; Private; NE	6	6	0	0	100.0
8—E Medina Lake; Texas Department of Transportation, Medina County, and private rights-of-way; C	2,260	477	481	1,302	21.1
18—Medina Lake; Private; C	1,254	1,254	0	0	100.0
23—Eisenhower City Park/Camp Bullis Military Training Reservation; City of San Antonio/Dept. of Defense; C	190	190	0	0	100.0
25—Laurel Canyon (Bear Bluff); Private Limited Partnership with City of San Antonio conservation easement; C	2,000	2,000	0	0	100.0
31—Rancho Diana (undeveloped natural area); City of San Antonio; C	958	958	0	0	100.0
10—Garner State Park; Texas Parks and Wildlife Department; W	686	686	0	0	100.0
24—Upper Long Canyon; Private; W	5	5	0	0	100.0

[1] Described under *Species Needs,* below. NE = northeast; C = central; W = west.
[2] This experimental reintroduction is not one of the 17 naturally occurring EOs.
[3] This newly discovered site does not yet have in EO ID or EO number in the TXNDD.

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in title 50 of the Code of Federal Regulations set forth the procedures for determining whether a species is an endangered species or a threatened species, issuing protective regulations for threatened species, and designating critical habitat for endangered and threatened species. In 2019, jointly with the National Marine Fisheries Service, the Service issued a final rule that revised the regulations in 50 CFR part 424 regarding how we add, remove, and reclassify endangered and threatened species and the criteria for designating listed species' critical habitat (84 FR 45020; August 27, 2019). On the same day, the Service also issued final regulations that, for species listed as threatened species after September 26, 2019, eliminated the Service's general protective regulations automatically applying to threatened species the prohibitions that section 9 of the Act applies to endangered species (84 FR 44753; August 27, 2019).

The regulations that are in effect and therefore applicable to this final rule are 50 CFR part 424, as amended by (a) revisions that we issued jointly with the National Marine Fisheries Service in 2019 regarding both the listing, delisting, and reclassification of endangered and threatened species and the criteria for designating listed species' critical habitat (84 FR 45020; August 27, 2019); and (b) revisions that we issued in 2019 eliminating for species listed as threatened species are September 26, 2019, the Service's general protective regulations that had automatically applied to threatened species the prohibitions that section 9 of the Act applies to endangered species (84 FR 44753; August 27, 2019).

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

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

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

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

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

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

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or

required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the species' expected response and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

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

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

Analytical Framework

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the species, including an assessment of the potential threats to the species. The SSA report does not represent our decision on whether the species should be listed as an endangered or threatened species under the Act. However, it does provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies. The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at Docket No. FWS–R2–ES–2021–0013 on *https://www.regulations.gov.*

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

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

Summary of Biological Status and Threats

In this discussion, we review the biological condition of the species and its resources, and the threats that influence the species' current and future condition, in order to assess the species' overall viability and the risks to that viability. We analyze these factors both individually and cumulatively to determine the current condition of the species and project the future condition of the species under several plausible future scenarios.

Species Needs

Habitat Availability and Protection From Herbivory

Bracted twistflower habitat occurs on karstic, porous limestones near the boundary of the Devils River or Edwards formations and Glen Rose formations in central Texas. These juniper-oak woodlands and shrublands experience hot, often dry summers and mild winters with bimodal (spring and fall) precipitation patterns. Optimal microsites for the bracted twistflower have less than 50 percent cover of woody plant canopy with the most robust plants growing in full sun (Fowler 2010, pp. 10–12; Leonard 2010, pp. 30–32; Ramsey 2010, pp. 10–13, 20; Leonard and Van Auken 2013, pp. 276–285). However, in areas with dense populations of white-tailed deer and other herbivores, few individuals survive except where they are protected from herbivory by a cover of dense, spiny understory vegetation (McNeal 1989, p. 17; Damude and Poole 1990, pp. 29–30; Poole et al. 2007, p. 470; Leonard 2010, p. 63).

Reproduction

Bracted twistflower is an annual species sustained through its reserve of seeds in the soil. Thus, resilient populations must produce more viable seeds than they lose through germination, herbivory, and loss of viability. Individuals that have begun flowering are vulnerable to herbivory by white-tailed deer, squirrels, and other herbivores, including introduced ungulates; although robust plants may generate a new flower stalk after the first stalk is removed, the loss of resources likely reduces reproductive output and decreases resiliency.

Bracted twistflower reproduces primarily by outcrossing between individuals that are not closely related; self-pollination produces only small

amounts of seeds. Fertilization requires that two or more sexually compatible individuals are located within the forage range of native bee pollinators. The longevity of seed viability has not been determined, although at least some seeds remain viable in the soil for at least 7 years (Service 2021, p. 12). The known pollinators of bracted twistflower are leafcutter bees (*Megachile* spp.) (Dieringer (1991, pp. 341–343), which have an estimated forage range of 600 meters (m) to 3 kilometers (km) (0.37 to 1.86 miles (mi)) (Mitchell 1936, pp. 124–125; Gathmann and Tscharntke 2002, pp. 760–761; Greenleaf et al. 2007, p. 593; Discover Life 2019); sweat bees (family *Halictidae*) may also be effective pollinators (Service 2021, p. 5), but due to their smaller size have correspondingly smaller forage ranges. Sexual reproduction also increases genetic diversity, and thus representation, which allows populations to be more likely to adapt and survive when confronted with new pathogens, competitors, and changing environmental conditions. For these reasons, successful reproduction likely requires clustering of genetically diverse individuals within habitats that also support leafcutter bees, sweat bees, and other native bee species.

Fall and winter rainfall stimulate bracted twistflower seed germination; successive rainfall events that allow soil moisture to persist may have greater effect than one or two heavy rains. In addition to rain, other factors appear to stimulate germination, such as the removal of competing vegetation, and possibly fire during a previous season.

Minimum Viable Population Size

Populations of bracted twistflower must be large enough to have a high probability of surviving for a prescribed period of time. For example, Mace and Lande (1991, p. 151) propose that species or populations be classified as vulnerable when the probability of persisting 100 years is less than 90 percent. This metric of population resilience is called minimum viable population (MVP). We adapted the method published in Pavlik (1996, p. 137) to estimate an MVP for bracted twistflower of about 1,800 individuals. This estimate of MVP is based only on numbers of mature, flowering individuals because juveniles that die before they reproduce do not contribute to the effective population size or future genetic diversity.

Risk Factors

A primary driver of the bracted twistflower's status is habitat loss due to urban and residential land development (McNeal 1989, p. 17; Damude and Poole 1990, p. 51; Zippin 1997, p. 229; Fowler 2010, p. 2; Pepper 2010, p. 5). A number of cities, including Austin, San Marcos, New Braunfels, and San Antonio, were established along the Balcones Escarpment due to the prevalence of springs. This area, known as the Interstate 35 corridor, is one of the fastest-growing urban complexes in the United States (TDC 2023, unpaginated). Urban development reduces the redundancy and representation of the bracted twistflower and has consumed all or most of the habitat at six EOs of the bracted twistflower.

Habitat changes leading to lower sunlight intensity in the existing habitat are another threat to the bracted twistflower as growth and reproduction of the species, and thus resilience, increases with higher light intensity and duration (Fowler 2010, pp. 1–18; Leonard 2010, pp. 1–86; Ramsey 2010, pp. 1–35; Leonard and Van Auken 2013, pp. 276–285). Bracted twistflower habitats have likely experienced a decline in the frequency of wildfire, which has allowed Ashe juniper and other woody plant cover to increase within most bracted twistflower populations (Bray 1904, pp. 14–15, 22–23; Fonteyn et al. 1988, p. 79; Fowler et al. 2012, pp. 1518–1521). These increases in woody plant cover reduce the growth and reproduction of bracted twistflower.

Excessive herbivory by white-tailed deer and introduced ungulates is a significant factor affecting the status of bracted twistflower throughout the species' range, except where populations are protected from deer by fencing or through intensive herd management (McNeal 1989, p. 17; Damude and Poole 1990, pp. 52–53; Dieringer 1991, p. 341; Zippin 1997, pp. 39–197, 227; Leonard 2010, pp. 36–43; Fowler 2014, pp. 17, 19). Herbivory is exacerbated by the extremely high deer densities in the Edwards Plateau of Texas (Zippin 1997, p. 227).

Both authorized and unauthorized recreation affects the species' survival at several protected natural areas, as well as on private lands. Hiking and mountain bike trails have impacted the populations at Mt. Bonnell City Park, Barton Creek Preserve, Garner State Park, and Bull Creek Park through trampling of the herbaceous vegetation and severe soil erosion where trails cut directly through occupied habitat (McNeal 1989, p. 19; Fowler 2010, p. 2; Bracted Twistflower Working Group 2010, p. 3; Pepper 2010, pp. 5, 15, 17).

Small, isolated populations are less resilient and more vulnerable to catastrophic losses caused by random fluctuations in recruitment or variations in rainfall or other environmental factors (Service 2016, p. 20). Small populations are also less able to overwhelm herbivores to ensure replenishment of the soil seed reserve (Service 2021, p. 33). In addition to population size, it is likely that population density also influences population viability, because reproduction requires genetically compatible individuals to be clustered within the forage range of the native bee pollinators (Service 2021, p. 33). Small, reproductively isolated populations are also more susceptible to the loss of genetic diversity, genetic drift, and inbreeding (Barrett and Kohn 1991, pp. 3–30). This may reduce the ability of the species or population to resist pathogens and parasites, adapt to changing environmental conditions, or colonize new habitats. More than half of the EOs observed since 1989 are at risk due to the demographic consequences of small population sizes (significantly below the estimated MVP level of 1,800 individuals), and many of the remaining populations have very little genetic diversity and relatively high levels of inbreeding (Pepper 2010, pp. 13, 15). The species as a whole still possesses significant genetic diversity (Pepper 2010, pp. 4, 11, 15), but several of the core reservoirs of the species' genetic diversity occur on private lands and may be lost to development.

Current Condition

Our assessment of the current species viability of bracted twistflower is based on its resiliency, redundancy, and representation. We ranked the current conditions of bracted twistflower EOs as high, medium, low, or extirpated based on the following characteristics: The resiliency (proportion of potential populations where habitat is intact, as described above); the population sizes and trends (if known) in remaining intact habitats; genetic diversity and inbreeding coefficients (if known); the current levels of monitoring, vegetation management, and protection from development, herbivores, and recreational impacts on the remaining intact habitats. We considered resiliency to be based upon the potential populations in intact habitats (see table 1), which is one of several components that contribute to current conditions. The current condition of each EO is based upon the cumulative effects of these factors.

Resiliency

Our review of the TXNDD EO records (TXNDD 2018a,b) indicates that

relatively large pulses of bracted twistflower plants emerge in specific areas (''source features'') during relatively few years, while during most years few or no plants emerge. This wide annual variation in germination makes it very difficult to determine the species' population sizes and demographic trends (Service 2021, pp. 22–23, appendix A). However, one indicator of the status of bracted twistflower populations is the condition of their habitats. We define potential population size as the maximum numbers observed in specific areas during ''pulse'' years, when optimal conditions stimulate the greatest amounts of seed germination, establishment, and survival to successful reproduction. Thus, our estimate of the species' status is based in part on the potential populations remaining in intact habitats. The potential total number of individuals at the 17 naturally occurring EOs observed since 1989 is 12,764 (not including 120 planted at the experimental population at EO 33).

Since 1989, 14 percent of bracted twistflower habitat (a potential population of 1,780 plants) has been completely destroyed in portions of 6 EOs; 19 percent of bracted twistflower habitat (a potential population of 2,496 plants) has been partially destroyed in portions of 5 EOs; and 67 percent (a potential population of 8,488 plants) remains intact in portions of 15 naturally occurring EOs (note that each EO can have intact, partially destroyed, and destroyed portions, so the total is greater than the number of EOs). Nevertheless, this estimate reflects only the losses due to habitat development and does not account for populations that may have declined due to excessive herbivory or juniper competition.

Only five of the remaining 17 naturally-occurring EOs are in high condition, with only four of the remaining 17 naturally-occurring EOs maintaining a potential intact population of at least 50 percent of the estimated MVP value of 1,800 individuals. These populations are Barton Creek Greenbelt and Wilderness Park (EO 17) and Rancho Diana (EO 31), which are protected natural areas managed by the City of Austin and City of San Antonio, respectively; Laurel Canyon (EO 25), which is protected from development and land use change through a City of San Antonio conservation easement; and a portion of Medina Lake (EO 18), which landowners voluntarily conserve. The City of Austin also protects 17.9 acres of habitat (EO 7) from development and land use change at the Ullrich Water Treatment Plant (Texas Parks and Wildlife Department 2018, p. 1), where there is a bracted twistflower population with a potential maximum population of about 27 percent of the estimated MVP level. Gus Fruh (EO 36) is small, but due to its proximity to EO 17 along Barton Creek, might be considered part of a Barton Creek metapopulation. Mt. Bonnell City Park (EO 9), Garner State Park (EO 10), Eisenhower City Park (EO 23), Valburn Drive/Bull Creek District Park (EO 35), and Falls Ranch (no EO number) are all currently far below the MVP level. Four EOs have been mostly lost to development: Cat Mountain (EO 2), East Medina (EO 8), Mt. Bonnell City Park, and Valburn Drive/Bull Creek District Park. Two EOs have been completely lost to development: Mesa (EO 21) and Rough Hollow Ranch (EO 32). No individuals have been seen in recent years at two additional EOs, Bright Leaf SNA (EO 26) and Upper Long Canyon (EO 24), nor at the experimental population at Vireo Preserve (EO 33). In summary, none of the EOs of bracted twistflower have reached the MVP level in the last decade, most have low resiliency, many have gradually declined over the years that they have been monitored, and six EOs have been extirpated or very nearly extirpated.

Redundancy and Representation

Bracted twistflower currently possesses significant genetic diversity at the species level, but populations are genetically distinct and there is no gene flow between most populations (Pepper 2010, p. 11). However, of the 10 EOs assessed by Pepper, low levels of genetic diversity occurred in all or parts of 4 EOs (40 percent), and all or parts of 5 EOs (50 percent) had high levels of inbreeding; low genetic diversity and inbreeding were more prevalent in smaller, more isolated populations (Pepper 2010, pp. 13, 15). Therefore, although the species still possesses adequate genetic and ecological representation, many of its populations are at risk, due to small population sizes, low levels of genetic diversity, lack of gene flow, and inbreeding.

Representation areas are sectors of a species' geographic range where important constituents of the species' genetic and ecological diversity occur. The known EOs of bracted twistflower are clustered in three geographic areas separated from each other by 50 km (30 mi) or more. Slight differences in day length, solar elevation, temperature, and precipitation occur over the species' range from northeast to southwest. Austin has more moderate summer and winter temperatures, 40 percent fewer days of freezing weather, and 40 percent greater annual rainfall, compared to Uvalde County. These climate differences also create variation in the structure and composition of associated vegetation. Pepper (2010, pp. 4, 15) identified major, distinct clusters of genetic diversity in Medina County and in the Austin area. Based on these genetic data and the geographic clustering of populations, we identified three representation areas in the northeastern, central, and western portions of the species' range (Service 2021, figure 9).

Two EOs are extirpated (EO 21 and EO 32), and five EOs have low condition ranks and negligible contributions to redundancy. The northeastern representation area has six EOs with high or medium condition ranks, conferring an intermediate degree of population redundancy within this area. The central representation area also has intermediate redundancy because it has four EOs with high- or medium-condition ranks. In the western representation area, only EO 10 has a medium condition rank, and no population pulses have been observed there in recent years. This representation area appears to have very low redundancy; however, few surveys have been conducted in that area, so undiscovered populations might still exist.

In summary, bracted twistflower has five EOs in high condition, with only four that are maintaining a potential population size of 50 percent of the MVP. Two representation areas have intermediate redundancy. Genetic representation at the species level is adequate, but 40 to 50 percent of EOs had low genetic diversity and high inbreeding and inbreeding also occurred in three larger populations. The species has lost all or parts of six EOs and one-third of its potential population size over the last 30 years.

Projections of the Species' Future Viability

The SSA projects viability during two future periods, from 2030 to 2040 and from 2050 to 2074. These timeframes represent the likely minimum and maximum lengths of time that seeds could remain viable in the soil, and therefore the potential of declining EOs to recover from viable seeds in the soil seed reserve. This timeframe also corresponds closely to climate projections and human population growth projections, a proxy for urban development (USGCRP 2017, entire; USGS 2019, unpaginated; TDC 2023, unpaginated). Although we do not know the maximum length of time that

bracted twistflower seeds can remain viable in the soil seed reserve, observations of the experimental population at Vireo Preserve reveal that at least some seeds are viable after 7 years. Nevertheless, we do not know the maximum length of time that bracted twistflower seeds may remain viable in the soil. Consequently, we used a surrogate species approach based on a long-term experiment on annual plant seed longevity in the soil which found that 60 percent of annual and biennial plant species still germinated after 15 years in the soil, but by 35 and 50 years, viable seeds persisted for only 30 percent and 25 percent of the species, respectively (Telewski and Zeevart 2002, pp. 1285–1288). Therefore, it is likely that soil seed reserves of bracted twistflower will remain viable at least 10 to 20 years and, if not replenished by new crops of seeds, will become depleted after 35 to 50 years.

The projections of future viability also considered three different scenarios representing an improvement over current conditions, continuation of current trends, or deterioration beyond current conditions. These scenarios were based on seven components that influence this species' status and their cumulative effects on the species: the extent of conservation support, effects of regional development, survey results, documentation of the geographic range, effectiveness of habitat management, effectiveness of population management, and effects of climate changes. Table 2, below, summarizes the projected species viability during each of the two timeframes and under each of the three scenarios. Under the ''improvement'' scenario, the number of EOs in high condition, currently 5, would increase to 10 by 2030–2040 and to 13 by 2050–2074, leading to an increase in species resiliency. In this scenario, species redundancy and representation remain stable. Under the ''current trends continue'' scenario, the number of extirpated EOs would increase to 4 by 2030–2040 and to 10 by 2050–2074, leading to a loss of redundancy. Both EOs in the western representation area would be extirpated by 2050–2074, leading to a reduction in species representation. Conditions within 14 EOs would deteriorate under this scenario, leading to a reduction in species resiliency. The ''deterioration'' scenario projects extirpation of 11 and 15 EOs during these periods, respectively, leading to a significant reduction in species redundancy and representation. By 2050–2074, all EOs in the western representation area would be extirpated, with only two remaining in the northeastern representation area and one in the central representation area. Under this scenario, species resiliency declines across all sites. For more information, see the bracted twistflower SSA report (Service 2021, pp. 51–66). These scenarios should not be interpreted as mutually exclusive. The components of the scenarios will interact independently; future viability will likely result from a combination of conditions analyzed in these scenarios. For example, conservation support and habitat management could be better than expected by 2050, but climate changes and regional growth could have more severe impacts than expected.

TABLE 2—PROJECTED VIABILITIES OF BRACTED TWISTFLOWER DURING TWO FUTURE TIMEFRAMES AND UNDER THREE SCENARIOS

EO No.	Current condition rank	Future scenarios		
		Improvement	Current trends continue	Deterioration
		Period/rank	Period/rank	Period/rank
Northeastern Representation Area				
2	Low	2030–2040: Low	2030–2040: Low	2030–2040: Extirpated.
		2050–2074: Medium	2050–2074: Extirpated	2050–2074: Extirpated.
7	High	2030–2040: High	2030–2040: High	2030–2040: Low.
		2050–2074: High	2050–2074: High	2050–2074: Low.
9	Medium	2030–2040: High	2030–2040: Low	2030–2040: Extirpated.
		2050–2074: High	2050–2074: Extirpated	2050–2074: Extirpated.
17	High	2030–2040: High	2030–2040: High	2030–2040: Low.
		2050–2074: High	2050–2074: Medium	2050–2074: Low.
21	Extirpated	2030–2040: Extirpated	2030–2040: Extirpated	2030–2040: Extirpated.
		2050–2074: Extirpated	2050–2074: Extirpated	2050–2074: Extirpated.
26	Low	2030–2040: Medium	2030–2040: Extirpated	2030–2040: Extirpated.
		2050–2074: Medium	2050–2074: Extirpated	2050–2074: Extirpated.
32	Extirpated	2030–2040: Medium	2030–2040: Extirpated	2030–2040: Extirpated.
		2050–2074: Medium	2050–2074: Extirpated	2050–2074: Extirpated.
33	Low	2030–2040: Medium	2030–2040: Extirpated	2030–2040: Extirpated.
		2050–2074: High	2050–2074: Extirpated	2050–2074: Extirpated.
35	Medium	2030–2040: High	2030–2040: Low	2030–2040: Low.
		2050–2074: High	2050–2074: Low	2050–2074: Extirpated.
36	High	2030–2040: High	2030–2040: Medium	2030–2040: Low.
		2050–2074: High	2050–2074: Low	2050–2074: Extirpated.
xx [1]	Medium	2030–2040: Medium	2030–2040: Low	2030–2040: Extirpated.
		2050–2074: High	2050–2074: Extirpated	2050–2074: Extirpated.
Central Representation Area				
8	Low	2030–2040: Medium	2030–2040: Low	2030–2040: Extirpated.
		2050–2074: Medium	2050–2074: Extirpated	2050–2074: Extirpated.
18	Medium	2030–2040: High	2030–2040: Medium	2030–2040: Low.
		2050–2074: High	2050–2074: Low	2050–2074: Extirpated.
23	Medium	2030–2040: High	2030–2040: Low	2030–2040: Extirpated.
		2050–2074: High	2050–2074: Low	2050–2074: Extirpated.

TABLE 2—PROJECTED VIABILITIES OF BRACTED TWISTFLOWER DURING TWO FUTURE TIMEFRAMES AND UNDER THREE SCENARIOS—Continued

EO No.	Current condition rank	Future scenarios		
		Improvement	Current trends continue	Deterioration
		Period/rank	Period/rank	Period/rank
25	High	2030–2040: High 2050–2074: High	2030–2040: Medium 2050–2074: Low	2030–2040: Low. 2050–2074: Extirpated.
31	High	2030–2040: High 2050–2074: High	2030–2040: High 2050–2074: High	2030–2040: Medium. 2050–2074: Low.
Western Representation Area				
10	Medium	2030–2040: High 2050–2074: High	2030–2040: Low 2050–2074: Extirpated	2030–2040: Extirpated. 2050–2074: Extirpated.
24	Low	2030–2040: Medium 2050–2074: High	2030–2040: Low 2050–2074: Extirpated	2030–2040: Extirpated. 2050–2074: Extirpated.

[1] This newly discovered site does not yet have in EO ID or EO number in the TXNDD.

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

Conservation Efforts and Regulatory Mechanisms

The Bracted Twistflower Working Group, a consortium of Federal, State, and local agencies, researchers, and conservation organizations, has met informally at least annually since 2000, and has worked actively to promote the conservation and recovery of this species. The Service, Texas Parks and Wildlife Department (TPWD), the City of Austin, Travis County, the Lower Colorado River Authority, and the Lady Bird Johnson Wildflower Center established a voluntary memorandum of agreement to protect, monitor, and restore bracted twistflower and its habitats on Balcones Canyonlands Preserve (BCP) tracts. Five extant EOs and one experimental population are protected through the agreement, including three of the five populations in a high current condition (see table 2, above). The City of San Antonio has actively protected and managed EOs at Eisenhower Park and Rancho Diana; the latter continues to be one of the largest remaining populations. The City of San Antonio and The Nature Conservancy own a conservation easement to protect 222 ha (549 ac) in Medina County for watershed conservation; this includes EO 25, which has one of the largest extant bracted twistflower populations (City of San Antonio and The Nature Conservancy, 2016). All or parts of 11 EOs are located on State or local conservation land.

Summary of Comments and Recommendations

In the proposed rule published on November 10, 2021 (86 FR 62668), we requested that all interested parties submit written comments on the proposal by January 10, 2022. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. Newspaper notices inviting general public comment were published in the Uvalde Leader, Austin American Statesman, and the San Antonio Express. We did not receive any requests for a public hearing.

Peer Reviewer Comments

As discussed in Peer Review above, we received comments from one peer reviewer. We reviewed all comments we received from the peer reviewer for substantive issues and new information regarding the information contained in the SSA report. The peer reviewer stated that the SSA is an outstanding compendium of what we know about this species. This reviewer provided additional information, clarifications, and suggestions to improve the final SSA report, which we adopted. They also provided the following substantive critique of our analyses of current and future conditions:

(1) Comment: The peer reviewer stated that our assessments of current and future viability of the Travis County populations in the northeastern representation area were too optimistic.

Our response: The final two paragraphs of the executive summary within the SSA report that was reviewed by the peer reviewer incorrectly stated the current conditions and projections of future viability and reported higher ranks for current conditions and all three future scenarios than our analyses actually determined. This error was corrected in the SSA report prior to the publication of the proposed rule (86 FR 62668; November 10, 2021). Sections 5 (Current Conditions) and 6 (Projections of Future Viability) of the SSA report that the peer reviewer reviewed did present the analyses correctly. The peer reviewer may also have misinterpreted our definition of the medium condition rank. We added information to the final SSA report to clarify the meaning of the medium condition rank.

Comments From States

(2) Comment: The Texas Parks and Wildlife Department (TPWD) commented that critical habitat on private lands could harm relationships with landowners and stated that the benefits of excluding critical habitat on private land without landowner support outweigh the benefits of designating the area as critical habitat.

Our response: When making a critical habitat designation, the Service is

required to identify areas that are essential to the conservation of the species, regardless of land ownership. The areas being designated as critical habitat contain the necessary physical and biological features for the bracted twistflower and are essential to the conservation of the species into the future. The Service did not receive any comments from private landowners opposing the designation of critical habitat on their land. While we are not required to contact landowners when making critical habitat designations, we understand that cooperative conservation can be very successful. The Service supports voluntary conservation through our Partners for Fish and Wildlife Program, which provides funding for habitat projects on private lands that benefit Federal trust species.

Public Comments

(3) Comment: The City of Austin requested an exclusion to a portion of proposed critical habitat Subunit 1d, which is adjacent to the Ullrich Water Treatment Plant, to allow for future infrastructure projects and proposed including additional adjacent lands to compensate for the exclusion. They also stated that they are unaware of any record of the species within the area for which they requested an exclusion.

Our response: Proposed Subunit 1d has confirmed records of bracted twistflower, including some records that may have been within the area requested for exclusion by the City of Austin (City of Austin 2016, pers. comm.; Fowler 2014, unpaginated; TXNDD 2018b, p. 3 unpaginated). However, based on this comment, we examined the survey data again and determined that plants were last documented in the easternmost polygon in 1989 with a geographic precision of plus-or-minus 164 ft (50 m). Due to the low precision, we cannot confirm whether this polygon was occupied, and the species has not been documented there since, despite regular monitoring. Additionally, we do not have any records of plants documented within the southernmost polygon. Therefore, we find that the best available information indicates that this area is no longer occupied. As a result, the area does not qualify as occupied under the first prong of the Act's definition of critical habitat. We then assessed whether these areas should be included under the second prong of the definition of critical habitat—areas that are not occupied at the time of listing but are essential to the conservation of the species. We determined that they are not essential for the conservation of the species because we are designating areas in all three representation areas, including areas that preserve the populations with the highest resiliency, and recovery of the species can be achieved by maximizing populations in occupied areas, see Criteria Used to Identify Critical Habitat. As a result, we revised the boundaries of the final critical habitat designation to remove these portions of this unit. Because the area is no longer included in the critical habitat designation, the exclusion analysis for this area is not necessary.

Numerous recent occurrence records occur within the westernmost polygon in the Subunit 1d; therefore, we continue to conclude that this portion of the proposed subunit is occupied by the species (City of Austin 2016, pers. comm.; Fowler 2014, unpaginated; TXNDD 2018b, unpaginated). We considered the City of Austin's request for exclusion for this area. The economic analysis did not identify significant costs related to critical habitat, and the City of Austin did not provide adequate economic information regarding any of the activities identified. The City of Austin also did not provide information or a reasoned rationale supporting their requests for exclusion, which is necessary for the Service to engage in an exclusion analysis. Critical habitat does not restrict access to property. Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. Because the areas we are designating as critical habitat in this rule are considered occupied, the majority of costs are not associated with the critical habitat designation but with the listing of the species as threatened.

(4) Comment: The City of Austin proposed to add additional areas to our critical habitat designation within the Balcones Canyonland Preserve adjacent to the Ullrich Water Treatment Plant.

Our response: When developing our critical habitat proposal, we relied on a model of the habitat needs of the species to determine the boundaries of the proposed units. The areas the City of Austin proposed to add to the critical habitat designation are outside the known soil formation, slope, and elevational range of known occupied sites in the area. Additionally, these areas are currently unoccupied, and we do not know if they would be able to become occupied in the future. Therefore, we conclude that these areas are not essential to the conservation of bracted twistflower, and we are not amending our designation to include them.

(5) Comment: One commenter stated that juniper encroachment is not a threat to the bracted twistflower and that the removal of juniper and prescribed burning would be detrimental to the species.

Our response: Our assessment that juniper encroachment and changes in wildfire frequency threaten bracted twistflower is based on scientific data and observations. Two assessments (McNeal 1989, p. 17; Damude and Poole 1990, pp. 29, 30, 46) observed that bracted twistflower plants can occur under dense shrub cover due to severe herbivory, but are larger, more vigorous, and reproduce more in the open, suggesting that open woodlands are preferred habitats. Two master's theses (Ramsey 2010, p. 20; Leonard 2010, p. 63), the final report of a section 6-funded research project (Fowler 2010, pp. 9–12), and two peer-reviewed scientific publications (Fowler et al. 2012, pp. 1516–1521; Leonard and Van Auken 2013, pp. 282–284) documented increased growth and reproductive output for individuals that are exposed to direct sunlight at least part of the day, when deer herbivory is prevented. These authors concluded that dense brush may serve as a refugium from herbivory, but it is not the species' optimal habitat. These conclusions are further supported by the species' positive response to deer-fencing and brush thinning conducted by the City of San Antonio at Rancho Diana Natural Area. Furthermore, two of the largest populations, Laurel Canyon and Rancho Diana, occur in relatively open vegetation of low shrubs, where there is little or no juniper cover. This body of research provides evidence that the bracted twistflower is best adapted to the edges and canopy gaps of juniper-oak woodlands that were historically maintained by periodic wildfires. We emphasize that listing bracted twistflower as a threatened species and the designation of its critical habitat do not require landowners, including the City of Austin, to manage the species' habitats in a particular way.

(6) Comment: One commenter stated that the SSA report for the bracted twistflower was overly optimistic in current and future conditions and the species should be listed as endangered rather than threatened. However, no new information was provided.

Our response: The fundamental difference between an endangered and a threatened species is the time horizon at which the species becomes in danger of extinction. An endangered species is

currently at risk of extinction, while a threatened species is likely to become at risk of extinction in the foreseeable future. The bracted twistflower currently occurs primarily on protected natural areas. While some populations have declined or have not been recently monitored, others are currently stable and likely to maintain stable or increasing populations into the foreseeable future provided that their habitats are effectively managed. Additionally, as an annual plant, effective management and restoration can boost population sizes within a relatively short timeframe. One of the primary threats to the species is urban and residential development. This threat is not anticipated to affect the species within the protected natural areas since these areas are protected from development. Other threats, such as ungulate herbivory and juniper encroachment, could cause populations on protected sites to decline, if they are not effectively managed. The SSA report (Service 2021, p. 53) projects that such declines could occur as soon as 2030 to 2040 under the ''current trends continue'' scenario. Therefore, the Service has determined that this species is not currently in danger of extinction, but it is likely to become so within the foreseeable future without the protections of the Act. A more complete discussion of our finding and rationale can be found under Determination of Bracted Twistflower's Status, below.

(7) Comment: Two commenters stated that the bracted twistflower is endangered within a significant portion of its range. Specifically, the commenters were concerned with the western and northeastern representation areas.

Our response: In order for a species to be listed due to its status within a significant portion of its range, the species must have a different status in that portion and that portion must also be significant. Although several bracted twistflower populations in the northeastern representation area have been destroyed or damaged by development, five populations are on protected natural areas, including two relatively large populations at Barton Creek and Ullrich. The City of Austin's annual monitoring data from 2012 through 2018 (City of Austin 2018, entire) indicate wide annual variation in the numbers of individuals that germinate and flower, but no detectable trends occurred over this timeframe. For this reason, we determined that the populations within this portion of the range are not currently in danger of extinction and therefore have the same status as the species rangewide. A significant portion of the range under the Act is not necessarily equivalent to representation areas used in SSAs to describe a species' condition. The SSA placed the two Uvalde County populations in the western representation area due to their physical separation from the central populations. However, these Uvalde County populations constitute the western-most periphery of the species' range, rather than a significant portion of the range. Furthermore, the Garner State Park population has been monitored very infrequently, and the other population, on private land, was last observed in 1997. Consequently, we have no information upon which to judge the current status of these populations and therefore cannot conclude that they have a different status from the remainder of the range.

(8) Comment: One commenter recommended that we designate unoccupied critical habitat for the species and suggested Vireo Preserve as a potential location.

Our response: In order to designate critical habitat in areas not occupied by the species at the time of listing, the Service must determine that the area is essential to the conservation of the species. During our analysis, we determined that the occupied areas we are designating are adequate to ensure the conservation of the species and that designating unoccupied areas as critical habitat was not essential for the conservation of the species. Additionally, we have concerns about the ability of the Vireo Preserve to support the species. Bracted twistflower had been introduced within the Vireo Preserve in the past and did not survive due to high levels of herbivory from white-tailed deer and introduced ungulates. Because we determined that Vireo Preserve is not essential to the conservation of the species, we are not designating it as unoccupied critical habitat.

(9) Comment: One commenter recommended that the Service include rights-of-way within Medina County as critical habitat.

Our response: We are not designating critical habitats in areas that lack natural vegetation, such as roads and buildings, because we determined that they do not contain the essential physical and biological features due to development or significant disturbance. Although the species has been found along highway and road rights-of-way in Medina County, due to frequent soil disturbance and the displacement of native vegetation by introduced, invasive grasses, such as bermudagrass (*Cynodon dactylon*) and King Ranch bluestem (*Bothriochloa ischaemum*), these are not the areas where we would emphasize recovery of the species.

(10) Comment: One commenter stated that, although our estimates of potential populations are probably the best available method, our evaluation overestimated resiliency and underestimated the potential extirpation of individual populations. Worsening conditions within many sites, due to deer browsing, trampling, and more, have resulted in declining population sizes and exhaustion of the persistent seed reserve. The commenter stated that, although the numbers in the proposed rule's table 2 (86 FR 62668, November 10, 2021, pp. 62675–62676) are correctly interpreted as site potentials, they are almost certainly overestimates of population sizes in the context of the resiliency analysis.

Our response: Estimates of potential populations are often larger than the numbers of flowering individuals seen in any given year. As an annual plant, bracted twistflower persists through its soil seed reserve. As the commenter noted, soil seed reserves decline if not replenished through successful reproduction. However, we have no data on this particular species' seed reserve capacity and limited data on seed longevity in the soil. The method we used is an empirical estimate of the seed reserve potential to generate reproductive individuals that is derived from the largest numbers of individuals observed in the extant portions of a population's habitat. We acknowledge the limitations of this method, but as noted, it is the best available scientific information.

(11) Comment: One commenter stated that population estimates used within the SSA report overestimate population sizes and suggested a better estimate would be based on harmonic means. This commenter also stated that genetically effective population sizes are the best measures of population sizes.

Our response: The harmonic mean, is a type of average (The American Heritage Dictionary 1982, p. 595), is a useful measure for highly variable population sizes. However, this approach requires a relatively large number of annual population censuses. We do not have enough population census data for most populations, and in other cases censuses were conducted only during peak years. In these cases, harmonic means are not very meaningful. The data required to calculate harmonic means exist for only for a few sites monitored annually by staffs of the City of Austin and City of San Antonio; we will include the

harmonic means for those sites in future revisions to the SSA report.

Determination of Bracted Twistflower's Status

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

Status Throughout All of Its Range

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats and the cumulative effect of the threats under the Act's section 4(a)(1) factors to the bracted twistflower.

Bracted twistflower occurs in three geographically separate representation areas, which experience differing regional climate and biotic factors. Although threats are currently acting on the bracted twistflower throughout its range, 11 EOs were found to be in high or medium r condition currently, and 11 EOs (including one experimental population) occur on protected, State-owned or locally owned conservation lands. Thus, after assessing the best available information, we conclude that the bracted twistflower is not currently in danger of extinction throughout all of its range. We, therefore, proceed with determining whether the bracted twistflower is likely to become endangered within the foreseeable future throughout all of its range.

For the purpose of this determination, the foreseeable future is 50 years. Based on the best available information, this is the period of time in which we can make a reliable prediction of the bracted twistflower's viability. These timeframes represent the likely minimum and maximum lengths of time that seeds could remain viable in the soil, and therefore the potential of declining EOs to recover from viable seeds in the soil seed reserve. This timeframe also corresponds closely to climate projections and human population growth projections, a proxy for urban development (USGCRP 2017, entire; USGS 2019, unpaginated; TDC 2023, unpaginated). In our projections of future viability, the best available information demonstrates that the time period during which we can reasonably expect that a population could recover from the soil seed reserve if managed appropriately is 10 to 20 years. The best available information further demonstrates that soil seed reserves would die out if not replenished in a 35- to 50-year timeframe. Accordingly, these two timeframes bracket the span of time during which populations will either be recovered or extirpated, and they indicate the period of time it is reasonable for us to make a reliable prediction as to the species' status in the foreseeable future.

Under the ''current trends continue'' scenario, the number of extirpated EOs increases from 2 to 10. Under the ''deterioration'' scenario, 15 EOs will become extirpated, and the condition rank of the remaining 3 EOs will be low. Development, which results in the permanent loss of habitat, is the most significant threat to the bracted twistflower, and this threat is expected to continue into the future. Habitats throughout the species' range have been degraded due to habitat modification and increased browsing pressure from white-tailed deer and introduced ungulates. Threats from habitat loss, habitat modification, increased herbivory, and loss of genetic diversity are cumulative and will likely result in further degradation without management intervention. Although genetic diversity is high within some populations, there is no appreciable gene flow between populations; this is likely to cause a loss of overall genetic diversity at the population and species level over time (Pepper 2010, p. 11). Populations of bracted twistflower have declined and are expected to continue to decline into the future. Our analysis of the species' current and future conditions show that the population and habitat factors used to determine the resiliency, representation, and redundancy of bracted twistflower are likely to continue to decline to the degree that the species is likely to become in danger of extinction within the foreseeable future throughout all of its range.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. The court in *Center for Biological Diversity* v. *Everson,* 2020 WL 437289 (D.D.C. Jan. 28, 2020) (*Everson*), vacated the aspect of the Final Policy on Interpretation of the Phrase ''Significant Portion of Its Range'' in the Endangered Species Act's Definitions of ''Endangered Species'' and ''Threatened Species'' (Final Policy; 79 FR 37578, July 1, 2014) that provided the Service does not undertake an analysis of significant portions of a species' range if the species warrants listing as threatened throughout all of its range. Therefore, we proceed to evaluating whether the species is endangered in a significant portion of its range—that is, whether there is any portion of the species' range for which both (1) the portion is significant, and (2) the species is in danger of extinction in that portion. Depending on the case, it might be more efficient for us to address the ''significance'' question or the ''status'' question first. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the species' range.

Following the court's holding in *Everson,* we now consider whether there are any significant portions of the species' range where the species is in danger of extinction now (*i.e.,* endangered). In undertaking this analysis for the bracted twistflower, we choose to address the status question first—we consider information pertaining to the geographic distribution of the species and the threats that the species faces to identify any portions of the range where the species is endangered.

The statutory difference between an endangered species and a threatened species is the timeframe in which the species becomes in danger of extinction; an endangered species is in danger of extinction now while a threatened species is not in danger of extinction now but is likely to become so in the foreseeable future. Thus, we reviewed the best scientific and commercial data available regarding the time horizon for the threats that are driving the bracted twistflower to warrant listing as a threatened species throughout all of its range. We considered whether the

threats are geographically concentrated in any portion of the species' range in a way that would accelerate the time horizon for the species' exposure or response to the threats. We examined the following threats: habitat loss to development (Factor A); changes in fire frequency and the composition and structure of vegetation (Factor A); excessive herbivory by white-tailed deer and other ungulates (Factor C); and demographic and genetic consequences of small, isolated populations (Factor E), including cumulative effects.

All of the known threats are present throughout the bracted twistflower's range, but to different degrees in different areas. We identified the western portion of the species' range, consisting of two EOs in Uvalde County, and determined that there is a concentration of threats from browsing of white-tailed deer and other ungulates. These threats are not unique to this area, but are acting at greater intensity here (*e.g.,* larger populations of white-tailed deer and other ungulates). One EO is fairly large in size and is in medium condition with a moderate level of genetic diversity. The other EO within Uvalde County only has data from one observation in 1997, which documented five plants, and is in low condition.

Although some threats to the bracted twistflower are concentrated in Uvalde County, the best scientific and commercial data available do not indicate that the concentration of threats, or the species' responses to the concentration of threats, are likely to accelerate the time horizon in which the species becomes in danger of extinction in that portion of its range. As a result, the bracted twistflower is not in danger of extinction now within Uvalde County. Since the larger population in this portion is in medium condition, this portion is not currently in danger of extinction. Therefore, we determine that the species is likely to become in danger of extinction within the foreseeable future throughout all of its range. This does not conflict with the courts' holdings in *Desert Survivors* v. *U.S. Department of the Interior,* 321 F. Supp. 3d 1011, 1070–74 (N.D. Cal. 2018) and *Center for Biological Diversity* v. *Jewell,* 248 F. Supp. 3d 946, 959 (D. Ariz. 2017) because, in reaching this conclusion, we did not need to consider whether any portions are significant and, therefore, did not apply the aspects of the Final Policy's definition of ''significant'' that those court decisions held were invalid.

Determination of Status

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

Available Conservation Measures

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

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Section 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

The recovery planning process begins with development of a recovery outline made available to the public soon after a final listing determination. The recovery outline guides the immediate implementation of urgent recovery actions while a recovery plan is being developed. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) may be established to develop and implement recovery plans. The recovery planning process involves the identification of actions that are necessary to halt and reverse the species' decline by addressing the threats to its survival and recovery. The recovery plan identifies recovery criteria for review of when a species may be ready for removal from protected status (''delisting''), and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery outline, draft recovery plan, final recovery plan, and any revisions will be available on our website as they are completed (*https://www.fws.gov/program/endangered-species*), or from our Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

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

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

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

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is listed as an endangered or threatened species and with respect to its critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of any endangered or

threatened species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the species' habitat that may require conference or consultation or both as described in the preceding paragraph include management and any other landscape-altering activities on projects permitted by the Federal Highways Administration, U.S. Department of Agriculture's Natural Resources Conservation Service, U.S. Army Corps of Engineers, Department of Defense's Joint Base San Antonio, and Federal Emergency Management Agency.

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

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

Background

Section 4(d) of the Act contains two sentences. The first sentence states that the Secretary shall issue such regulations as she deems necessary and advisable to provide for the conservation of species listed as threatened species. The U.S. Supreme Court has noted that statutory language similar to the language in section 4(d) of the Act authorizing the Secretary to take action that she ''deems necessary and advisable'' affords a large degree of deference to the agency (see *Webster* v. *Doe,* 486 U.S. 592, 600 (1988)). Conservation is defined in the Act to mean the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Additionally, the second sentence of section 4(d) of the Act states that the Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or section 9(a)(2), in the case of plants. Thus, the combination of the two sentences of section 4(d) provides the Secretary with wide latitude of discretion to select and promulgate appropriate regulations tailored to the specific conservation needs of the threatened species. The second sentence grants particularly broad discretion to the Service when adopting one or more of the prohibitions under section 9.

The courts have recognized the extent of the Secretary's discretion under this standard to develop rules that are appropriate for the conservation of a species. For example, courts have upheld, as a valid exercise of agency authority, rules developed under section 4(d) that included limited prohibitions against takings (see *Alsea Valley Alliance* v. *Lautenbacher,* 2007 WL 2344927 (D. Or. 2007); *Washington Environmental Council* v. *National Marine Fisheries Service,* 2002 WL 511479 (W.D. Wash. 2002)). Courts have also upheld 4(d) rules that do not address all of the threats a species faces (see *State of Louisiana* v. *Verity,* 853 F.2d 322 (5th Cir. 1988)). As noted in the legislative history when the Act was initially enacted, ''once an animal is on the threatened list, the Secretary has an almost infinite number of options available to [her] with regard to the permitted activities for those species. [She] may, for example, permit taking, but not importation of such species, or [she] may choose to forbid both taking and importation but allow the transportation of such species'' (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

The provisions of this 4(d) rule will promote conservation of the bracted twistflower by prohibiting the following activities, except as otherwise authorized or permitted: importing or exporting; certain acts related to removing, damaging, and destroying; delivering, receiving, carrying, transporting, or shipping in interstate or foreign commerce in the course of commercial activity; and selling or offering for sale in interstate or foreign commerce. The provisions of this rule are one of many tools that we will use to promote the conservation of the bracted twistflower.

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

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

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

Provisions of the 4(d) Rule

Exercising the Secretary's authority under section 4(d) of the Act, we have developed a final rule that is designed to address the bracted twistflower's conservation needs. As discussed previously under Summary of Biological Status and Threats, we have concluded that the bracted twistflower is likely to become in danger of extinction within the foreseeable future primarily due to urban and residential land development (Factor A), increases in woody plant cover (Factor A), excessive herbivory (Factor C), and small, isolated populations (Factor E). Section 4(d) requires the Secretary to issue such regulations as she deems necessary and advisable to provide for the conservation of each threatened species and authorizes the Secretary to include among those protective regulations any of the prohibitions that section 9(a)(2) of the Act prescribes for endangered species. Our regulations at 50 CFR 17.71 apply the prohibitions in section 9(a)(2) of the Act to all threatened plants. However, if we promulgate species-specific protective regulations for a given species, the species-specific regulations replace 50 CFR 17.71. We find that the protections, prohibitions, and exceptions in this final rule as a whole satisfy the requirement in section 4(d) of the Act to issue regulations deemed necessary and advisable to

provide for the conservation of the bracted twistflower.

The protective regulations in this 4(d) rule for bracted twistflower incorporate prohibitions from section 9(a)(2) of the Act to address the threats to the species. In particular, this 4(d) rule will provide for the conservation of the bracted twistflower by prohibiting the following activities, unless they fall within specific exceptions or are otherwise authorized or permitted: importing or exporting; certain acts related to removing, damaging, and destroying; delivering, receiving, carrying, transporting, or shipping in interstate or foreign commerce in the course of commercial activity; or selling or offering for sale in interstate or foreign commerce.

To protect the species, in addition to the protections that apply to Federal lands, the 4(d) rule prohibits a person from removing, cutting, digging up, or damaging or destroying the species on non-Federal lands in knowing violation of any law or regulation of any State or in the course of any violation of a State criminal trespass law. As most populations of the bracted twistflower occur off Federal land, these protections in the 4(d) rule are key to its effectiveness. For example, any damage to the species on non-Federal land in violation of a Texas off-highway vehicle law will be prohibited by the 4(d) rule. Additionally, any damage incurred by the species due to criminal trespass on non-Federal lands will similarly violate the 4(d) rule. These protective regulations will help to limit specific actions that damage individual populations.

The exceptions to the prohibitions include all of the general exceptions to the prohibitions set forth at 50 CFR 17.71 and 17.72.

Despite these prohibitions regarding threatened species, we may under certain circumstances issue permits to carry out one or more otherwise-prohibited activities, including those described above. The regulations that govern permits for threatened plants state that the Director may issue a permit authorizing any activity otherwise prohibited with regard to threatened species (50 CFR 17.72). Those regulations also state that the permit shall be governed by the provisions of § 17.72 unless a species-specific rule applicable to the plant is provided in §§ 17.73 to 17.78. Therefore, permits for threatened species are governed by the provisions of § 17.72 unless a species-specific 4(d) rule provides otherwise. However, under our recent revisions to § 17.71, the prohibitions in § 17.71(a) do not apply to any plant listed as a threatened species after September 26, 2019. As a result, for threatened plant species listed after that date, any protections must be contained in a species-specific 4(d) rule. We did not intend for those revisions to limit or alter the applicability of the permitting provisions in § 17.72, or to require that every species-specific 4(d) rule spell out any permitting provisions that apply to that species and species-specific 4(d) rule. To the contrary, we anticipate that permitting provisions would generally be similar or identical for most species, so applying the provisions of § 17.72 unless a species-specific 4(d) rule provides otherwise would likely avoid substantial duplication. Under 50 CFR 17.72 with regard to threatened plants, a permit may be issued for the following purposes: for scientific purposes, to enhance propagation or survival, for economic hardship, for botanical or horticultural exhibition, for educational purposes, or for other purposes consistent with the purposes and policy of the Act.

We recognize the beneficial and educational aspects of activities with seeds of cultivated plants, which generally enhance the propagation of the species and, therefore, such activities will satisfy permit requirements under the Act. We intend to monitor the interstate and foreign commerce and import and export of these specimens in a manner that will not inhibit such activities, providing the activities do not represent a threat to the survival of the species in the wild. In this regard, seeds of cultivated specimens will not be subject to the prohibitions above, provided that a statement that the seeds are of ''cultivated origin'' accompanies the seeds or their container.

Propagation is currently taking place for the bracted twistflower and will continue to be an important recovery tool. This will include collecting seeds from wild populations, following Center for Plant Conservation guidelines and the joint ''Policy Regarding Controlled Propagation of Species Listed Under the Endangered Species Act'' (65 FR 56916; September 20, 2000), and propagating them for seed increase, population augmentation, introduction, and research related to the species' recovery.

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

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

III. Critical Habitat

Background

Section 4(a)(3) of the Act requires that, to the maximum extent prudent and determinable, we designate a species' critical habitat concurrently with listing the species. Critical habitat is defined in section 3 of the Act as:

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

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

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

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

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

and habitats used periodically, but not solely by vagrant individuals).

This critical habitat designation was proposed when the regulations defining ''habitat'' (85 FR 81411; December 16, 2020) and governing the 4(b)(2) exclusion process for the Service (85 FR 82376; December 18, 2020) were in place and in effect. However, those two regulations have been rescinded (87 FR 37757; June 24, 2022, and 87 FR 43433; July 21, 2022) and no longer apply to any designations of critical habitat. Therefore, for this final rule designating critical habitat for the bracted twistflower, we apply the regulations at 424.19 and the 2016 Joint Policy on 4(b)(2) exclusions (81 FR 7226; February 11, 2016). Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation also does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the Federal agency would be required to consult with the Service under section 7(a)(2) of the Act. However, even if the Service were to conclude that the proposed activity would result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must implement ''reasonable and prudent alternatives'' to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat).

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information from the SSA report and information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species; the recovery plan for the species; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; other unpublished materials; or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act; (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species; and (3) the prohibitions found in the 4(d) rule. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Physical or Biological Features Essential to the Conservation of the Species

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas we will designate as critical habitat from within the geographical area occupied by the species at the time of listing, we consider the physical or biological features that are essential to the conservation of the species and which may require special management considerations or protection. The regulations at 50 CFR 424.02 define ''physical or biological features essential to the conservation of the species'' as the features that occur in specific areas and that are essential to support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features. A feature may be a single

habitat characteristic or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity. For example, physical features essential to the conservation of the species might include gravel of a particular size required for spawning, alkaline soil for seed germination, protective cover for migration, or susceptibility to flooding or fire that maintains necessary early-successional habitat characteristics. Biological features might include prey species, forage grasses, specific kinds or ages of trees for roosting or nesting, symbiotic fungi, or absence of a particular level of nonnative species consistent with conservation needs of the listed species. The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount of a characteristic essential to support the life history of the species.

In considering whether features are essential to the conservation of the species, we may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species. These characteristics include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing (or development) of offspring; and habitats that are protected from disturbance.

Summary of Essential Physical or Biological Features

We derive the specific physical or biological features essential to the conservation of the bracted twistflower from studies of the species' habitat, ecology, and life history as described below. Additional information can be found in the SSA report available on *https://www.regulations.gov* and *https://ecos.fws.gov/ecp/species/2856.* We have determined that the following physical or biological features are essential to the conservation of the bracted twistflower:

Geological Substrate and Soils

The prevalent Cretaceous geological formations in the Edwards Plateau of central Texas include the Edwards group of formations and its equivalent, the Devils River formation, which replaces the Edwards to the west and south; both of these formations overlie the Glen Rose formation (Maclay and Small 1986, pp. 17–24). Karstic, porous limestones are abundant in the Edwards and Devils River formations, and conversely, the Glen Rose limestones have relatively little porosity. The Edwards Aquifer occupies the porous upper strata, and many seeps and springs occur along the Balcones Escarpment, where the boundary of these upper formations with the Glen Rose is exposed at the surface. Some units of the Edwards, Devils River, and Glen Rose formations are dolomitic, meaning that, in addition to calcium, they also contain significant amounts of magnesium. Bracted twistflower populations occur in close proximity to the exposed boundary of the Edwards or Devils River and Glen Rose formations (McNeal 1989, p. 15; Zippin 1997, p. 223; Carr 2001, p. 1; Pepper 2010, p. 5). Most populations are less than 2 km (1.2 mi) from this boundary, as seen in less detailed, small-scale geological maps (Fowler 2014, pp. 11–12). A detailed, large-scale geological map of northern Bexar County (Clark et al. 2009, entire) reveals that two bracted twistflower populations (Eisenhower City Park and Rancho Diana) occur in a narrow stratum identified as a basal nodular hydrostratigraphic member of the Kainer Formation, Edwards Group (Clark et al. 2016, pp. 6–7). This stratum is immediately below a dolomitic hydrostratigraphic member of the Kainer Formation, and immediately above a cavernous hydrostratigraphic member of the Glen Rose limestone (Service 2021, pp. 8–9, figures 6–8). Populations often occur in horizontal bands where these strata are exposed along slopes. Soils in the immediate vicinity of individual plants are very shallow clays with abundant rock fragments.

Although we do not know why the species is associated with the Edwards-Glen Rose boundary, Fowler (2014, p. 12) proposed two hypotheses: (1) The species depends on increased seepage between these formations; and (2) the species requires higher levels of magnesium ions that leach from dolomitic limestone in the lower strata of the Edwards formation. These hypotheses are not mutually exclusive.

Ecological Community

Bracted twistflower occurs in native, old-growth juniper-oak woodlands and shrublands along the Balcones Escarpment. Individual plants frequently occur near or under a canopy of Ashe juniper, Texas live oak, Texas persimmon (*Diospyros texana*), Texas mountain laurel, Texas red oak, or other trees. In many sites, bracted twistflower inhabits dense thickets of evergreen sumac (*Rhus virens*), agarita (*Mahonia trifoliolata*), Roemer acacia (*Acacia roemeriana*), Lindheimer silk-tassel (*Garrya ovata* ssp. *lindheimeri*), thoroughwort (*Ageratina havanensis*), oreja de ratón (*Bernardia myricifolia*), or other shrubs.

Bracted twistflower is a winter annual plant that persists only where individuals produce enough seeds to sustain a reserve of viable seeds in the soil. White-tailed deer and introduced ungulates heavily browse the flower stalks of individual plants before they can set seed, thus contributing to the decline of populations. Herbivory threatens the species throughout its range, except where it is protected from deer by fencing or intensive herd management (hunting) (McNeal 1989, p. 17; Damude and Poole 1990, pp. 52–53; Dieringer 1991, p. 341; Zippin 1997, pp. 39–197, 227; Leonard 2010, pp. 36–43; Fowler 2014, pp. 17, 19). The extremely high deer densities in the Edwards Plateau of Texas exacerbate the species' vulnerability to herbivory (Zippin 1997, p. 227).

In sites that are protected from white-tailed deer, the most robust bracted twistflower plants occur where woody plant cover is less dense (Damude and Poole 1990, pp. 29–30; Poole et al. 2007, p. 470). The two largest populations, Laurel Canyon and Rancho Diana, occur in relatively open vegetation of low shrubs and sotol (*Dasylirion texanum*), where there is little or no juniper cover. Laboratory and field experiments demonstrated that growth and reproduction of bracted twistflower benefits from higher light intensity and duration than it receives in many of the extant populations (Fowler 2010, pp. 10–11; Leonard 2010, p. 63; Ramsey 2010, p. 20); its persistence in dense thickets may be due to increased herbivory of the plants growing in more open vegetation (Leonard 2010, p. 63; Ramsey 2010, p. 22). Deer-exclusion cages significantly increased the probability of survival, reproduction, above-ground biomass, and seed set, compared to un-caged plants, at a bracted twistflower population near Mesa Drive in Austin where the deer population was very high (Zippin 1997, p. 60). In 2012, the City of San Antonio Parks and Recreation Department (SAPRD) protected the Rancho Diana population with a deer-fenced exclosure. In August and September 2017, SAPRD personnel cut to ground level all woody vegetation in a 760-square-meter (m^2) (8,180-square-foot (ft^2)) plot within the exclosure. In May

2018, the number of bracted twistflower plants within the cleared plot was 16 times greater, and seed production within the plot was 15 times greater, than in any of 4 previous years (Cozort 2019, pers. comm). In synthesis, shaded juniper thickets may serve as refugia from herbivory, but they are not the species' optimal habitat. Bracted twistflower is best adapted to microsites at canopy gaps and edges within the juniper-oak woodland where it receives direct sunlight at least part of the day. It is likely that wildfires occurred more frequently in bracted twistflower habitats prior to European settlement, and that the more recent reduction in fire frequency has allowed Ashe juniper to increase in cover and density (Bray 1904, pp. 14–15, 23–24; Fonteyn et al. 1988, p. 79; Service 2021, pp. 12, 29–30).

Bracted twistflower produces seeds primarily through outcrossing (fertilization between different individuals), and therefore depends heavily on pollinators, including a native leafcutter bee, *Megachile comata,* for reproduction (Dieringer 1991, pp. 341–343). Halictid bees (sweat bees) and other native bee species may also be effective pollinators (Service 2021, p. 5). Therefore, bracted twistflower habitats must also support populations of leafcutter bees and other native bee species that effectively pollinate the species. Native bees in turn require, as sources of pollen and nectar, a diverse, abundant understory of native forb and shrub species that in the past was periodically renewed by wildfires.

In summary, the essential physical and biological features of bracted twistflower are:

(1) Karstic, dolomitic limestones underlain by less permeable limestone strata, where perched aquifers seep to the surface along slopes. These are often found within 2 km of the exposed boundary of the Edwards or Devils River and Glen Rose geological formations;

(2) Native, old-growth juniper-oak woodlands and shrublands along the Balcones Escarpment;

(3) Herbivory from white-tailed deer and introduced ungulates of such low intensity that it does not severely deplete populations prior to seed dispersal;

(4) Tree and shrub canopy gaps that allow direct sunlight to reach the herbaceous plant layer at least 6 hours per day; and

(5) Viable populations of native bee species and the abundant, diverse forb and shrub understory that support them.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection. The features essential to the conservation of this species may require special management considerations or protections to reduce the following threats: Habitat loss due to urban and residential development, increased woody plant cover, severe herbivory by native and introduced ungulates, and trampling and erosion from recreational use. Management activities that could ameliorate these threats include (but are not limited to) juniper thinning, prescribed fire, fencing to exclude deer and other herbivores, herd management of local ungulate populations, and protection from foot and bicycle traffic. These management activities will protect the physical and biological features essential for the conservation of the species by reducing herbivory, maintaining open canopies, protecting the habitat from trampling and erosion, and conserving diverse shrub and forb understory vegetation that supports the species' native bee pollinators.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify specific areas within the geographical area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species to be considered for designation as critical habitat. We are designating critical habitat within occupied habitat in all three representation areas, including areas that preserve the populations with the highest resiliency. We are not designating any areas outside the geographical area occupied by the species because we have not identified any unoccupied areas that meet the definition of critical habitat.

We considered the geographic areas occupied by the species at the time of listing to consist of EOs with survey data within the past 7 years or areas in which we confirmed that habitat remained intact using aerial imagery. We know that seeds can remain dormant and viable in the soil of intact sites for at least 7 years. Due to the large proportion of private lands within the range of the species, the majority of known locations occur on publicly owned conservation lands that can be accessed for surveys. Most of the critical habitat units have been surveyed annually, and the habitats are protected by the cities of Austin and San Antonio. We do not have recent surveys for two sites, EOs 10 and 18 (Garner State Park and Medina Lake). However, we have precise geographic coordinates for these populations collected with Global Positioning System (GPS) instruments. In a Geographic Information System (GIS), we have overlaid the geographic coordinates of these sites on recent orthographically corrected aerial photographs and have determined that the habitats remain intact.

For areas within the geographic area occupied by the species at the time of listing, we delineated critical habitat unit boundaries using the following criteria. We delineated each critical habitat unit around areas where karstic, dolomitic limestones of the Edwards or Devils River formations overlay the less permeable Glen Rose formation. The elevation ranges and degree of slope of these geological strata vary among EOs. However, because the exposed strata that support bracted twistflower populations are nearly horizontal, we used the elevation range where individuals have been observed at each EO to delineate this essential geological feature over the short distances spanned by that EO. Similarly, since seepage from overlying karst aquifers occurs on slopes, we also used the range of slopes where individuals have been observed at each EO to delineate this essential feature at that EO. Thus, we combined the parameters of the observed elevation range and slope range of the species at each EO to delimit each critical habitat unit. However, we excluded any areas that lack natural vegetation, such as roads and buildings, as determined through examination of recent aerial photographs. We also did not designate critical habitat units at EOs that are no longer occupied, or that no longer possess the essential physical and biological features due to development or significant disturbance. Finally, we did not extend critical habitat units beyond areas that have been surveyed, because we cannot determine if they contain the essential physical or biological features.

When determining critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands

lack physical or biological features necessary for bracted twistflower. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this rule have been excluded by text in the rule and are not designated as critical habitat. Therefore, a Federal action involving these lands will not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action will affect the physical or biological features in the adjacent critical habitat.

We are designating as critical habitat areas that we have determined are occupied at the time of listing (*i.e.,* currently occupied) and that contain one or more of the physical or biological features that are essential to support life-history processes of the species.

Units are designated based on one or more of the physical or biological features being present to support bracted twistflower's life-history processes. Some units contain all of the identified physical or biological features and support multiple life-history processes. Some units contain only some of the physical or biological features necessary to support the bracted twistflower's particular use of that habitat.

The critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document under Regulation Promulgation. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on *https://www.regulations.gov* at Docket No. FWS–R2–ES–2021–0013.

Final Critical Habitat Designation

We are designating three units as critical habitat for the bracted twistflower. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the bracted twistflower. The three areas we designate as critical habitat are: (1) Northeast Unit; (2) Central Unit; and (3) Southwest Unit. Table 3 shows the critical habitat units, the land ownership, and the approximate area of each unit. All designated units are occupied.

TABLE 3—CRITICAL HABITAT UNITS FOR THE BRACTED TWISTFLOWER

[Area estimates reflect all land within critical habitat unit boundaries]

Unit	Subunit (conservation area or property name)	Property owner	Occupied?	Critical habitat size	
				Acres	Hectares
1. Northeast	1a. Barton Creek Greenbelt/Wilderness Park (EOs 17, 36).	City of Austin	Yes	690.50	279.44
	1b. Bull Creek District Park (EO 35)	City of Austin	Yes	2.32	0.94
	1c. Mount Bonnell Park (EO 9)	City of Austin	Yes	2.00	0.81
	1d. Ullrich Water Treatment Plant (Bee Creek Park) (EO 7).	City of Austin	Yes	19.47	7.88
2. Central	2a. Eisenhower Park (EO 23)	City of San Antonio	Yes	78.16	31.63
	2b. Rancho Diana (EO 31)	City of San Antonio	Yes	395.73	160.15
	2c. Laurel Canyon Ranch Easement (EO 25).	Laurel C. Canyon Ranch LP; City of San Antonio holds conservation easement.	Yes	39.59	16.02
	2d. Medina River (EO 18)	Private	Yes	23.28	9.42
3. Southwest	Garner State Park (EO 10)	Texas Parks and Wildlife Department.	Yes	345.22	139.71
Totals:				1,596.27	646.00

Note: Area sizes may not sum exactly due to rounding.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for the bracted twistflower, below.

Unit 1: Northeast

Unit 1 consists of approximately 715 ac (289 ha) of occupied habitat within Travis County, Texas, and is composed of four subunits. All four subunits are owned by the City of Austin with the majority of the designated critical habitat occurring on lands managed for conservation as part of the BCP. This unit contains the essential physical and biological features of proximity to the geological boundary, old-growth juniper-oak woodlands, tree and shrub canopy gaps, and viable native bee populations. Some areas within this unit are protected from deer herbivory. Threats occurring within this unit include juniper encroachment, infrequent wildfire, white-tailed deer herbivory, off-trail recreational uses, and small population sizes. Special management needed for the bracted twistflower within this unit includes white-tailed deer herd management, thinning of juniper trees, and prescribed burning. For subunit descriptions, refer to the proposed rule (86 FR 62668; November 10, 2021).

Unit 2: Central

Unit 2 consists of approximately 537 ac (217 ha) of occupied habitat within Bexar and Medina Counties in Texas. This unit is composed of four subunits and includes the largest known population of bracted twistflower. Land ownership within this unit consists of City of San Antonio owned properties and well as two privately-owned properties, one of which has a conservation easement held by the City of San Antonio. This unit contains the essential physical and biological features of proximity to the geological boundary, old-growth juniper-oak woodlands, protection from deer herbivory, tree and shrub canopy gaps, and viable native bee populations.

Threats to this unit include herbivory from white-tailed deer, juniper encroachment, infrequent wildlife, off-trail recreational uses, and small population size.

Special management needed for the bracted twistflower within this unit includes white-tailed deer herd management, thinning of juniper trees, and prescribed burning.

Unit 3: Southwest

Unit 3 consists of occupied habitat within Uvalde County, Texas. Garner State Park was donated by local landowners to the State of Texas in 1941, and is managed by TPWD. One population of bracted twistflower persists at this very heavily visited, 1,786-ac (723-ha) State park. We are designating 345.22 ac (139.71 ha) as occupied critical habitat for the bracted twistflower at Garner State Park (EO 10). This unit contains the essential physical and biological features of proximity to the geological boundary, old-growth juniper-oak woodlands, tree and shrub canopy gaps, and viable native bee populations. Specific threats include herbivory from white-tailed deer and introduced ungulates, juniper encroachment into canopy gaps, off-trail recreational uses of habitats, and infrequent wildfire. Special management needed for the bracted twistflower within this unit includes white-tailed deer herd management and thinning of juniper trees; if it can be conducted safely, management could include prescribed burning.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. We published a final rule revising the definition of destruction or adverse modification on August 27, 2019 (84 FR 44976). Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of a listed species.

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

Compliance with the requirements of section 7(a)(2) is documented through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Service Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 set forth requirements for Federal agencies to reinitiate consultation on previously reviewed actions. These requirements apply when the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law) and, subsequent to the previous consultation: (a) if the amount or extent of taking specified in the incidental take statement is exceeded; (b) if new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (c) if the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion or written concurrence; or (d) if a new species is listed or critical habitat designated that may be affected by the identified action.

In such situations, Federal agencies sometimes may need to request reinitiation of consultation with us, but Congress also enacted some exceptions in 2018 to the requirement to reinitiate consultation on certain land management plans on the basis of a new species listing or new designation of critical habitat that may be affected by the subject Federal action. See 2018 Consolidated Appropriations Act, Public Law 115–141, Div, O, 132 Stat. 1059 (2018).

Application of the ''Adverse Modification'' Standard

The key factor related to the destruction or adverse modification determination is whether implementation of the proposed Federal action directly or indirectly alters the designated critical habitat in a way that appreciably diminishes the value of the critical habitat as a whole for the conservation of the listed species. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may violate section 7(a)(2) of the Act by destroying or adversely modifying such habitat, or that may be affected by such designation.

Activities that the Services may, during a consultation under section 7(a)(2) of the Act, consider likely to destroy or adversely modify critical habitat include, but are not limited to, actions that would disturb the soil or underlying rock strata, reduce the diversity and abundance of native bees and bee-pollinated plant species, or diminish the perched aquifers that supply seep moisture to bracted twistflower habitats. Such activities could include, but are not limited to, excavation of soil or underlying rock strata with bulldozers, graders, back-hoes, or excavators within habitats; application of insecticides that kill or impair native bees; application of herbicides that kill or damage native bee-pollinated plants; and displacement of native juniper-oak woodlands with surface cover, such as pavement and

buildings, that impede infiltration of rainwater into the soil. These activities could deplete or destroy the soil seed reserve of viable seeds of the bracted twistflower, diminish the abundance of the species' pollinators and thereby reduce seed production and gene flow, or alter the soil and hydrology so that it no longer supports the germination, establishment, and reproduction of the bracted twistflower.

Exemptions

Application of Section 4(a)(3) of the Act

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that the Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense (DoD), or designated for its use, that are subject to an integrated natural resources management plan (INRMP) prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.

In preparing this final rule, we have determined that the lands within the critical habitat designation for the bracted twistflower are not owned, managed, or used by the DoD.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. Exclusion decisions are governed by the regulations at 50 CFR 424.19 and the Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act (hereafter, the ''2016 Policy''; 81 FR 7226, February 11, 2016), both of which were developed jointly with the National Marine Fisheries Service (NMFS). We also refer to a 2008 Department of the Interior Solicitor's opinion entitled ''The Secretary's Authority to Exclude Areas from a Critical Habitat Designation under Section 4(b)(2) of the Endangered Species Act'' (M–37016). We explain each decision to exclude areas, as well as decisions not to exclude, to demonstrate that the decision is reasonable.

In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise discretion to exclude the area only if such exclusion would not result in the extinction of the species. In making the determination to exclude a particular area, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor. We describe below the process that we undertook for taking into consideration each category of impacts and our analyses of the relevant impacts.

Exclusions Based on Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. In order to consider economic impacts, we prepared an incremental effects memorandum (IEM) and screening analysis which, together with our narrative and interpretation of effects, we consider our draft economic analysis of the critical habitat designation and related factors (IEc 2020, entire). The analysis, dated December 7, 2020, was made available for public review from November 10, 2021, through January 10, 2022 (86 FR 62668). The economic analysis addressed probable economic impacts of critical habitat designation for bracted twistflower. Following the close of the comment period, we reviewed and evaluated all information submitted during the comment period that may pertain to our consideration of the probable incremental economic impacts of this critical habitat designation. Additional information relevant to the probable incremental economic impacts of critical habitat designation for the bracted twistflower is summarized below and available in the screening analysis for the bracted twistflower (IEc 2020, entire), available at *https://www.regulations.gov.*

Future consultation activity within the critical habitat area is likely to be very limited, but may include the following categories: (1) Land restoration of enhancement; (2) agriculture; (3) development; (4) transmission line construction; (5) oil or gas pipelines; (6) transportation; and (7) stream modification. The majority (99 percent) of the critical habitat area is within protected areas and conservation lands. The consultation history indicates that few projects and activities have occurred within critical habitat and within the broader range of the species over the past 9 years. Future consultations within the critical habitat units are anticipated to range from 0 to 0.1 formal consultations per year, 0.1 to 0.4 informal consultations per year, and 0 to 0.9 technical assistance efforts per year. Based on the average annual rate of consultations, the incremental administrative costs of consultation for the critical habitat units may range from $280 to $2,100 in an average year (IEc 2020, p. 15). We received no new information pertaining to our economic analysis during the comment period and have made no changes to our analysis of economic impacts in this final rule.

We considered the economic impacts of the critical habitat designation. The Secretary is not exercising her discretion to exclude any areas from this designation of critical habitat for the bracted twistflower based on economic impacts.

Exclusions Based on Impacts on National Security and Homeland Security

In preparing this rule, we determined that none of the lands within the designated critical habitat for the bracted twistflower are owned or managed by the DoD or Department of Homeland Security, and, therefore, we anticipate no impact on national security or homeland security. We did not receive any additional information during the public comment period for the proposed designation regarding impacts of the designation on national security or homeland security that would support excluding any specific areas from this final critical habitat designation under the authority of section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security discussed above. To identify other relevant impacts that may affect the exclusion analysis, we consider a number of factors, including whether there are permitted conservation plans covering the species in the area—such as HCPs, safe harbor agreements (SHAs), or candidate conservation agreements with assurances (CCAAs)—or whether there are non-permitted conservation

agreements and partnerships that may be impaired by designation of, or exclusion from, critical habitat. In addition, we look at whether Tribal conservation plans or partnerships, Tribal resources, or government-to-government relationships of the United States with Tribal entities may be affected by the designation. We also consider any State, local, social, or other impacts that might occur because of the designation.

We received a request to exclude a portion of the subunit 1d: Ullrich Water Treatment Plant, from the City of Austin. Although a portion of this subunit is within the Balcones Canyonlands Preserve, the portion requested for exclusion is outside the preserve and therefore not covered by the Balcones Canyonlands Preserve Land Management Plan. Because the area requested for exclusion occurs outside the Balcones Canyonlands Preserve and is not protected under the Balcones Canyonlands Preserve Land Management Plan, we determined that it does not qualify for an exclusion based on a permitted plan and are not excluding this area from critical habitat. The requester did not present a reasoned rationale supporting their requests for exclusion on any other basis, which is necessary for us to conduct an exclusion analysis.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

Under the RFA, as amended, and as understood in light of recent court decisions, Federal agencies are required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself; in other words, the RFA does not require agencies to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies will be directly regulated by this designation. There is no requirement under the RFA to evaluate the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities will be directly regulated by this rulemaking, the Service certifies that this final critical habitat designation will not have a significant economic impact on a substantial number of small entities.

In summary, we have considered whether this final designation will result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that this final critical habitat designation will not have a significant economic impact on a substantial number of small business entities. Therefore, a regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. In our economic analysis, we did not find that this critical habitat designation will significantly affect energy supplies, distribution, or use. The Office of Management and Budget (OMB) has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute ''a significant adverse effect'' when compared to not taking the regulatory action under consideration. The economic analysis finds that none of these criteria are relevant to this analysis. Thus, based on information in the economic analysis, energy-related impacts associated with bracted twistflower conservation activities within critical habitat are not expected. As such, the designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a

significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following finding:

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or Tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule will significantly or uniquely affect small governments because it will not produce a Federal mandate of $100 million or greater in any year; that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments. By definition, Federal agencies are not considered small entities, although the activities they fund or permit may be proposed or carried out by small entities. The lands being designated as critical habitat are primarily owned by the cities of Austin and San Antonio or the State of Texas and none of these government entities fits the definition of ''small governmental jurisdiction.'' Consequently, we do not believe that the critical habitat designation will significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for bracted twistflower in a takings implications assessment. The Act does not authorize the Service to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures, or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment has been completed and concludes that this designation of critical habitat for the bracted twistflower does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this rule does not have significant Federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this critical habitat designation with, appropriate State resource agencies. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, this final rule does not have substantial direct effects either on the States, or on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical or biological features of the habitat necessary for the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist State and local governments in long-range planning because they no longer have to wait for case-by-case section 7 consultations to occur.

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) of the Act will be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the

rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, this final rule identifies the physical or biological features essential to the conservation of the species. The designated areas of critical habitat are presented on maps, and the rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain information collection requirements, and a submission to the OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

Regulations adopted pursuant to section 4(a) of the Act are exempt from the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) and do not require an environmental analysis under NEPA. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This includes listing, delisting, and reclassification rules, as well as critical habitat designations and species-specific protective regulations promulgated concurrently with a decision to list or reclassify a species as threatened. The courts have upheld this position (*e.g., Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995) (critical habitat); *Center for Biological Diversity* v. *U.S. Fish and Wildlife Service,* 2005 WL 2000928 (N.D. Cal. Aug. 19, 2005) (concurrent 4(d) rule)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We have determined that no Tribal lands fall within the boundaries of the critical habitat for the bracted twistflower, so no Tribal lands will be affected by the designation.

References Cited

A complete list of references cited in this rulemaking is available on the internet at *https://www.regulations.gov* and upon request from the Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Austin Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. In § 17.12, amend paragraph (h) by adding an entry for ''*Streptanthus bracteatus*'' to the List of Endangered and Threatened Plants in alphabetical order under FLOWERING PLANTS to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Scientific name	Common name	Where listed	Status	Listing citations and applicable rules
FLOWERING PLANTS				
*	*	*	*	*
Streptanthus bracteatus	Bracted twistflower	Wherever found	T	88 FR [Insert **Federal Register** page where the document begins], April 11, 2023; 50 CFR 17.73(h);[4d] 50 CFR 17.96(a).[CH]
*	*	*	*	*

■ 3. Amend § 17.73 by adding paragraph (h) to read as follows:

§ 17.73 Special rules—flowering plants.

* * * * *

(h) *Streptanthus bracteatus* (bracted twistflower).

(1) *Prohibitions.* The following prohibitions that apply to endangered plants also apply to the bracted twistflower. Except as provided under paragraph (h)(2) of this section, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this species:

(i) Import or export, as set forth at § 17.61(b) for endangered plants.

(ii) Remove and reduce to possession the species from areas under Federal jurisdiction; maliciously damage or destroy the species on any such area; or remove, cut, dig up, or damage or destroy the species on any other area in knowing violation of any law or regulation of any State or in the course of any violation of a State criminal trespass law.

(iii) Interstate or foreign commerce in the course of commercial activity, as set forth at § 17.61(d) for endangered plants.

(iv) Sale or offer for sale, as set forth at § 17.61(e) for endangered plants.

(2) *Exceptions from prohibitions.* In regard to this species:

(i) You may conduct activities as authorized by permit under § 17.72.

(ii) Any employee or agent of the Service or of a State conservation agency that is operating a conservation program pursuant to the terms of a cooperative agreement with the Service in accordance with section 6(c) of the Act, who is designated by that agency for such purposes, may, when acting in the course of official duties, remove and reduce to possession from areas under Federal jurisdiction members of bracted twistflower that are covered by an approved cooperative agreement to carry out conservation programs.

(iii) You may engage in any act prohibited under paragraph (h)(1) of this section with seeds of cultivated specimens, provided that a statement that the seeds are of ''cultivated origin'' accompanies the seeds or their container.

■ 4. In § 17.96, amend paragraph (a) by adding an entry for ''Family Brassicaceae: *Streptanthus bracteatus* (bracted twistflower)'', immediately after the entry for ''Family Brassicaceae: *Physaria thamnophila* (Zapata bladderpod)'', to read as follows:

§ 17.96 Critical habitat—plants.

* * * * *

Family Brassicaceae: *Streptanthus bracteatus* (bracted twistflower)

(1) Critical habitat units are depicted for Bexar, Medina, Travis, and Uvalde Counties, Texas, on the maps in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of bracted twistflower consist of the following components:

(i) Karstic, dolomitic limestones underlain by less permeable limestone strata, where perched aquifers seep to the surface along slopes. These are often found within 2 kilometers of the exposed boundary of the Edwards or Devils River and Glen Rose geological formations;

(ii) Native, old-growth juniper-oak woodlands and shrublands along the Balcones Escarpment;

(iii) Herbivory from white-tailed deer and introduced ungulates of such low intensity that it does not severely deplete populations prior to seed dispersal;

(iv) Tree and shrub canopy gaps that allow direct sunlight to reach the herbaceous plant layer at least 6 hours per day; and

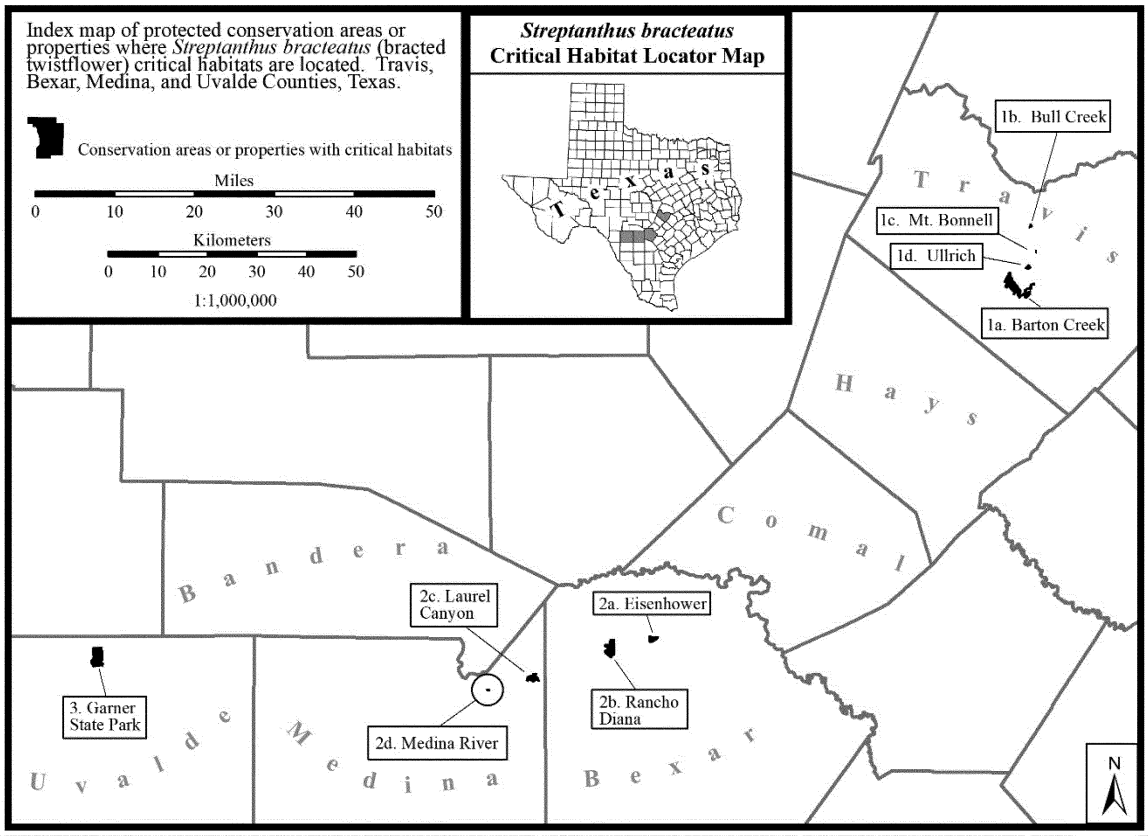
(v) Viable populations of native bee species and the abundant, diverse forb and shrub understory that support them.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on May 11, 2023.

(4) Data layers defining map units were created using U.S. Geological Survey digital elevation models. For each unit/subunit, we determined the range of occupied elevations and the range of occupied slopes; critical habitat polygons consist of the intersection of the occupied elevations and occupied slopes. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at *https://www.regulations.gov* at Docket No. FWS–R2–ES–2021–0013, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Index map follows:

Figure 1 to *Streptanthus bracteatus* (bracted twistflower) paragraph (5)



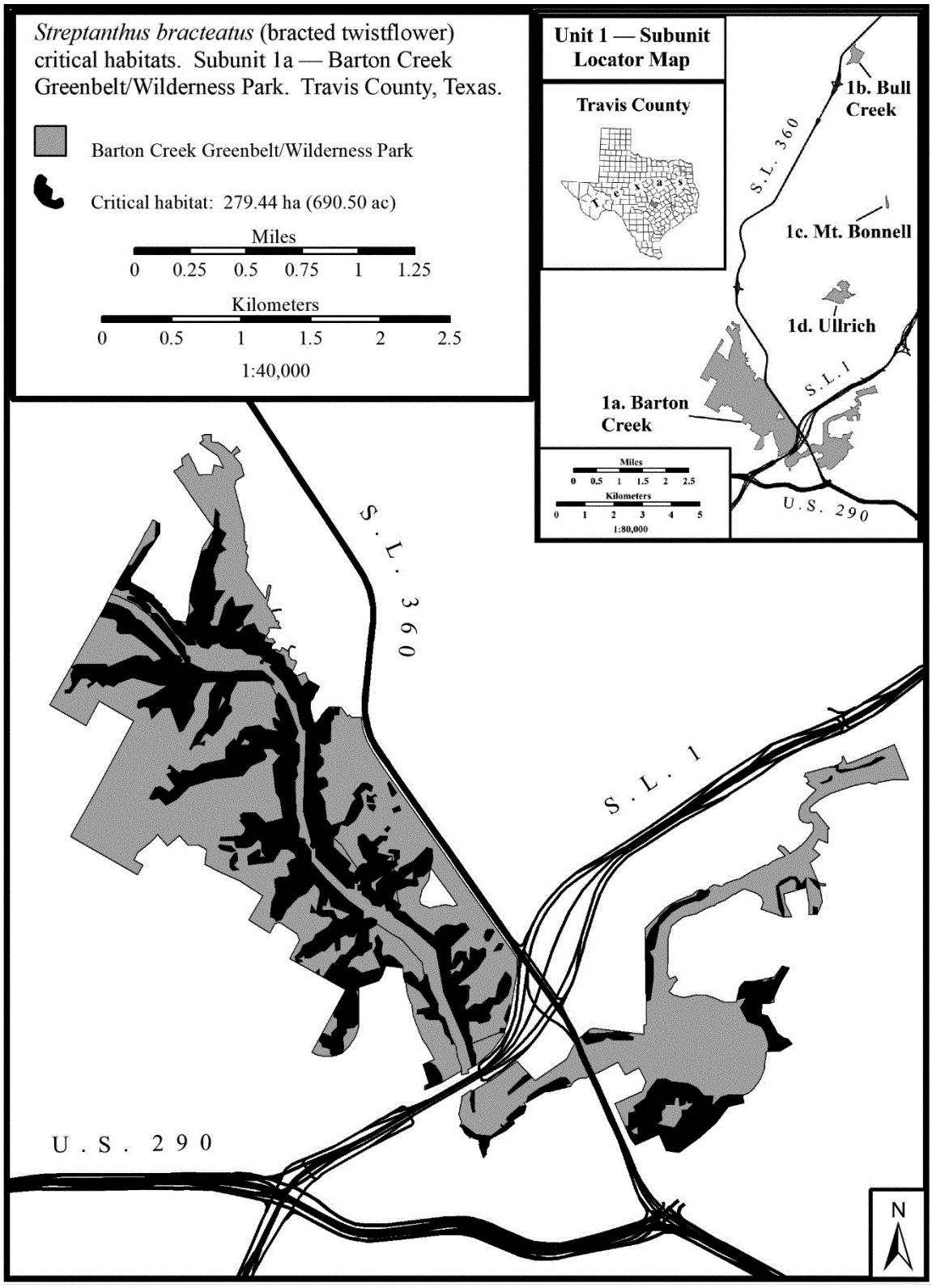
(6) Unit 1: Northeast; Travis County, Texas.

(i) Subunit 1a: Barton Creek Greenbelt and Barton Creek Wilderness Park.

(A) Subunit 1a consists of 690.5 acres (ac) (279.44 hectares (ha)) in Travis County and is composed of lands along Barton Creek owned by the City of Austin Parks and Recreation Department and jointly managed by the Parks and Recreation Department and Austin Water's Wildland Conservation Division as a unit of the Balcones Canyonlands Preserve (BCP) system.

(B) Map of Subunit 1a follows:

Figure 2 to *Streptanthus bracteatus* (bracted twistflower) paragraph (6)(i)(B)

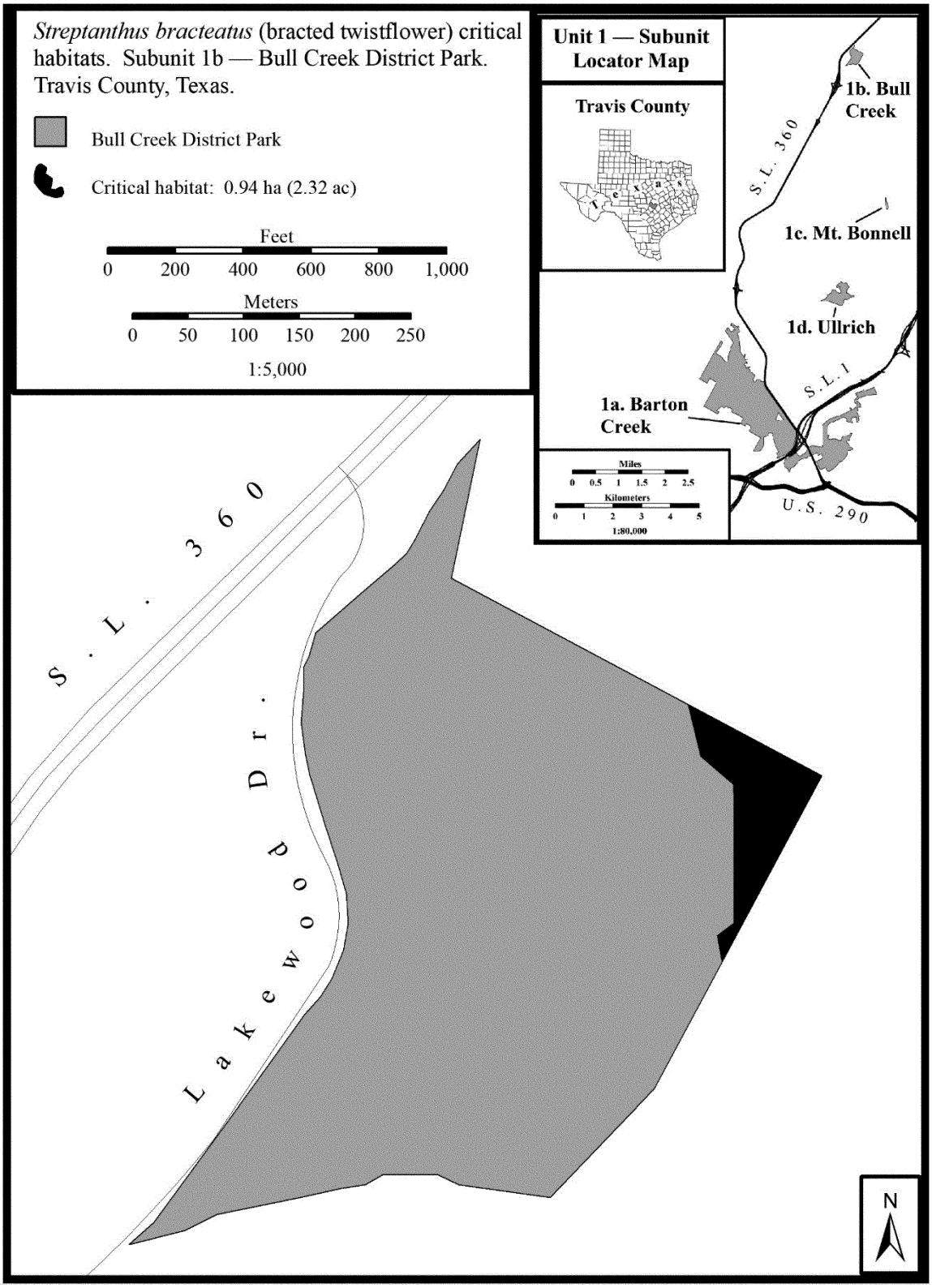


(ii) Subunit 1b: Bull Creek District Park.

(A) Subunit 1b consists of 2.32 ac (0.94 ha) in Travis County and is composed of lands owned by the City of Austin Parks and Recreation Department and jointly managed by the Parks and Recreation Department and Austin Water's Wildland Conservation Division as a unit of the BCP system.

(B) Map of Subunit 1b follows:

Figure 3 to *Streptanthus bracteatus* (bracted twistflower) paragraph (6)(ii)(B)

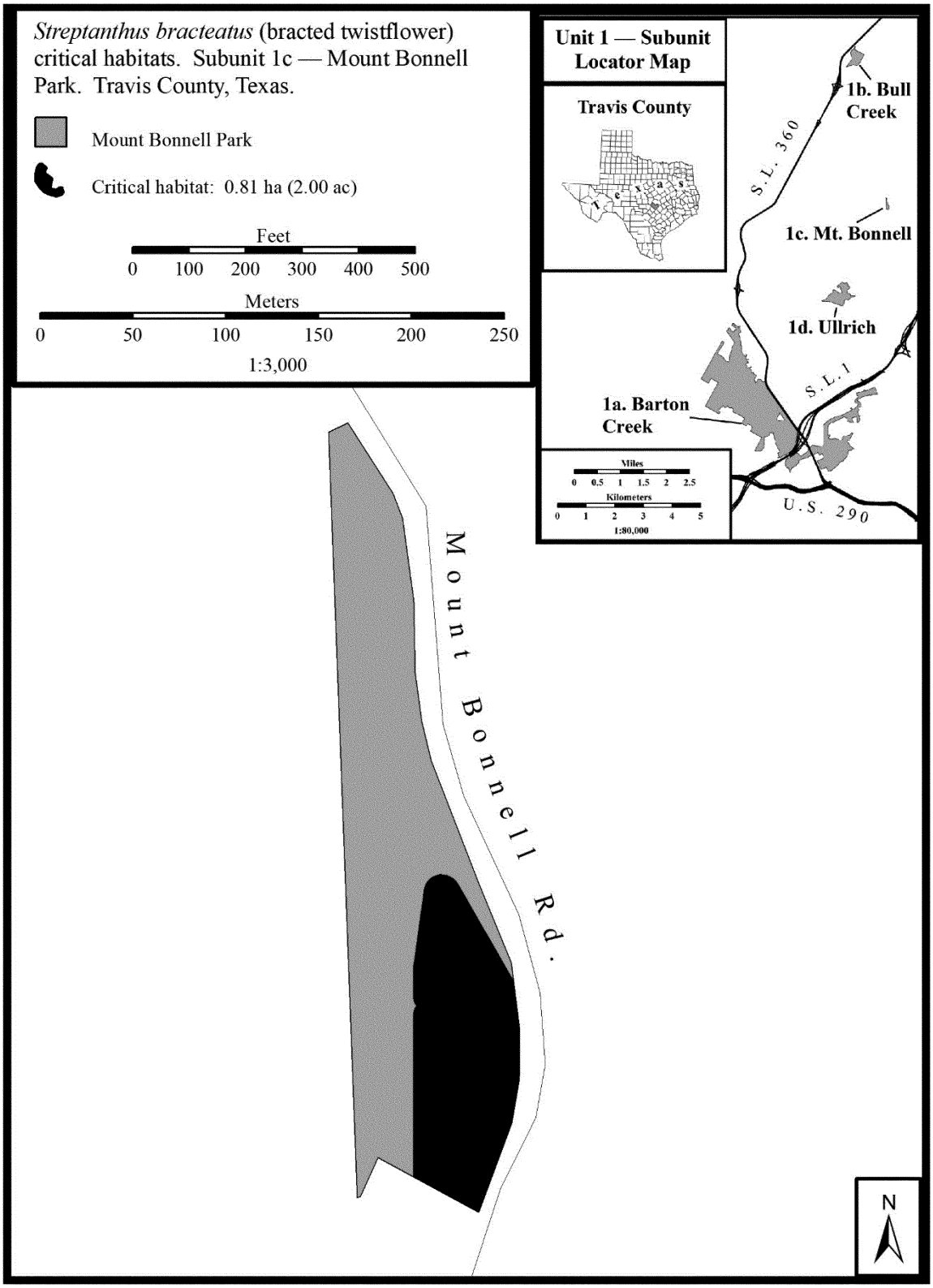


(iii) Subunit 1c: Mount Bonnell Park.

(A) Subunit 1c consists of 2 ac (0.81 ha) in Travis County and is composed of lands owned by the City of Austin Parks and Recreation Department and jointly managed by the Parks and Recreation Department and Austin Water's Wildland Conservation Division as a unit of the BCP system.

(B) Map of Subunit 1c follows:

Figure 4 to *Streptanthus bracteatus* (bracted twistflower) paragraph (6)(iii)(B)

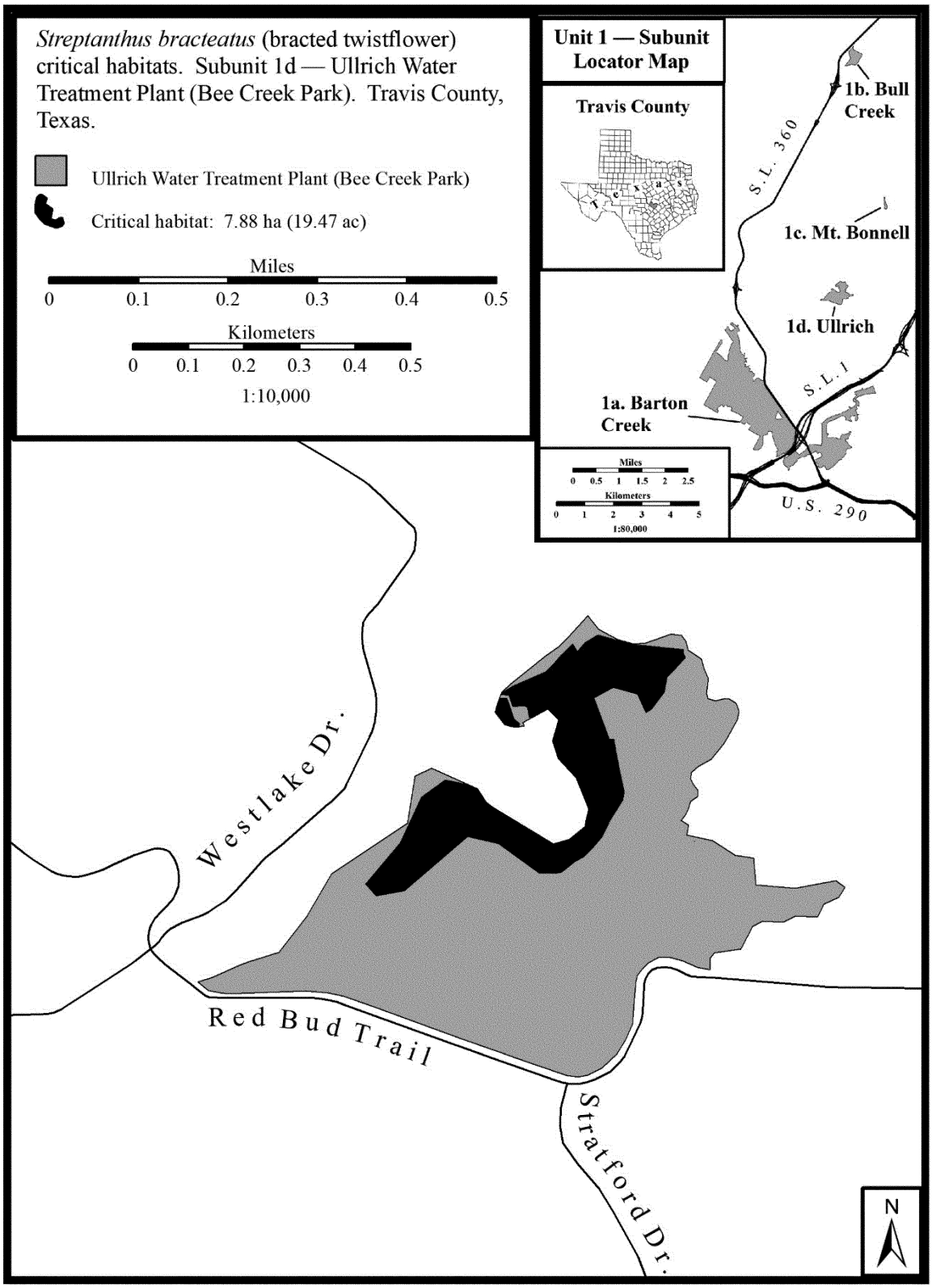


(iv) Subunit 1d: Ullrich Water Treatment Plant/Bee Creek Park.

(A) Subunit 1d consists of 19.47 ac (7.88 ha) in Travis County and is composed of lands owned by the City of Austin Water Utility, a portion of which is jointly managed by the Parks and Recreation Department and Austin Water's Wildland Conservation Division as a unit of the BCP system.

(B) Map of Subunit 1d follows:

Figure 5 to *Streptanthus bracteatus* (bracted twistflower) paragraph (6)(iv)(B)



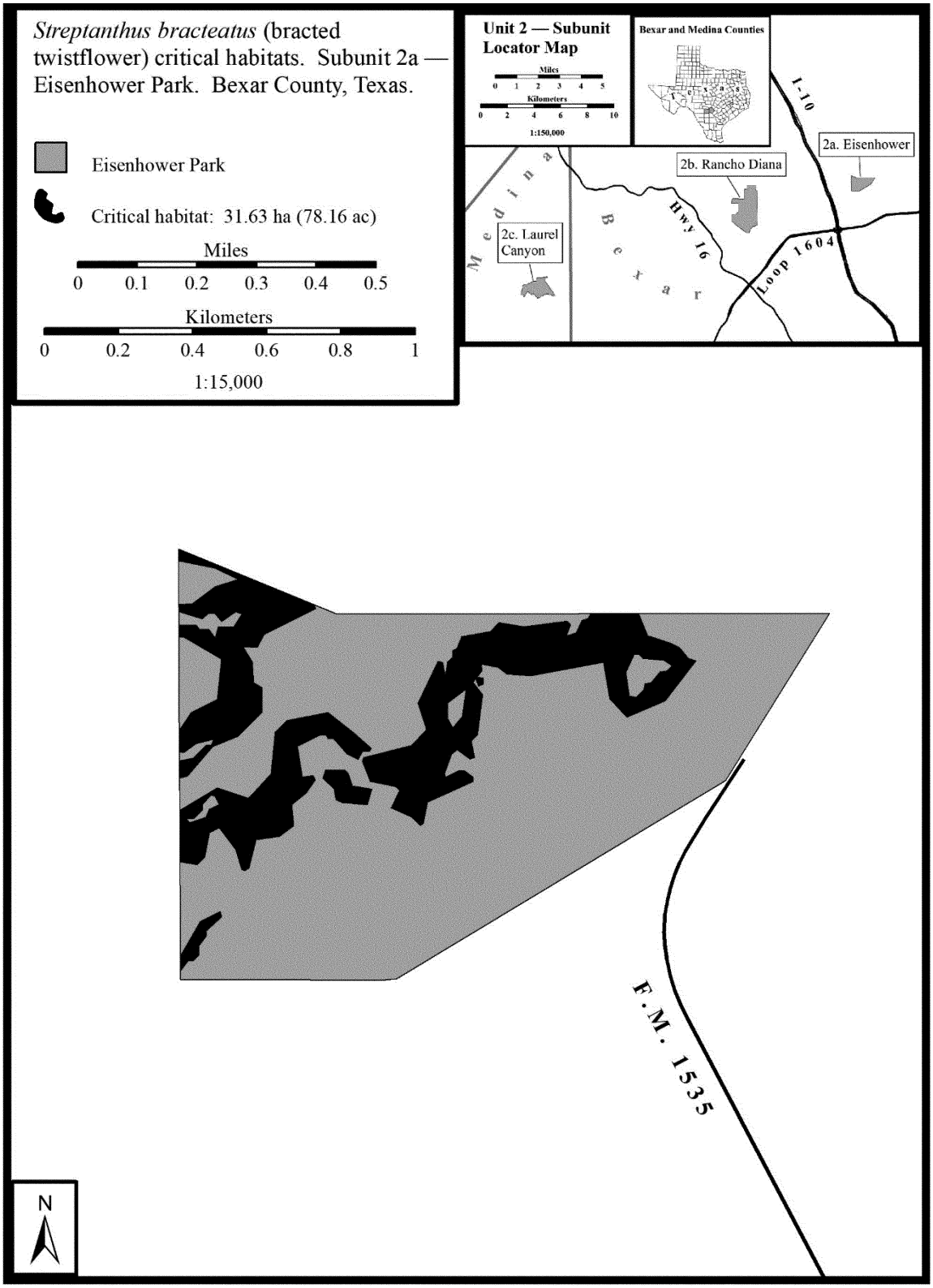
(7) Unit 2: Central; Bexar and Medina Counties, Texas.

(i) Subunit 2a: Eisenhower Park.

(A) Subunit 2a consists of 78.16 ac (31.63 ha) in Bexar County and is composed of lands owned by the City of San Antonio and managed by San Antonio Parks and Recreation Department.

(B) Map of Subunit 2a follows:

Figure 6 to *Streptanthus bracteatus* (bracted twistflower) paragraph (7)(i)(B)

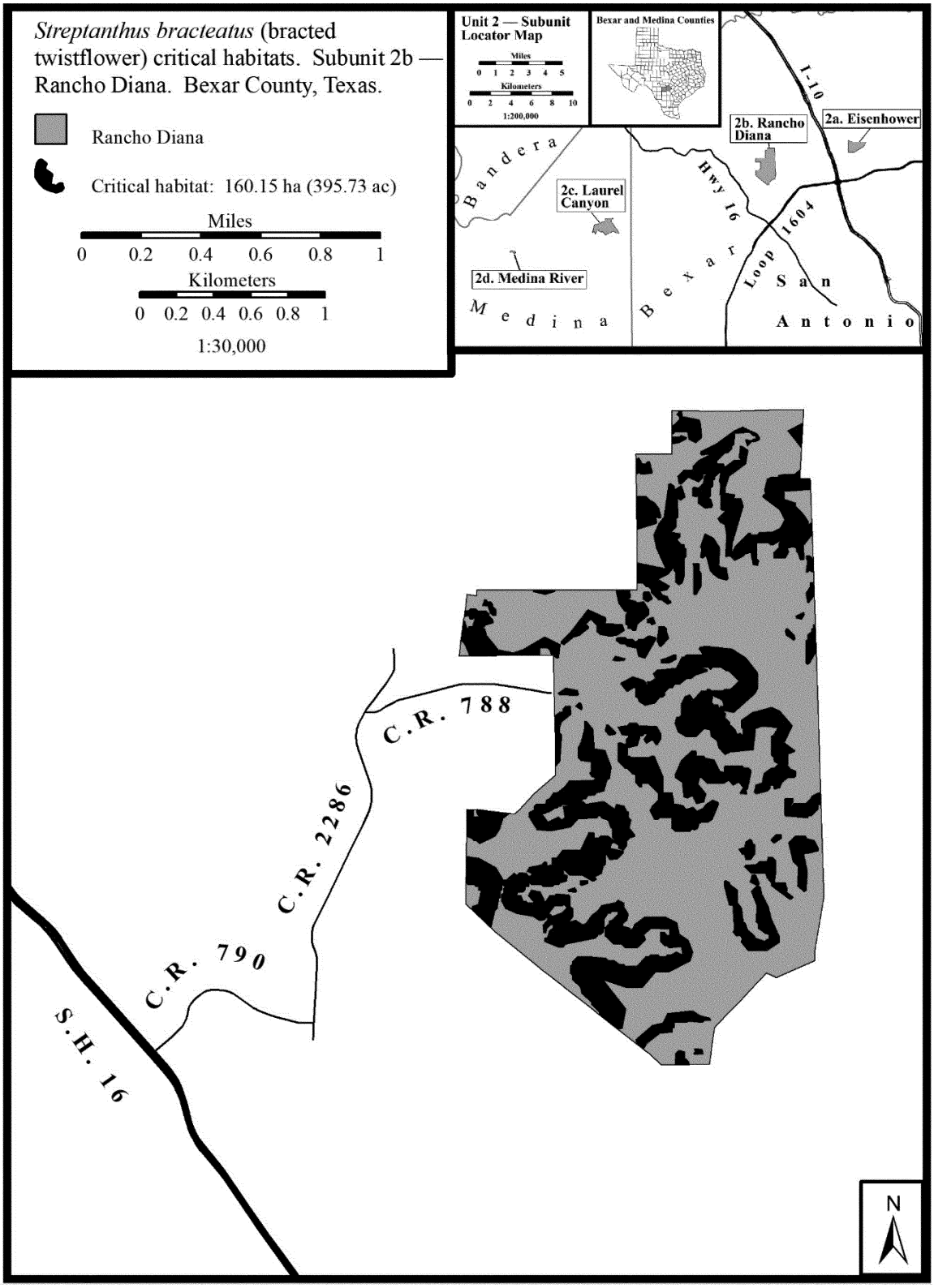


(ii) Subunit 2b: Rancho Diana.

(A) Subunit 2b consists of 395.73 ac (160.15 ha) in Bexar County and is composed of lands owned and managed by the City of San Antonio.

(B) Map of Subunit 2b follows:

Figure 7 to *Streptanthus bracteatus* (bracted twistflower) paragraph (7)(ii)(B)



(iii) Subunit 2c: Laurel Canyon Ranch Easement.

(A) Subunit 2c consists of 39.59 ac (16.02 ha) in Medina County and is composed of private property owned by Laurel C. Canyon Ranch, LP. The City

of San Antonio Edwards Aquifer Protection Program holds a conservation easement on 222 ha (549 ac) of Laurel Canyon Ranch.

(B) Map of Subunit 2c follows:

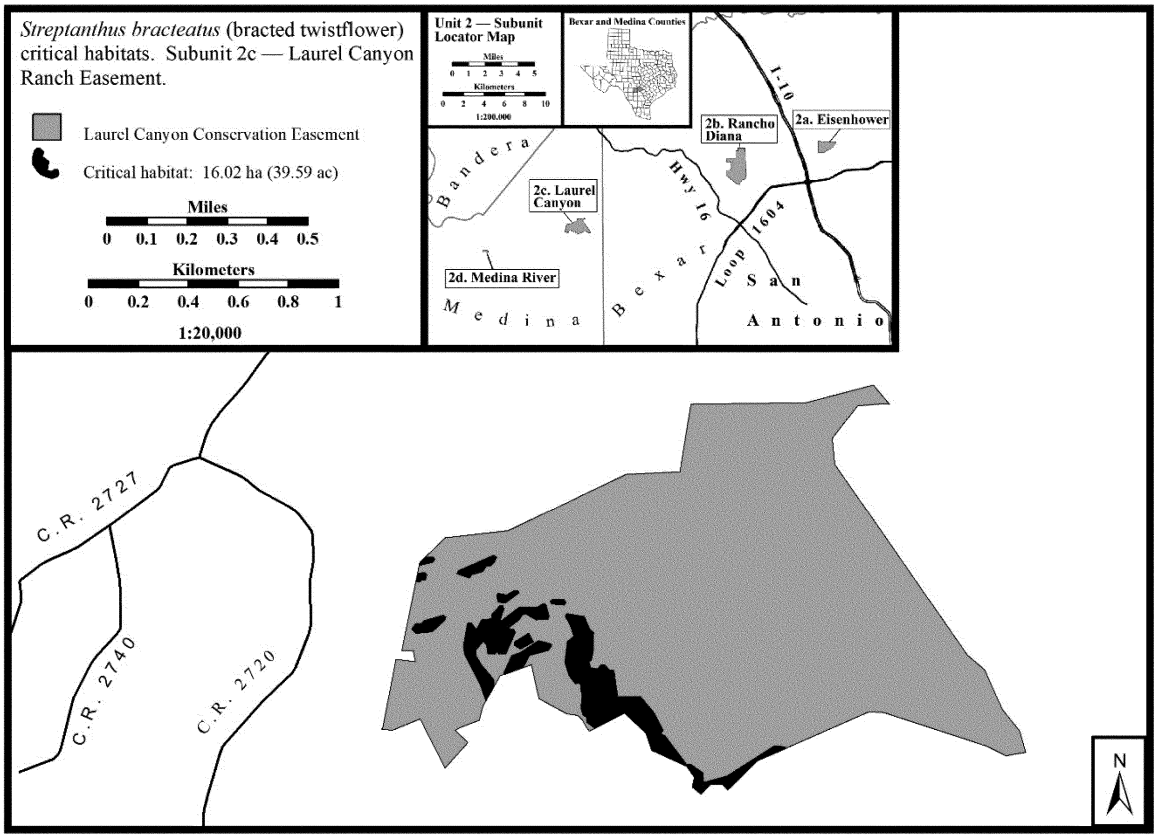


Figure 8 to *Streptanthus bracteatus* (bracted twistflower) paragraph (7)(iii)(B)

(iv) Subunit 2d: Medina River.

(A) Subunit 2d consists of 23.28 ac (9.42 ha) in Medina County and is composed of private property owned by Medina Ranch Inc.

(B) Map of Subunit 2d follows:

Figure 9 to *Streptanthus bracteatus* (bracted twistflower) paragraph (7)(iv)(B)

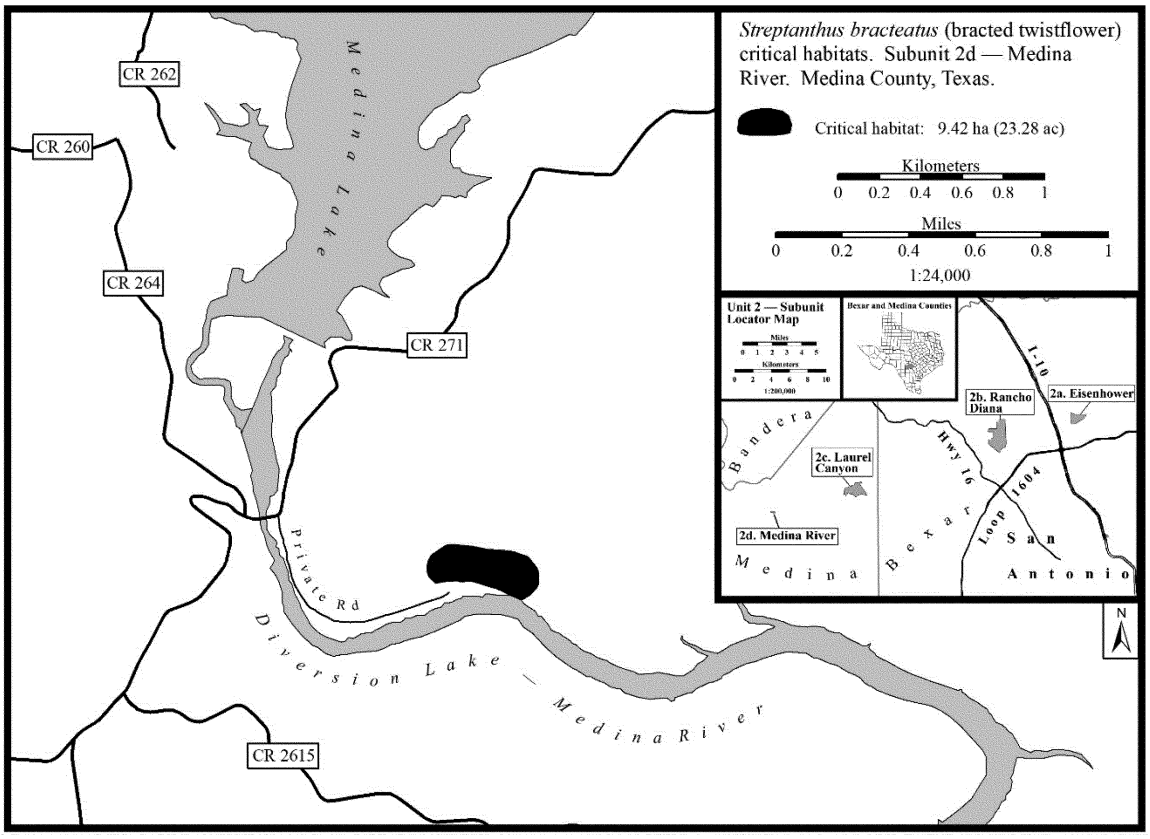
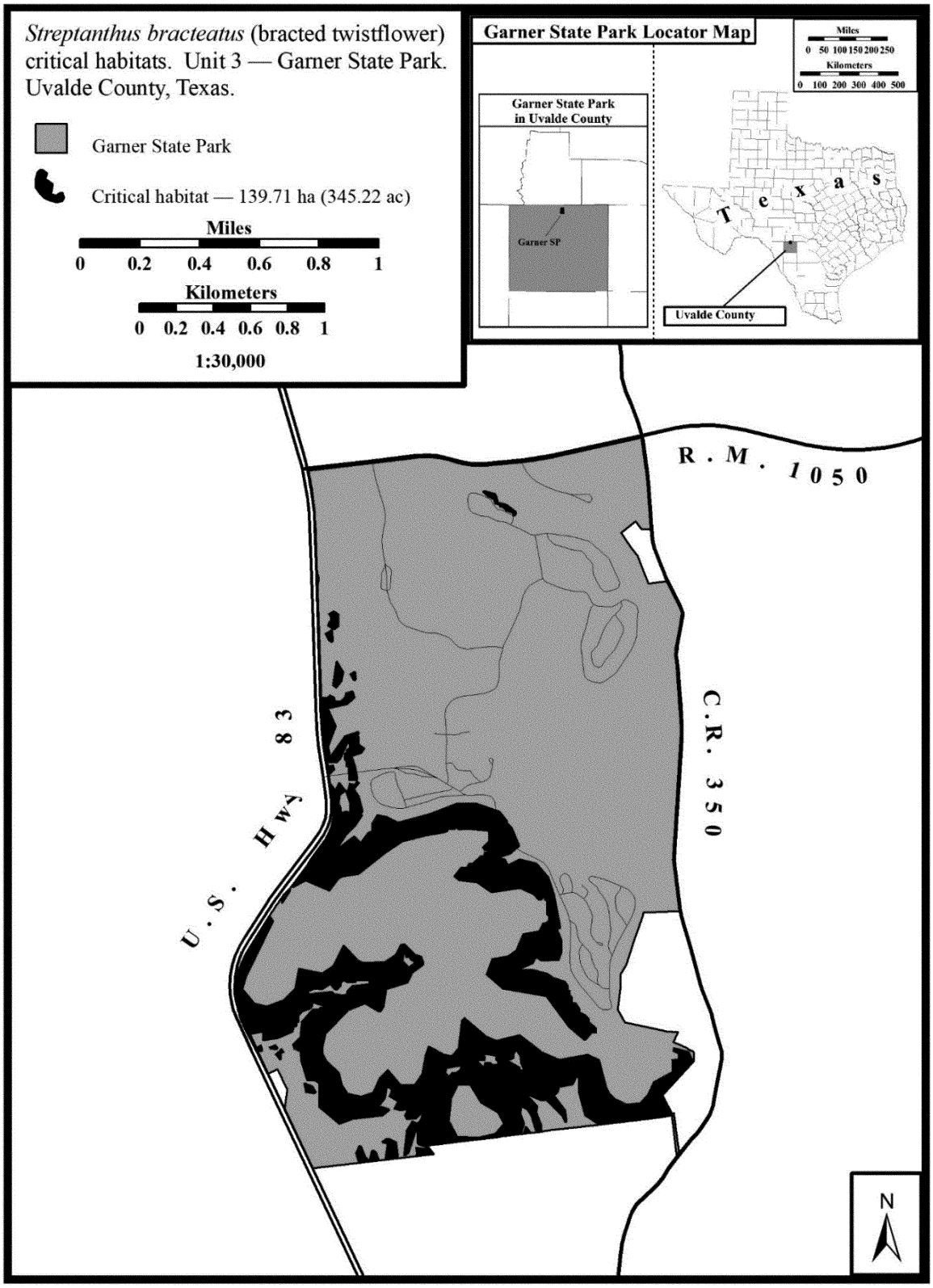


Figure 10 to *Streptanthus bracteatus* (bracted twistflower) paragraph (8)(ii)

(8) Unit 3: Southwest; Garner State Park, Uvalde County, Texas.

(i) Unit 3 consists of 345.22 ac (139.71 ha) in Uvalde County and is composed of lands within Garner State Park, which is managed by Texas Parks and Wildlife Department.

(ii) Map of Unit 3 follows:



* * * * *

Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2023–07118 Filed 4–10–23; 8:45 am]

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FEDERAL REGISTER

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No. 69 April 11, 2023

Part V

The President

Executive Order 14094—Modernizing Regulatory Review

Federal Register
Vol. 88, No. 69
Tuesday, April 11, 2023

Presidential Documents

Title 3—

The President

Executive Order 14094 of April 6, 2023

Modernizing Regulatory Review

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to modernize the regulatory process to advance policies that promote the public interest and address national priorities, it is hereby ordered as follows:

Section 1. *Improving the Effectiveness of the Regulatory Review Process.* (a) This order supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), and Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review). Any provisions of those orders not amended in this order shall remain in effect. This order also further implements the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review).

(b) Section 3(f) of Executive Order 12866 is hereby amended to read as follows:

''(f) ''Significant regulatory action'' means any regulatory action that is likely to result in a rule that may:

(1) have an annual effect on the economy of $200 million or more (adjusted every 3 years by the Administrator of OIRA for changes in gross domestic product); or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise legal or policy issues for which centralized review would meaningfully further the President's priorities or the principles set forth in this Executive order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.''

Sec. 2. *Affirmative Promotion of Inclusive Regulatory Policy and Public Participation.* (a) To the extent practicable and consistent with applicable law, regulatory actions should be informed by input from interested or affected communities; State, local, territorial, and Tribal officials and agencies; interested or affected parties in the private sector and other regulated entities; those with expertise in relevant disciplines; and the public as a whole. Opportunities for public participation shall be designed to promote equitable and meaningful participation by a range of interested or affected parties, including underserved communities.

(b) To inform the regulatory planning process, executive departments and agencies (agencies) shall, to the extent practicable and consistent with applicable law:

(i) clarify opportunities for interested persons to petition for the issuance, amendment, or repeal of a rule under 5 U.S.C. 553(e);

(ii) endeavor to respond to such petitions efficiently, in light of agency judgments of available resources and priorities; and

(iii) maintain, subject to available resources, a log of such petitions received, and share with the Administrator of the Office of Information

and Regulatory Affairs (OIRA), upon request, information on the status of recently resolved and pending petitions.

(c) To inform the development of regulatory agendas and plans, agencies shall endeavor, as practicable and appropriate, to proactively engage interested or affected parties, including members of underserved communities; consumers; workers and labor organizations; program beneficiaries; businesses and regulated entities; those with expertise in relevant disciplines; and other parties that may be interested or affected. These efforts shall incorporate, to the extent consistent with applicable law, best practices for information accessibility and engagement with interested or affected parties, including, as practicable and appropriate, community-based outreach; outreach to organizations that work with interested or affected parties; use of agency field offices; use of alternative platforms and media for engaging the public; and expansion of public capacity for engaging in the rulemaking process.

(d) The Administrator of OIRA, in consultation with relevant agencies, as appropriate, shall consider guidance or tools to modernize the notice-and-comment process, including through technological changes. These reforms may include guidance or tools to address mass comments, computer-generated comments (such as those generated through artificial intelligence), and falsely attributed comments.

(e) Section 6(b)(4) of Executive Order 12866 establishes a process for persons not employed by the executive branch of the Federal Government to request meetings with OIRA officials regarding the substance of regulatory actions under OIRA review. Public trust in the regulatory process depends on protecting regulatory development from the risk or appearance of disparate and undue influence, including in the OIRA review process. In order to reduce this risk or appearance, the Administrator of OIRA shall, to the extent practicable and consistent with applicable law:

(i) Provide information to facilitate the initiation of meeting requests regarding regulatory actions under OIRA review from potential participants not employed by the executive branch of the Federal Government who have not historically requested such meetings, including those from underserved communities; and

(ii) Implement reforms to improve procedures and policies with respect to OIRA's consideration of meeting requests initiated by persons not employed by the executive branch of the Federal Government regarding the substance of regulatory actions under OIRA review to further the efficiency and effectiveness of such meetings. These reforms may include:

(A) efforts to ensure access for meeting requesters who have not historically requested such meetings;

(B) discouraging meeting requests that are duplicative of earlier meetings with OIRA regarding the same regulatory action by the same meeting requesters;

(C) consolidation of meetings by requester, subject matter, or any other consistently applied factors deemed appropriate to improve efficiency and effectiveness; and

(D) disclosure of data in an open, machine-readable, and accessible format that includes the dates and names of individuals involved in all substantive meetings and the subject matter discussed during such meetings, as required by section 6(b)(4)(C)(iii) of Executive Order 12866, so as to better facilitate transparency and analysis.

Sec. 3. *Improving Regulatory Analysis.* (a) Regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and are consistent with Executive Order 12866, Executive Order 13563, and the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review). Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law.

(b) Within 1 year of the date of this order, the Director of the Office of Management and Budget, through the Administrator of OIRA and in consultation with the Chair of the Council of Economic Advisers and representatives of relevant agencies, shall issue revisions to the Office of Management and Budget's Circular A–4 of September 17, 2003 (Regulatory Analysis), in order to implement the policy set forth in subsection (a) of this section.

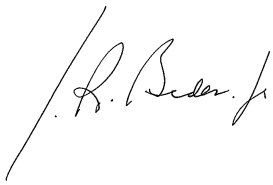
Sec. 4. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

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

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

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

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



THE WHITE HOUSE,
April 6, 2023.

[FR Doc. 2023–07760
Filed 4–10–23; 11:15 am]
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